



## **PLANNING COMMISSION**

June 12, 2018, Council Chambers, 6:30 pm  
201 West Ash Street, Mason, MI

### **AGENDA**

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. PUBLIC COMMENT**

**4. APPROVAL OF MINUTES** (May 15, 2018)

**5. PUBLIC HEARING**

A. Eric Harter, Mason Motorcars LLC is requesting a special use permit and site plan approval for used motor vehicle sales at 700 North Cedar Street, parcel 33-19-10-05-152-017.

**6. UNFINISHED BUSINESS**

A. Ordinance 219: Consider Resolution 2018-06 to recommend City Council adopt Ordinance 219 to Amend Chapter 94 – Zoning – of the Code of the City of Mason by repealing and replacing Article XI Zoning Board of Appeals (ZBA)

B. Update - Ordinance 218 - to Amend Section 94-131 and Subsection 94-132 of Chapter 94 – Zoning – of the Code of the City of Mason to allow residential uses

C. Development Update – Administrators Report

D. Workplan Update

E. Sidewalks

**7. NEW BUSINESS**

**8. LIAISON REPORT**

**9. ADJOURN**

**CITY OF MASON  
PLANNING COMMISSION MEETING  
MINUTES OF MAY 15, 2018  
DRAFT**

Sabbadin called the meeting to order at 6:33 p.m. in the Council Chambers at 201 W. Ash Street, Mason, Michigan.

Present: Commissioners: (7) Barna, Droscha, Feintuch, Hagle\*, Howe, Sabbadin, Waxman

Absent: Commissioners: (1) Reeser

Also present: Elizabeth A. Hude, AICP, Community Development Director

\*Hagle left meeting at 6:56 p.m.

**PUBLIC COMMENT**

None.

**APPROVAL OF MINUTES**

MOTION by Waxman, second by Droscha to approve April 10, as amended, and April 24, 2018 minutes.

Yes (7) Barna, Droscha, Feintuch, Hagle\*, Howe, Sabbadin, Waxman

No (0)

Absent (1) Reeser

**MOTION PASSED**

**PUBLIC HEARING**

<b>A. Ordinance 217 - Amend Section 94-173 to delete Subsection (i)e. which states that the maximum building height for hotel, motel, transient lodging facilities shall not exceed two stories or 35 feet.</b>		
OPEN: 6:36 P.M.	CLOSED: 6:37 P.M.	No comments from the public.
PC Discussion: Howe asked if the remainder of the ordinance was sufficient for hotels or if other changes were necessary. Hude responded that the recently proposed hotel met the requirements and she was not aware of any at this time.		
VOTE MOTION made by Waxman, second by Droscha to approve Resolution 2018-04. Yes (7) Barna, Droscha, Feintuch, Hagle, Howe, Sabbadin, Waxman No (0) Absent (1) Reeser <b><u>MOTION PASSED</u></b>		

<b>B. Ordinance 218 - to Amend Section 94-131 and Subsection 94-132 of Chapter 94 – Zoning – of the Code of the City of Mason to allow residential uses.</b>		
OPEN: 6:37 P.M.	CLOSED: 6:38 P.M.	No comments from the public.
<p>PC Discussion:</p> <p>Howe asked if this applied to the big white house on the corner of Barnes/Ash. Hude responded that it did and that it appears the house is currently occupied as residential. It is a non-conforming use now that will become conforming through this ordinance amendment.</p> <p>Barna stated she was glad to see this and that it adds flexibility and enhances the goals for more mixed use.</p> <p>Hude stated that in the future the property currently occupied by the Hilliard and the Presbyterian church would likely be rezoned to commercial as the goal would be to avoid ground floor residential in those locations as part of the core commercial district.</p>		
<p>VOTE</p> <p>MOTION made by Waxman, second by Droscha to approve Resolution 2018-05.</p> <p>Yes (7) Barna, Droscha, Feintuch, Hagle, Howe, Sabbadin, Waxman</p> <p>No (0)</p> <p>Absent (1) Reeser</p> <p><u>MOTION PASSED</u></p>		
<b>C. Ordinance 219: Introduction and First Reading of Ordinance 219 to Amend Chapter 94 – Zoning – of the Code of the City of Mason by repealing and replacing Article XI Zoning Board of Appeals (ZBA).</b>		
OPEN: 6:38 P.M.	CLOSED: 6:39 P.M.	No comments from the public.
<p>PC Discussion:</p> <p>Staff asked that the matter be postponed to the June meeting to allow time to receive comments from the City Attorney.</p>		
<p>VOTE</p> <p>MOTION made by Waxman, second by Droscha to postpone discussion and vote on Resolution 2018-06 to the June meeting.</p> <p>Yes (7) Barna, Droscha, Feintuch, Hagle, Howe, Sabbadin, Waxman</p> <p>No (0)</p> <p>Absent (1) Reeser</p> <p><u>MOTION PASSED</u></p>		
<b>D. Ordinance 220: Introduction and First Reading of Ordinance 220 to Amend the Mason Zoning Map by rezoning parcels 33-19-10-08-240-015 and 33-19-10-08-240-016 (440 and 448 S. Jefferson) from an O-1: General office district to a C-1: Central business district.</b>		
OPEN: 6:39 P.M.	CLOSED: 6:39 P.M.	No comments from the public.

**PC Discussion:**

Sabbadin provided an overview on the history of the property and its current use as commercial – Bad Brew and that acting on this ordinance would make them a conforming use. Hude reaffirmed that the property has historically been used as commercial but zoned office. This amendment will allow commercial uses by right.

**VOTE**

MOTION made by Waxman, second by Droscha to approve Resolution 2018-07.

Yes (7) Barna, Droscha, Feintuch, Hagle, Howe, Sabbadin, Waxman

No (0)

Absent (1) Reeser

**MOTION PASSED**

**UNFINISHED BUSINESS**

- A. Development Updates – The Administrators Report was distributed.
- B. Workplan Update – Staff will be submitting the workplan for future planning projects to City Council. The scope/schedule/budget for each project will be refined further. Perhaps a joint PC/CC workshop to review the priorities for work and inform the necessary refinements.

**NEW BUSINESS**

Site Plan Review (SPR) – 830 Kerns Road (Angel House) requesting a preliminary and final site plan approval for the construction of various site improvements including an update to the existing play area; the addition of a running/walking track; a basketball court; pavilion; storage area; and, ten (10) new parking spaces. Angel House is located on Kerns Road approximately 500 feet south of Howell Road and approximately 1,450 north of Cedar Street (M-36). The parcel is zoned M-2 General Manufacturing.

Roger Donaldson, Architect for the project, provided an overview and history on the site. In 1929 Kiwanis Club donated Camp Kiwanis property to the Boy Scouts. That property was returned to Kiwanis and eventually sold and the proceeds were used to help fund the Angel House. Andrea Calabrese, Chief Operating Officer for Child and Family Charities/Angel House was also present.

Child and Family Charities, operators of the Angel House, would like to add a permanent walking path for mothers and children to use for exercise, a pavilion for shade and picnic tables, and additional parking for staff meetings. They currently have lighting in the existing parking area and, as funds become available, will add lighting to the new parking area. They would like to request that the requirement for a landscaped buffer on the south side of the property be waived in addition to the north and east boundary. Mr. Donaldson passed out an aerial view of the property showing some existing trees and shrubs along the south line. They have not had any issues with the vet clinic to date.

Howe stated that the improvements were nice for residents and create a safe place to walk. Barna asked if they would be installing sidewalks on the property facing the street. Discussion took place on the upcoming expansion of the Hayhoe Riverwalk Trail along Kerns and the desire to work with Angel House to ensure those improvements support their goals.

Sabbadin asked if a change to property like this would require them to install sidewalks? Discussion took place about the requirement for sidewalk improvements on private property. They are required in private subdivisions, however, a recent legal opinion received on the Goodwill site plan confirmed that a requirement to make public improvements cannot be made of private property owners. Barna stated that sidewalks have been required in the past. Hude offered to research further and bring information back for future discussion.

Hude clarified that this was a final site plan as it was an amendment to a previously approved site plan.

Waxman questioned the landscaping, suggested following the law unless extremely ownerous. He asked if the vet clinic had any concerns. Hude stated that the neighbors were not notified as it is not a public hearing. Barna wondered what was previously required.

Droscha questioned the need for the requirement, that they were making playground improvements, no issues with the neighbors.

MOTION made by Waxman to approve Resolution 2018-08, second by Howe.

MOTION made by Droscha to amend the resolution and add a waiver for the landscaping requirement on the south property boundary, second by Howe.

VOTE

YES (7) Barna, Droscha, Feintuch, Howe, Sabbadin, Waxman

No (0)

Absent (2) Hagle, Reeser

**MOTION PASSED**

### **LIAISON REPORT**

Droscha reported that the focus of the last City Council meeting was the first reading of the ordinances discussed during tonight's public hearings.

Waxman asked about filling of vacancies on the board. Droscha commented that we did not have any applicants, but has talked to people encouraging them to apply.

### **ADJOURN**

The meeting adjourned at 7:20 p.m.

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Lori Hagle, Secretary



## City of Mason Planning Commission

*Staff Report*

TO: Planning Commission  
FROM: Elizabeth A. Hude, AICP - Community Development Director  
SUBJECT: Special Use Permit and Site Plan Review – 700 N. Cedar Street  
DATE: June 7, 2018

Eric Harter, Mason Motorcars LLC is requesting a special use permit and site plan approval for used motor vehicle sales at 700 North Cedar Street, parcel 33-19-10-05-152-017.

The property is currently used as an office. The existing tenant will remain and Mason Motorcars will have office space in the existing building to support the used motor vehicle sales operation. No changes to the building or site are proposed.

The parcel is zoned C-2 (General Commercial District). Section 94-222 states that any use within the C-2 zoning district requires site plan review. If the proposed use was allowed by right, the application would qualify for administrative site plan review under Sec. 94-223 as there is no increase in the base or footprint of the structure, and no increase in the number of required off-street parking spaces. However, Section 94-142. C-2 General Commercial District (d) Uses authorized by special use permit paragraph (8) indicates that used motor vehicle sales is a use that requires a special use permit in the C-2 Zoning District. A Special Use Permit requires Site Plan Review. The applicant has, therefore, made application for both a Special Use Permit and Site Plan Review. Staff recommends that the application be viewed simultaneously as a preliminary and final site plan.

### **LAND USE AND ZONING:**

The site is located and fronts on Cedar Street (M36), which is under the jurisdiction of the Michigan Department of Transportation (MDOT). The surrounding land uses and zoning are as follows:

	Current Land Use	Zoning	Future Land Use
North	Commercial	C-2 (General Commercial District)	Commercial
East	Commercial	C-2 (General Commercial District)	Commercial
South	Commercial	C-2 (General Commercial District)	Commercial
West	Commercial	C-2 (General Commercial District)	Commercial

### **SITE PLAN REVIEW:**

The following sections address compliance with site plan requirements. The following comments are provided based upon the plan dated May 11, 2018, Certificate of Survey (Site Plan).

### **Plan Details:**

There are no proposed changes to the building or site. The applicant proposes to utilize existing parking spaces for used vehicle sales.

**Height, Bulk, Density, and Area Requirements:**

As no changes are proposed, the plan appears to meet the building height, setbacks and lot coverage site development standards listed in Section 94-121(c) and Table 100-1.

**Off-Street Parking & Circulation:**

The plan as presented appears to meet the parking space requirements as set forth in Table 100-5. Table 100-5 does not include a specific requirement for parking in conjunction with used motor vehicle sales. Sec. 94-292 states:

*(c) Requirements for a use not mentioned. In the case of a use not specifically mentioned in this article, the zoning official shall determine the requirements of off-street parking based upon a similar listed use.*

There are currently 44 parking spaces available on the lot including two (2) barrier-free spaces. The applicant proposes using nineteen (19) of those spaces to display used motor vehicles. Staff has determined that the proposed number of spaces appears to be sufficient based upon a review of the parking space requirements for both General Offices and General Retail, as well as the parking table and the traffic generation estimate provided by the applicant under application item III.C:

Use	UFA (per applicant)	Parking/UFA	Customer Parking Req.	Customer Parking Proposed
Office 1 – State Farm Insurance	800 +/- sq. ft.	1:200 sq. ft.	4	4
Office 2 – Mason Motorcars LLC	800 +/- sq. ft.	1:200 sq. ft.	Included in calculation for General Retail	
General Retail – 1 per 150 sq. ft. UFA	2,907 sq. ft. (=19 parking spaces)	1:150 sq. ft.	19	19
Parking spaces used as General Retail Area			19	19
Additional parking available			0	2
Total parking spaces proposed			42	44
Barrier-free spaces required			2	2

*Note: Parking requirement for General Offices – 1 per 200 sq. ft. of UFA*

**Landscaping:**

No changes proposed.

**Signs:**

The site plan does not propose a new or expanded sign located within the property.

If any new signage is to be located on the site it will be subject to the requirements of Chapter 58 of the Zoning Ordinance, including Division 2 of said chapter.

**Site Lighting:**

No changes proposed.

**Construction Schedule:**

Operations are expected to begin upon approval of the Special Use Permit/Site Plan.

**PUBLIC SERVICES AND FACILITIES:****Water and Sanitary Sewer:**

No new water or sanitary sewer services are proposed for this project.

**Storm Water Management:**

No changes proposed.

**Agency Comments:**

MDOT	MDOT would not have any issues with the use of the existing driveway for the proposed use of the property. (email dated 5/23/18)
Police	
Fire	No comments or concerns. (email 5/24/18)
City Engineer	From an engineering perspective we take no exception to the proposed Special Use Permit for auto sales at 700 N. Cedar Street. (email dated 6/5/18)
DPW	No concerns. (email 6/7/18)

**REVIEW CRITERIA:**

It appears that the site and proposed use will comply with the special use permit and site plan review standards listed in Sections 94-191(f) and 94-227 of the Code.

**Special Permit Basis of Determination:**

In accordance with Special Use Permit: Chapter 94, Article VI, Sec. 94-191(f) Basis of determination.

d) Review and decision. The planning commission may approve, approve with conditions, or deny an application for special use permit. The review of a special use permit application and the associated site plan shall be made by the planning commission in accordance with the procedures and standards specified in this chapter.

Sec. 94-191(f) Basis of determination. Before approving a special use permit, the planning commission shall find by clear and convincing proof that the applicable standards set forth by this chapter shall be satisfied by the completion and operation of the proposed development. The planning commission shall review the particular circumstances and facts of each proposed use in terms of these standards and shall make written findings showing that such use shall:

*(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 adjacent property or the zoning district in which it is proposed.*

*(2) Not be hazardous or disturbing to uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.*

*(3) Be served adequately by essential facilities and services, such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools.*

*(4) Not create additional requirements at public cost for public facilities and services.*

*(5) Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any person, property, or the general welfare by noise, fumes, glare, or odors.*

*(6) Not be located such that it will directly or indirectly have a substantial adverse impact on the natural resources of this city.*

*(7) Be in compliance with other applicable local, county, state, or federal rules and regulations.*



**Site Plan Review Standards Sec. 94-227:**

In reviewing an application for site plan review and approval the following standards shall apply:

- (1) *The site shall be developed so that all elements shall be harmoniously and efficiently organized in relation to the size, shape, type and topography of the site and surrounding property.*
- (2) *The site shall be developed so as not to impede the normal and orderly development, improvement, and use of surrounding property for uses permitted in this chapter.*
- (3) *All buildings or groups of buildings shall be arranged to permit emergency vehicle access by some practical means to all sites.*
- (4) *Every structure or dwelling unit shall have direct access to a public street or indirect access to a public street via an approved dedicated private street.*
- (5) *Appropriate measures shall be taken to ensure that the addition or removal of surface waters will not adversely affect neighboring properties that controls are in place to minimize sedimentation and erosion, and that topographic alterations are minimized to accommodate storm water management.*
- (6) *Provisions shall be made for the construction of storm sewer facilities including grading, gutters, piping, on-site storage, and treatment of turf as required to handle storm water and prevent erosion.*
- (7) *Secondary containment for above ground areas where hazardous substances are stored or used shall be provided as required by the city fire chief.*
- (8) *Exterior lighting shall be designed and located so that the source of illumination is directed away from adjacent properties, the intensity of lighting is the minimum necessary, and the direction of lighting is downward as much as is possible and appropriate for the project.*
- (9) *All loading and unloading areas, outside storage areas, and refuse receptacles shall be screened from casual view from the public rights-of-way and adjoining land uses.*
- (10) *Site plans shall meet the driveway, traffic safety, and parking standards of the city in such manner as necessary to address the following:*
  - a. *Safe and efficient vehicular and non-vehicular circulation, including parking areas, non-motorized linkages to abutting parcels, uses, sidewalks, and trails.*
  - b. *Shared driveways and service drives.*
  - c. *Adequate and properly located utilities.*
- (11) *Provisions shall be made for proposed common areas and public features to be reasonably maintained.*
- (12) *The site plan submittal shall demonstrate compliance with all applicable requirements of this chapter, chapters 58 and 74, the building code, and county, state, and federal law.*

**STAFF RECOMMENDATION:**

With the findings and analysis described above, the following action is recommended for consideration by the Planning Commission:

***The Planning Commission approve Resolution No. 2018-08.***

**Attachments:**

1. Resolution
2. Application
3. Site Plan
4. Agency emails

Introduced:  
Second:

**CITY OF MASON  
PLANNING COMMISSION RESOLUTION  
No. 2018-08**

**A RESOLUTION APPROVING A SPECIAL USE PERMIT AND FINAL SITE PLAN AND TO  
SELL USED MOTOR VEHICLES ON PROPERTY LOCATED AT 700 N. CEDAR STREET**

**June 12, 2018**

**WHEREAS**, a request has been received from Eric Harter, Mason Motorcars LLC for a Special Use Permit final site plan approval to be allowed to sell used motor vehicles on property located at 700 N. Cedar Street; and

**WHEREAS**, a site plan was submitted dated May 11, 2018, Certificate of Survey (Site Plan); and

**WHEREAS**, the subject property is further described as 923.83 FT, S 46-21-47 E ALNG N LN OF CEDAR ST 641.61 FT TO POB, N 43-38-13 E 103.61 FT, NELY ALNG CURVE TO LEFT 99.71 FT WITH RAD OF 135 FT, CHD BRG N 22-28-41 E 97.46 FT, N 01-19-09 E 33.12 FT, S 88-40-51 E 90 FT, S 01-19-09 W 241.32 FT, S 43-38-13 W 101.13 FT, N 46-21-47 W 171.54 FT ALNG N LN OF CEDAR ST TO POB ON NW 1/4 OF SEC 5, T2N R1W CITY OF MASON. 0.844 ACRES; and

**WHEREAS**, the parcel is zoned C-2 (General Commercial district); and

**WHEREAS**, Section 94-222 states that any use within the C-2 zoning district requires site plan review; and

**WHEREAS**, Section 94-142. C2 General Commercial District (d) Uses authorized by special use permit paragraph (8) indicates that used motor vehicle sales requires a special use permit in the C-2 Zoning District; and

**WHEREAS**, the plans will comply with the Special Use Permit Basis for Determination listed in Section 94-191(f) and Site Plan Review Standards listed in Section 94-227 of the Mason Code; and

**NOW THEREFORE BE IT BE RESOLVED**, that the Mason Planning Commission does hereby approve a Special Use Permit final site plan to sell used motor vehicles on property located at 700 N. Cedar based on the site plan dated May 11, 2018, Certificate of Survey (Site Plan).

Yes ( )

No ( )

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Sarah J. Jarvis, Clerk  
City of Mason  
Ingham County, Michigan



## APPLICATION – SITE PLAN REVIEW/SPECIAL USE PERMIT

### City of Mason

Planning Department • 201 W. Ash Street • Mason, MI 48854

Phone: 517/676-9155 • Fax: 517/676-1330

www.mason.mi.us

#### Applicant– Please check one of the following:

<input type="checkbox"/>	Preliminary Site Plan Review
<input type="checkbox"/>	Final Site Plan Review
<input checked="" type="checkbox"/>	Special Use Permit*
<input type="checkbox"/>	Administrative Review

\* Includes Preliminary Site Plan Review

#### PLANNING DEPARTMENT USE ONLY

Application Received: \_\_\_\_\_

Tax ID: \_\_\_\_\_

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

Receipt #: \_\_\_\_\_

June 12 PC

#### I. APPLICANT INFORMATION

Name ERIC HARTER

Organization MASON MOTORCARS LLC

Address 700 N CEDAR ST SUITE B

Telephone Number (517) 749-1000 Facsimile Number \_\_\_\_\_

Interest in Property (owner, tenant, option, etc.) TENANT

Note: If applicant is anyone other than owner, request must be accompanied by a signed letter of authorization from the owner.

#### II. PROPERTY INFORMATION

Owner JEFF KIRKPATRICK Telephone Number (517) 788-9150

Property Address 700 N CEDAR ST

Legal Description: If in a Subdivision: Subdivision Name \_\_\_\_\_ Lot Number \_\_\_\_\_

If Metes and Bounds (can be provided on separate sheet): \_\_\_\_\_

SEE ATTACHED

#### APPLICANT CERTIFICATION

By execution of this application, the person signing represents that the information provided and the accompanying documentation is, to the best of his/her knowledge, true and accurate. In addition, the person signing represents that he or she is authorized and does hereby grant a right of entry to City officials for the purpose of inspecting the premises and uses thereon to verify compliance with the terms and conditions of any Special Use Permit and/or Site Plan approval issued as a result of this application.

Signature [Signature] Date 5-22-18

### III. REQUEST DESCRIPTION

- A. Written Description – Please use this section to describe the use or uses proposed. Attach additional pages, if necessary.

SEE ATTACHED

B. Available Services

Public Water ☒ YES ☐ NO  
Public Sanitary Sewer ☒ YES ☐ NO

Paved Road (Asphalt or Concrete) ☒ YES ☐ NO  
Public Storm Sewer ☒ YES ☐ NO

C. Estimate the Following

Traffic Generated 6 CARS DAILY

Total Employees 1 Shifts 1

Population Increase 0

Employees in Peak Shift 1

Hours of Operation 9 AM to 6 PM

Total Bldg. Area Proposed 16602 SQ FT

MON day through FRI day

Parking Spaces Provided 19 MERCHANDISE  
18 CUSTOMER

D. Project Phasing

This project will be completed in: ☐ One Phase ☐ Multiple Phases – Total No. of Phases: \_\_\_\_\_

**Note: The phases of construction for multi-phase projects must be shown on the site plan**

### IV. APPLICATION MATERIALS

The following are checklists of items that generally must be submitted with applications for Preliminary Site Plan Review, Final Site Plan Review, and Special Use Permits. Applicants should review Articles VI and VII of Chapter 94 of the Mason Code for a complete listing of application requirements. All site plan drawings must comply with the requirements of Section 94-226(d) of the Zoning Ordinance. Incomplete applications will not be processed.

- ☒ Completed application form
- ☒ 20 copies of site plan drawings is larger than 11" x 17" (30 copies for Special Use Permits)
  - ☐ 1 – 11" x 17" copy of the site plan
  - ☐ Plans submitted on CD (Commercial only) Scan
- ☒ Legal description
- ☒ Proof of ownership/owner authorization
- ☒ Construction schedule for proposed project
- ☒ Construction calculations for utilities
- ☒ Fee (see below)
- ☒ Any other information deemed necessary

**Application Fee** – all requests must be accompanied by a fee, as established by the City Council. The fee schedule for Preliminary Site Plan Reviews, Final Site Plan Reviews, and Special Use Permits is as follows (As of October 16, 2006):

<u>Administrative Reviews</u>	\$70.00
<u>Preliminary Site Plan Reviews</u>	\$200.00
<u>Final Site Plan Review</u>	\$100.00
<u>Special Use Permits</u> (includes preliminary site plan review)	\$275.00
<u>Engineering Review</u>	\$220.00*

\*Two-hour minimum fee for projects increasing demand on public utilities. Actual fees incurred are billed to applicant upon completion of review.

**V. APPLICATION DEADLINES**

**Preliminary Site Plan/Special Use Permit Review** – Applications for Preliminary Site Plan Review may be submitted at any time. Complete applications must be received a minimum four (4) weeks prior to a Planning Commission meeting to be placed on the agenda. Upon receipt of a complete application, a public hearing will be scheduled for the next regularly scheduled meeting (for Special Use Permits only). The Planning Commission has the final authority to approve, approve with conditions or deny an application for Preliminary Site Plan/Special Use Permit Review. The Planning Department staff will issue a letter to the applicant advising of any changes or revisions that may be necessary prior to making application for Final Site Plan Review.

**Final Site Plan Review** – Complete applications must be received a minimum of four (4) weeks prior to a Planning Commission meeting to be placed on an agenda. The Planning Commission has the final authority to approve, approve with conditions or deny an application for Final Site Plan Review. Planning Commission meetings are held on the second Tuesday after the first Monday of every month, unless the Tuesday is a Township recognized holiday, in which case the meeting is held on the following day (Wednesday).

**VI. STAFF REPORT**

The Planning Department Staff will prepare a report to the Planning Commission regarding an application for Preliminary Site Plan Review, Final Site Plan Review or Special Use Permit. The report will explain the request and review whether it complies with the zoning standards of the Mason Code. Staff will present the findings of that report during the Planning Commission meeting. An applicant who wishes to obtain one (1) copy of that report, at no cost, prior to the meeting must provide a written request to the Planning Department. The report is generally complete on the Friday before the meeting and can be mailed to the applicant or picked up by the applicant in the Planning Department.



2



8 3 5 9 3 5 1  
Tx:4222418  
12/27/2017 9:03:00 AM

2018-000117  
DERRICK QUINNEY  
INGHAM COUNTY MICHIGAN  
REGISTER OF DEEDS  
RECORDED ON:  
01/02/2018 10:57 AM  
PAGES: 2

INGHAM COUNTY TREASURER'S CERTIFICATE  
I HEREBY CERTIFY that there are no TAX LIENS or TITLES  
held by the state or any individual against the within description, and  
all TAXES on same are paid for five years previous to the date of this  
instrument as appears by the records of this office except as stated.

12/27/2017 Eric Schertzing, Ingham County Treasurer  
Sec. 135, Act 206, 1893 as amended  
ESP

## WARRANTY DEED

The Grantor(s), Leo's Bail Bonds Agency Co., a Michigan Corporation

whose address is 700 N. Cedar Street, Mason, Michigan 48854

convey(s) and warrant(s) to Jeff Kirkpatrick & Associates, LLC, a Michigan limited liability  
company

whose address is 401 S. Jackson Street, Jackson, Michigan 49201

the following described premises situated in the City of Mason, County of Ingham, and State of  
Michigan:

### PARCEL 1:

Commencing at the Northwest corner of Section 5, Town 2 North, Range 1 West, City of Mason,  
Ingham County, Michigan, thence South 88 degrees 26'03" East 47.42 feet; thence South 88  
degrees 19'32" East 573.77 feet; thence South 01 degree 00'08" West 1923.83 feet; thence South  
46 degrees 21'47" East 677.61 feet to the point of beginning on the North right of way of Cedar  
Street; thence North 43 degrees 38'13" East 250 feet; thence South 01 degree 19'09" West 201.32  
feet; thence South 43 degrees 38'13" West 101.13 feet; thence North 46 degrees 21'47" West  
135.54 feet along said right of way line to the point of beginning. \

### PARCEL 2:

That part of Northwest ¼ of Section 5, Town 2 North, Range 1 West, City of Mason, Ingham  
County, Michigan, described as: Commencing at the Northwest corner of said Section 5; thence  
South 88 degrees 26'03" East 47.42 feet; thence South 88 degrees 19'32" East 573.77 feet; thence  
South 01 degree 00'08" West 1923.83 feet, said point being on the North line of Cedar Street;  
thence along said North line of Cedar Street South 46 degrees 21'47" East, 641.61 feet to the point  
of beginning; thence North 43 degrees 38'13" East, 103.61 feet; thence Northeasterly along a curve  
to the left, 99.71 feet, said curve having a radius of 135.00 feet, a central angle of 42 degrees  
19'04" and a line chord bearing and distance of North 22 degrees 28'41" East, 97.46 feet; thence  
North 01 degree 19'09" East, 33.12 feet; thence South 88 degrees 40'51" East, 90.00 feet; thence  
South 01 degree 19'09" West, 40.00 feet; thence South 43 degrees 38'13" West, 250.00 feet to the  
North line of Cedar Street; thence North 46 degrees 21'47" West 36.00 feet to the point of  
beginning. \

174722

Upon Recording Return To:  
Diversified National Title  
500 E. Michigan Ave. Ste. 203  
Lansing MI 48912



**JEFF KIRKPATRICK**  
**CERTIFIED COURT OFFICER**  
jeff@courtofficer.com

401 S. Jackson Street • Jackson, MI 49201 • (517) 788-8898

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April 25, 2018

To whom it may concern:

I am the President of Jeff Kirkpatrick & Associates and I own the property located 700 N. Cedar Street in Mason, Michigan.

I have entered into an agreement with Eric Harter to lease office and parking lot space to operate a used car dealership at this location. This agreement is subject to the required approval of the City of Mason.

Please consider this my authorization for Eric Harter and/or his representative to make the necessary application and related permits.

Should you have any question, please feel free to contact me at 517-937-7000.

Sincerely,

A handwritten signature in blue ink that reads "Jeff Kirkpatrick". The signature is stylized with a large "J" and "K".

Jeff Kirkpatrick

## PARKING TABLE

USE	PROPOSED	REQ'D
See Parking Sec. 94-292 & Table 100-5	# Spaces	# Spaces
Office <b>1662 sq. ft. Total</b>		
1 per 200 sq. ft. UFA	18	8
Used motor vehicle sales*		
Parking area dedicated to merchandise in sq. ft. (UFA)	2907	
General retail: 1 per 150 s.f. UFA	19	19
<b>Total Parking Spaces</b>	37	27
<b>Accessible Spaces (ADA)</b>	2	2
See Loading Sec. 94-293 & Table 100-6		
Office	1	1
Used motor vehicle sales	0	0
Loading area meets requirements?	Y	Y

Enter data  
Auto calcul

\* Parking Table 100-5 does not have a listing for motor vehicle sales. Instead, calculate the UFA for merchandise storage and use the General Retail Calculation.

*Usable floor area (UFA)* means the area used for or intended to be used for the display or sale of merchandise or services, or for use to serve patrons, clients, customers, or occupants. Such floor area which is used or intended to be used for hallways, stairways, elevator shafts, closets, columns, thickness of walls, utility or sanitary facilities shall be excluded from the computation of usable floor area. For office, merchandising, or service uses, those areas used for storage or processing merchandise or where customers, patients, clients and the general public are denied access shall be excluded from the computation of usable floor area. Measurement of usable floor area shall be the sum of the horizontal areas of each story of a structure measured from the internal faces of the exterior walls.



Mason Motorcars LLC intends to lease office space at 700 N Cedar St and occupy Suite B to retail pre-owned vehicles. They are allocated 19 parking spots to display pre-owned vehicles for sale, parking spots labeled 19-37 on the survey. Per the UFA of 1 per 150 sq. ft., of 19 parking spots with total of 2907 sq. ft., equates to 19 parking spots required and 19 allocated, parking spots labeled 19-37 on survey. Customer parking is available in parking spots labeled 1-18 on the survey. Per parking section 94-292 and table 100-5 of the zoning ordinance the office customer parking UFA formula of 1 per 200 sq. ft., office sq. ft. of 1662 sq. ft., equates to 8 office parking spots required and 18 allocated, parking spots labeled 1-18 on survey. In regards to loading and unloading requirements, loading and unloading of office supplies has dedicated area in the overflow vacant paved lot marked on the survey. As for the parking area dedicated to merchandising of the pre-owned vehicles, no delivery vehicles will deliver pre-owned vehicles. Each pre-owned vehicle is driven to the location and parked for merchandising.

Emergency vehicles have adequate flow with access from Cedar St. and exit can be obtained by circling around in the available drive space provided on the property to exit on Cedar St, or can exit thru the rear of the property to circle back to Cedar St as indicated on the survey.

LEGAL DESCRIPTION PER WARRANTY DEED  
LIBER 2018, PAGE 000117:

PARCEL 1

COMMENCING AT THE NORTHWEST CORNER OF SECTION 5, TOWN 2 NORTH, RANGE 1 WEST, CITY OF MASON, INGHAM COUNTY, MICHIGAN; THENCE SOUTH 88°26'03" EAST 47.42 FEET; THENCE SOUTH 88°19'32" EAST 573.77 FEET; THENCE SOUTH 01°00'08" WEST 1923.83 FEET; THENCE SOUTH 46°21'47" EAST 677.61 FEET TO THE POINT OF BEGINNING ON THE NORTH RIGHT-OF-WAY OF CEDAR STREET; THENCE NORTH 43°38'13" EAST 250.00 FEET; THENCE SOUTH 01°19'09" WEST 201.32 FEET; THENCE SOUTH 43°38'13" WEST 101.13 FEET; THENCE NORTH 46°21'47" WEST 135.54 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

PARCEL 2

THAT PART OF NORTHWEST 1/4 OF SECTION 5, TOWN 2 NORTH, RANGE 1 WEST, CITY OF MASON, INGHAM COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 5; THENCE SOUTH 88°26'03" EAST 47.42 FEET; THENCE SOUTH 88°19'32" EAST 573.77 FEET; THENCE SOUTH 01°00'08" WEST 1923.83 FEET, TO THE NORTH LINE OF CEDAR STREET; THENCE ALONG SAID NORTH LINE OF CEDAR STREET SOUTH 46°21'47" EAST 641.61 FEET TO THE POINT OF BEGINNING; THENCE NORTH 43°38'13" EAST 103.61 FEET; THENCE NORTHEASTERLY ALONG A CURVE TO THE LEFT, 99.71 FEET, SAID CURVE HAVING A RADIUS OF 135.00 FEET, A CENTRAL ANGLE OF 42°19'04" AND A LINE CHORD BEARING AND DISTANCE OF NORTH 22°28'41" EAST 97.43 FEET; THENCE NORTH 01°19'09" EAST 33.12 FEET; THENCE SOUTH 88°40'51" EAST 90.00 FEET; THENCE SOUTH 01°19'09" WEST 40.00 FEET; THENCE SOUTH 43°38'13" WEST 250.00 FEET TO THE NORTH LINE OF CEDAR STREET; THENCE NORTH 46°21'47" WEST 36.00 FEET TO THE POINT OF BEGINNING.

SOUTHWEST CORNER,  
SECTION 32,  
T3N, R1W

S88°19'32"E  
573.77'

S88°26'03"E  
47.42'

NORTHWEST CORNER,  
SECTION 5,  
T2N, R1W

S 01°00'08" W  
1923.83'

S46°21'47"E 641.61'

S46°21'47"E 677.61'

N43°38'13"E 103.61'

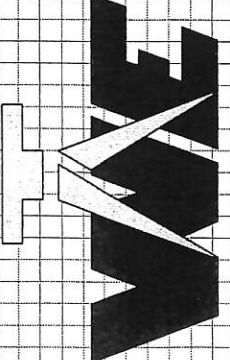


CERTIFICATION STATEMENT:

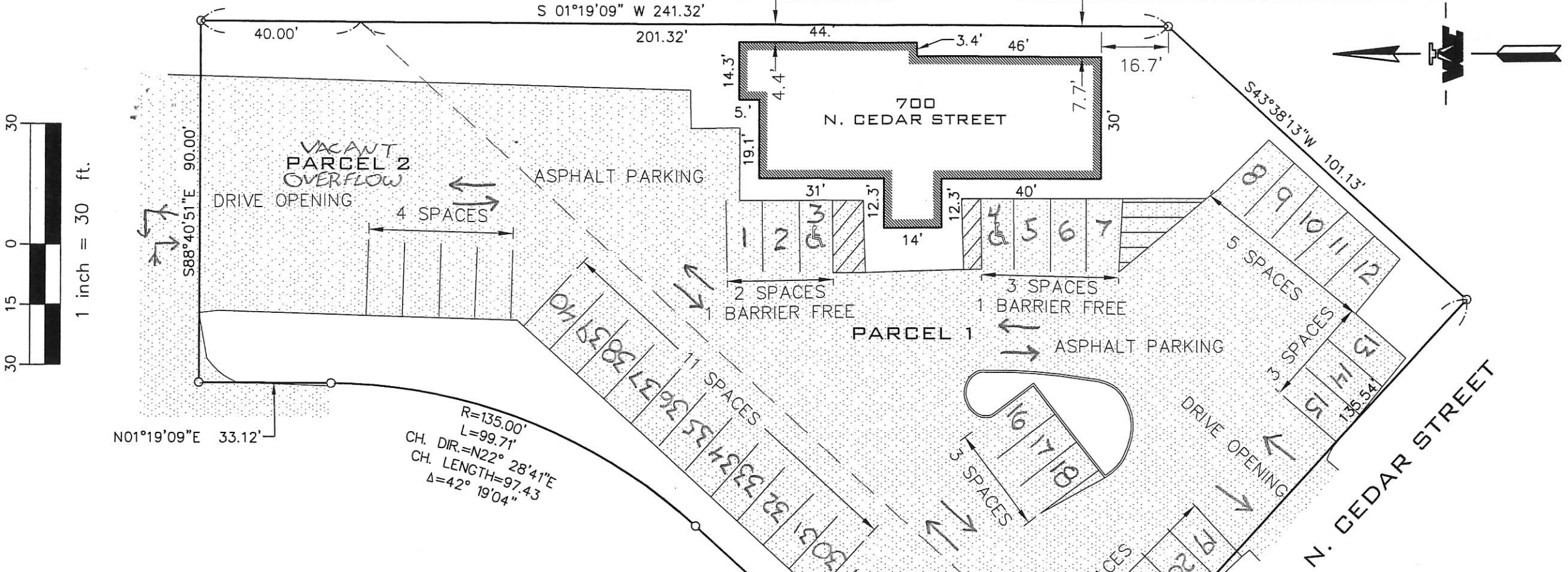
I, DONALD J. BENDZINSKI, PROFESSIONAL SURVEYOR #35989, CERTIFY THAT THIS SURVEY WAS MADE UNDER MY DIRECTION, THAT ALL CORNERS HAVE BEEN MARKED AS SHOWN, THAT THE RATIO OF CLOSURE OF THE UNADJUSTED FIELD OBSERVATIONS WAS 1:5000 OR BETTER, AND THAT ALL THE REQUIREMENTS OF PUBLIC ACT 132, AS AMENDED, HAVE BEEN COMPLIED WITH.

*Donald J. Bendzinski*  
5/19/18  
DATE

LEGEND	ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF
(M) MEASURED	NORTHWEST 1/4 SECTION 5
(R) RECORD	TOWN 2 NORTH, RANGE 1 WEST
● = SET IRON	CITY OF MASON
○ = FOUND IRON	INGHAM COUNTY, MICHIGAN

**WOLVERINE**  
Engineers & Surveyors, Inc.

312 North Street  
Mason, Michigan 48854  
Ph: 517-676-9200  
Fx: 517-676-9396  
<http://www.wolveng.com>



PROJECT: <b>ERIC HARTER</b>			
SHEET NAME: <b>CERTIFICATE OF SURVEY</b>			
JOB NO.: <b>18-0372</b>	CHECKED: <b>DJB</b>	DRAWN: <b>DER</b>	
SCALE: <b>1" = 30'</b>	DATE: <b>05/11/2018</b>	REV:	

**From:** Donald Heck  
**To:** [Elizabeth Hude](#)  
**Subject:** RE: 700 N Cedar - Mason  
**Date:** Tuesday, June 5, 2018 10:43:03 AM

---

Ms. Hude:

From an engineering perspective we take no exception to the proposed Special Use Permit for auto sales at 700 N. Cedar Street.

If you have any questions or require additional information, please do not hesitate to call.

Sincerely,

**Donald B. Heck, PE**  
**Wolverine Engineers & Surveyors, Inc.**  
312 North Street  
Mason, Michigan 48854-1169  
Ph: 517.676.9200      Fx: 517.676.9396  
[donh@wolveng.com](mailto:donh@wolveng.com)   <http://www.wolveng.com>

---

**From:** Elizabeth Hude [mailto:[elizabethh@mason.mi.us](mailto:elizabethh@mason.mi.us)]  
**Sent:** Tuesday, June 05, 2018 8:31 AM  
**To:** Donald Heck <[donh@wolveng.com](mailto:donh@wolveng.com)>  
**Subject:** RE: 700 N Cedar - Mason

Comments email are fine. No changes to site, just selling cars

~Elizabeth  
517-978-0206 p  
[elizabethh@mason.mi.us](mailto:elizabethh@mason.mi.us)

---

**From:** Donald Heck [mailto:[donh@wolveng.com](mailto:donh@wolveng.com)]  
**Sent:** Tuesday, June 5, 2018 8:28 AM  
**To:** Elizabeth Hude <[elizabethh@mason.mi.us](mailto:elizabethh@mason.mi.us)>  
**Subject:** RE: 700 N Cedar - Mason

Are we convening a development meeting on this or do you just want comments?

Thanks.

DBH

**From:** [Kerry Minshall](#)  
**To:** [Elizabeth Hude](#)  
**Subject:** RE: 700 N Cedar - Mason  
**Date:** Thursday, May 24, 2018 3:03:19 PM

---

No comments or concerns from the fire department.  
Kerry

Chief Kerry Minshall  
City of Mason Fire Department  
201 W. Ash Street  
Mason, MI 48854  
Office 517-244-9025  
Cell 517-749-5974  
Fax 517-244-9028

---

**From:** Elizabeth Hude  
**Sent:** Wednesday, May 23, 2018 10:35 AM  
**To:** Donald Heck <donh@wolveng.com>; Don Hanson - Ingham <mp\_hanson@ingham.org>; Kerry Minshall <kerrym@mason.mi.us>; Ken Baker <kenb@mason.mi.us>  
**Cc:** Deborah Stuart <deborahs@mason.mi.us>; Thelenl3@michigan.gov; DLove@ingham.org; fbarton@ingham.org  
**Subject:** 700 N Cedar - Mason

Hello,

We have received an application for a special use permit and site plan review. Please provide comments and recommendations no later than Wednesday, June 6, 2018. The application and site plan are attached, the public hearing notice will be posted as follows:

## **CITY OF MASON PLANNING COMMISSION NOTICE OF PUBLIC HEARING**

The Mason Planning Commission will conduct a public hearing on Tuesday, June 12, 2018, at 6:30 p.m., or as soon thereafter as possible, in the Council Chambers at City Hall, 201 West Ash Street, Mason, Michigan. The purpose of the hearing is to take public comment on a request for a special use permit and site plan approval for used motor vehicle sales at 700 North Cedar Street, parcel 33-19-10-05-152-017, City of Mason, Ingham Co. The application may be publicly inspected Monday through Friday, 8:00 a.m. to 5:00 p.m. in the Community Development Department at City Hall, 201 W. Ash Street, Mason, MI 48854. The Community Development Department may be reached at (517) 676-9155. Written comments will also be received at City Hall.

Sarah J. Jarvis, City Clerk

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**From:** Thelen, Lawrence (MDOT)  
**To:** [Elizabeth Hude](#); [Donald Heck](#); [Don Hanson - Ingham](#); [Kerry Minshall](#); [Ken Baker](#)  
**Cc:** [Deborah Stuart](#); [DLove@ingham.org](mailto:DLove@ingham.org); [fbarton@ingham.org](mailto:fbarton@ingham.org)  
**Subject:** RE: 700 N Cedar - Mason  
**Date:** Wednesday, May 23, 2018 11:01:51 AM

---

Elizabeth,

Thanks for sending the special use permit and site plan for review. MDOT would not have any issues with the use of the existing driveway for the proposed use of the property.

Regards,

Larry Thelen

Permit Agent/Transportation Technician

Lansing TSC(MDOT)

Phone:517-749-8733

Fax:517-335-3752

[Thelenl3@michigan.gov](mailto:Thelenl3@michigan.gov)

 Please consider the environment before printing this email. Thanks!

---

**From:** Elizabeth Hude <elizabethh@mason.mi.us>  
**Sent:** Wednesday, May 23, 2018 10:35 AM  
**To:** Donald Heck <donh@wolveng.com>; Don Hanson - Ingham <mp\_hanson@ingham.org>; Kerry Minshall <kerrym@mason.mi.us>; Ken Baker <kenb@mason.mi.us>  
**Cc:** Deborah Stuart <deborahs@mason.mi.us>; Thelen, Lawrence (MDOT) <Thelenl3@michigan.gov>; DLove@ingham.org; fbarton@ingham.org  
**Subject:** 700 N Cedar - Mason

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**From:** [Ken Baker](#)  
**To:** [Elizabeth Hude](#)  
**Subject:** RE: 700 N Cedar - Mason  
**Date:** Thursday, June 7, 2018 7:53:46 AM

---

I have no concerns over them moving to this site.

Respectfully

**Kenneth J. Baker**

Director of Public Works

for the City of Mason

517-676-1319 ex 1

This message contains information which may be confidential. Unless you are the intended recipient (or authorized to receive this message for the intended recipient), you may not use, copy, disseminate, or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail, and delete the message. Thank you.

---

**From:** Elizabeth Hude  
**Sent:** Wednesday, June 6, 2018 5:33 PM  
**To:** Ken Baker; Tom Silsby  
**Subject:** FW: 700 N Cedar - Mason

Comments? Don had no concerns.

~Elizabeth  
517-978-0206 p  
elizabethh@mason.mi.us

---

**From:** Elizabeth Hude  
**Sent:** Wednesday, May 23, 2018 10:35 AM  
**To:** Donald Heck <donh@wolveng.com>; Don Hanson - Ingham (mp\_hanson@ingham.org) <mp\_hanson@ingham.org>; Kerry Minshall <kerrym@mason.mi.us>; Ken Baker <kenb@mason.mi.us>  
**Cc:** Deborah Stuart <deborahs@mason.mi.us>; 'Thelenl3@michigan.gov' <Thelenl3@michigan.gov>; 'DLove@ingham.org' <DLove@ingham.org>; 'fbarton@ingham.org' <fbarton@ingham.org>  
**Subject:** 700 N Cedar - Mason

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We have received an application for a special use permit and site plan review. Please provide comments and recommendations no later than Wednesday, June 6, 2018. The application and site plan are attached, the public hearing notice will be posted as follows:

**CITY OF MASON PLANNING COMMISSION  
NOTICE OF PUBLIC HEARING**





## STAFF AGENDA REPORT TO PLANNING COMMISSION

Meeting: June 12, 2018

Agenda Item: 6A

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### AGENDA ITEM:

Public Meeting to discuss Ordinance 219 to Amend Chapter 94 – Zoning – of the Code of the City of Mason by repealing and replacing Article XI Zoning Board of Appeals (ZBA).

### RECOMMENDED ACTION

Move to approve Resolution No. 2018-06 recommending City Council adopt ordinance 219 amending the text of Chapter 94 Article XI Zoning Board of Appeals (ZBA).

### HISTORY

The Community Development Director is requesting an amendment to the Mason Zoning Ordinance that will repeal and replace Article XI Zoning Board of Appeals (ZBA).

As stated in the Landplan report dated November 22, 2017 (attached), “the overall intent of this updated Article is to provide City/ZBA officials, applicants and the general public with a clearer set of ZBA procedures and standards of review, and to address important matters about which the current Article XI is silent. An effort has been made to make the provisions more concise where practical and to expand the provisions where deemed beneficial. Draft Sections 94-365, 94-366 and 94-367 address, in a consistent and systematic manner and format, the authority, procedures and standards for the consideration of appeals of administrative decisions, interpretations, and variances – the three principal duties of the ZBA.”

The new Article XI will be more consistent with the Michigan Zoning Enabling Act and result in more legally defensible ZBA decisions should they be challenged.

### SUMMARY

#### Authority

Chapter 94 Article XII. Amendments of the Mason Code Section 94-391 provides for amendments to the zoning chapter initiated by the city council or by the planning commission.

The Michigan Zoning Enabling Act, which the City of Mason has adopted, authorizes municipalities to adopt and amend zoning ordinances.

**Urgency:** None

**Relation to Other Actions:** The Planning Commission held a public hearing on the proposed ordinance at their regular meeting on May 15, 2018. There were no comments from the public.

The City Attorney has concluded his review and made recommended changes that have been highlighted in the proposed ordinance.

City Council will proceed with a second reading and consideration of the Planning Commission’s recommendation at the next meeting following the Planning Commission’s decision.

### FISCAL IMPACT

**Current Budget:** None.

**Future Budget:** None.

**ADDITIONAL MATERIAL**

Proposed Ordinance 219

Planning Commission Resolution No. 2018-06

City Attorney Memo dated May 17, 2018

Landplan Summary date November 22, 2017



**CITY OF MASON  
PLANNING COMMISSION RESOLUTION NO. 2018-06**

**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL ADOPT  
ORDINANCE NO 219 – AN ORDINANCE TO AMEND CHAPTER 94—  
ZONING – OF THE CODE OF THE CITY OF MASON TO REPEAL AND  
REPLACE ARTICLE XI ZONING BOARD OF APPEALS (ZBA).**

**June 12, 2018**

**WHEREAS**, the Community Development Director has requested an amendment to the Mason Zoning Ordinance to repeal and replace Chapter 94-Zoning Article XI Zoning Board of Appeals (ZBA); and

**WHEREAS**, the Planning Commission finds that proposed Ordinance 219 is consistent with the Section 94-396(a) and offers the following as findings of fact:

- 1. Compliance with the Master Plan of the city.** The proposed amendment will improve transparency and be more consistent with the Michigan Zoning Enabling Act which grants the City of Mason its authority to carry out the implementation and enforcement of the Master Plan through the development of a zoning ordinance and zoning districts.
- 2. What, if any, identifiable conditions related to the proposed amendment have changed which justify the proposed amendment?** There does not appear to be any changes in the vicinity.
- 3. What, if any, error in judgment, procedure or administration was made in the original chapter which justifies the petitioner's change in zoning?** There is no known error of this sort.
- 4. What are the precedents and the possible effects of such precedent which might result from the approval or denial of the petition?** The proposed amendment will be more consistent with the Michigan Zoning Enabling Act and provide a clearer set of ZBA procedures and standards of review for the City/ZBA, officials, applicants and the general public. This in turn will strengthen the decisions of the ZBA should they face legal challenges.
- 5. What is the impact of the amendment on the ability of the City and other governmental agencies to provide adequate public services and facilities, and/or programs that might reasonably be required in the future if the petition is approved?** There are no known impacts.
- 6. Does the proposed amendment adversely affect the value of the surrounding property?** The proposed amendment is not site specific.
- 7. Are there any significant environmental impacts which would reasonably occur if the petitioned zoning change and resulting allowed structures were built?** There are no known environmental impacts associated with the proposed amendment.
- 8. The ability of the property in question to be put to a reasonable economic use in the zoning district in which it is presently located.** The proposed amendment is not site specific.

**NOW THEREFORE BE IT RESOLVED**, that the City of Mason Planning Commission does hereby recommend that the City Council adopt Ordinance No. 219 – an ordinance to amend Chapter 94 – Zoning – of the Code of the City of Mason to repeal and replace Article XI Zoning Board of Appeals (ZBA).

Yes ( )

No ( )

Absent ( )

---

Sarah J. Jarvis, City Clerk  
City of Mason  
Ingham County, Michigan

Introduced: May 7, 2018  
First Reading: May 7, 2018  
Second Reading: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

## **CITY OF MASON**

### **ZONING BOARD OF APPEALS REGULATION**

AN ORDINANCE TO AMEND CHAPTER 94 – ZONING –  
BY REPEALING AND REPLACING ARTICLE XI – ZONING  
BOARD OF APPEALS (ZBA).

#### **THE CITY OF MASON ORDAINS:**

Chapter 94 of the Mason City Code is hereby amended by repealing the current Article XI in full and replacing it in full, which amended, article shall read as follows:

### **Article XI ZONING BOARD of APPEALS (ZBA)**

#### **Sec. 94–361. Purpose.**

The purpose of this Article is to establish a Zoning Board of Appeals (ZBA) pursuant to Public Act 110 of 2006, as amended, including its responsibilities, procedures, and standards of review, to ensure that the objectives of this Ordinance are fully and equitably achieved.

#### **Sec. 94–362. Creation and Membership.**

(a) *Establishment and Appointment of Members:* The ZBA previously created under the City of Mason Zoning Ordinance, Ord. 152 of 2006, as amended, shall continue to function under this Ordinance, and each member shall remain in office until such time that the member is not reappointed or otherwise no longer eligible to serve. The ZBA is retained in accordance with Public Act 110 of 2006 as amended. The ZBA shall consist of seven (7) members, appointed by the City Council by majority vote. One (1) of the members shall be a member of the Planning Commission. One (1) regular or alternate member of a ZBA may be a member of the City Council but shall not serve as the chairperson. The remaining regular members, and any alternate members, shall be selected from the electors of the City residing within. The members selected shall be representative of the population distribution and of the various interests present in the City. An employee or contractor of the City Council may not serve as a member of the ZBA.

(b) *Alternate Members:* The City Council may appoint not more than two (2) alternate members to the ZBA. The alternate members shall be called on a rotating basis to sit as regular members of the ZBA in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings of the ZBA. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member shall serve on a case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the ZBA.

(c) *Terms of Appointment:* ZBA members, including alternate members, shall be appointed for three (3) year terms except in the case of a Planning Commission and/or City Council member serving on the ZBA, whose terms on the ZBA shall be limited to the time they are members of the Planning Commission

or City Council. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired.

(d) *Removal from Office / Conflict of Interest:* A member of the ZBA may be removed by the City Council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from deliberations and a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from deliberations and a vote in which the member has a conflict of interest constitutes malfeasance in office.

#### **Sec. 94–363. Organization and General Procedures.**

(a) *Rules of Procedure and Officers:* The ZBA shall adopt rules of procedure for the conduct of its meetings and the implementation of its duties. The ZBA shall annually elect from its members a chairperson, vice-chairperson, and secretary.

(b) *Meetings and Quorum:* Meetings of the ZBA shall be held at the call of the chairperson and at such other times as the ZBA in its rules of procedure may specify. A majority of the regular membership of the ZBA shall comprise a quorum, being four (4) members, which may include an alternate member(s) sitting in for a regular member(s). The ZBA shall not conduct official business unless a quorum is present. All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act, Public Act 267 of 1976, as amended.

(c) *Oaths and Witnesses:* The chairperson may administer oaths and compel the attendance of witnesses.

(d) *Minutes:* Minutes of all meetings shall be recorded and made available in accordance with the Michigan Open Meetings Act (MCL 15.261 et seq.) and shall contain the grounds of every determination made by the ZBA including all evidence and data considered, all findings of fact and conclusions drawn, the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the city clerk and shall be available to the public.

(e) *Records:* The ZBA shall maintain a record of its proceedings which shall be filed in the office of the City Clerk, and shall be a public record according to the Freedom of Information Act. The record of proceedings for the ZBA shall contain the following information as applicable:

- (1) Minutes for all meetings during which an application is considered and a record of testimony heard and evidence or documents presented including any reports, plans, surveys and photos. See Sec. 94-363(d) regarding required content of minutes.
- (2) The completed application for an appeal, variance, or interpretation.
- (3) Notice of the public hearing.
- (4) Letter from the zoning official granting or denying the application or referring it to the zoning board of appeals and all other relevant records related to the case.
- (5) A copy of relevant sections of the zoning ordinance that may be in question.
- (6) Briefs, correspondence or other communications made to the zoning board of appeals.
- (7) A copy of correspondences to the appellant regarding the request.

(f) *Legal Counsel:* The City attorney shall provide legal counsel to the ZBA when requested. The ZBA may retain other specialized legal counsel as it may deem necessary, following approval by the city council. If it makes such a request, it shall consult with the City Attorney regarding the appointment of special legal counsel and, upon the City Attorney's recommendation, if approved by the City Council, shall be appointed as special legal counsel.

(g) *Timely Decisions and Effective Date:* The ZBA shall take action on an application within sixty (60) days of the receipt of a complete application except where the applicant and ZBA mutually agree to an extended time period, such as in the case of the need for additional information from the applicant. A decision of the ZBA shall not become final until the expiration of five days from the date of the decision unless the ZBA shall find the immediate effect of the decision is necessary to adequately preserve public

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health, safety and/or welfare, including the applicant specifically.

(h) *Deferment of Decision:* When considering an appeal pursuant to subsection 94-365 or a variance pursuant to subsection 94-367, the ZBA shall defer all proceedings upon the request of the applicant when less than six members of the ZBA are present for consideration of and voting on said appeal or variance. The right of deferment shall be considered waived by the applicant if deferment is not requested immediately upon the opening of the hearing on the matter. When deferment is requested as required, the ZBA shall, at that time, determine the date of a future regular or special meeting for the continuation of the hearing and consideration of the matter. Notice of the rescheduled meeting and hearing made available during the initial meeting at which action is deferred shall constitute notice of the future hearing date with no further notice required except as may be otherwise required by the Open Meetings Act.

#### **Sec. 94-364. Jurisdiction.**

The ZBA shall act upon questions as they arise in the administration of this Ordinance and take other actions as specified in this Ordinance. The ZBA shall perform its duties and exercise its powers as provided in Public Act 110 of 2006, as amended. The ZBA shall not have the power to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but shall have the power to act on those matters so specified in this Ordinance including Ordinance interpretations, variances, and the review of an order, requirement, decision, or determination made by an administrative official or body charged with the administration or enforcement of this Ordinance.

#### **Sec. 94-365. Appeals for Administrative Reviews**

(a) *Authority:* The ZBA shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, or decision by the Zoning Administrator or by any other body or official in administering or enforcing the provisions of this Ordinance. Within this capacity the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of such body or official. The ZBA shall have all the powers of the body or official that made the decision subject to the appeal. This authority shall not extend to decisions on Special Land Use applications and ordinance amendment petitions.

(b) *Standards:* The ZBA shall reverse or otherwise modify the decision of such body or official from whom the appeal is taken only if it finds that the action or decision appealed meets one (1) or more of the following:

- (1) Was arbitrary or capricious.
- (2) Was based upon an erroneous finding of a material fact.
- (3) Constituted an abuse of discretion.
- (4) Was based upon erroneous interpretation of the Zoning Ordinance or zoning law.
- (5) Did not follow required procedures.

(c) *Procedures:*

(1) *Application Requirements:*

a. *Processing:* A written application for an appeal shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The application shall be submitted within twenty-one (21) days after the date of the meeting during which the meeting minutes addressing the decision being appealed was approved. The Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, the Community Development Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application's deficiency. The Community

Development Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for an administrative review shall specify, at a minimum, the name, address, and phone number of the applicant; the decision being appealed; the basis for the appeal; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

(2) *Stay:* An appeal of an administrative decision shall stay all proceedings in furtherance of the action appealed unless the officer or body from whom the appeal is taken certifies to the ZBA, after the notice of appeal is filed, that by reason of facts stated in the certification, a stay would, in the opinion of the officer or body, cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the ZBA or by the circuit court, on application, on satisfactory demonstration of due cause.

(3) *Record of Facts / Transmission of Record:* Upon receipt of an application for administrative review, the Community Development Director shall transmit to the ZBA all papers constituting the record associated with the decision being appealed. In hearing and deciding administrative appeals, the ZBA's review shall be based upon the record of the administrative decision being appealed.

a. The ZBA shall not consider new information which had not been presented to the administrative official or body that made the decision subject to the appeal except where the ZBA first remands the matter back to the body that made the original administrative decision with an order to consider the new information and affirm or modify its original decision.

(4) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney. See subsection (5) regarding participation at the hearing by a member of the ZBA who is also a member of the Planning Commission or the City Council.

(5) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record of the findings and determination of the ZBA and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse or otherwise modify the action subject to the appeal. A member of the ZBA who is also a member of the Planning Commission or the City Council shall not participate in a public hearing, deliberation, or vote, on the same matter that the member voted on as a member of the Planning Commission or the City Council. However, the member may consider and vote on other unrelated matters involving the same property.

#### **Sec. 94-366. Interpretations**

(a) *Authority:* The ZBA shall hear and decide upon requests to interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning, including the determination of the precise location of the boundary lines between zoning districts, application of off-street parking requirements for a specific use, and whether a particular use is authorized in a particular district.

(b) *Standards:* In deciding on an interpretation, the ZBA shall be guided by the following:

(1) All interpretations shall take into account any relevant interpretations previously issued by the ZBA and any relevant past ordinance administration practices.

(2) Prior to deciding a request for an interpretation, the ZBA may confer with City staff and consultants to gain insight into the provision subject to interpretation and any consequences that may result from differing decisions.

- (3) An interpretation shall be consistent with the intent and purpose of the Ordinance and the specific Article in which the language in question is contained.
- (4) A text interpretation shall apply to the specific provision for which the interpretation is requested, and shall not extend to matters beyond such specific provision.
- (5) A zoning district boundary interpretation shall be guided by the following:
  - a. Boundaries indicated as approximately following roads or highway shall be construed as following the center lines of said roads or highways.
  - b. Boundaries indicated as approximately following section lines, quarter section lines, quarter-quarter section lines, or lot lines shall be construed as following such lines.
  - c. Boundaries indicated as approximately following City boundary lines shall be construed as following such boundary lines.
  - d. Boundaries indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance there from as indicated on the Official Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Official Zoning Map.
  - e. Boundaries following the shoreline of a stream, lake, or other body of water shall be construed to follow such shorelines. In the event of change in the shoreline, the boundary shall be construed as moving with the actual shoreline. Boundaries indicated as approximately following the centerlines of streams, canals, or other water courses shall be construed to follow such centerlines.
  - f. Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two (2) districts, the subject land area shall be construed to be located in the "more restrictive district" and the regulations of such district shall govern. The "more restrictive district" shall be the district that places greater restrictions on development based on such factors as the scope of authorized uses, setbacks, lot coverage, and related development standards.

(c) Procedures:

(1) *Application Requirements:*

a. *Processing:* A written application for an interpretation shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The Community Development Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application's deficiency. The Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for an interpretation shall specify, at a minimum, the name, address, and phone number of the applicant; the standard, regulation or provision requiring an interpretation; a plot plan, site plan, or similar drawing illustrating the application or relevance of such interpretation; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

(2) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney.

(3) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record

of the findings and determination of the ZBA, and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to make an interpretation. A decision providing an interpretation may be accompanied by a recommendation to the Planning Commission for consideration of an amendment of the Ordinance to address what the ZBA may find is a problematic aspect of the Ordinance.

#### **Sec. 94–367. Variances**

(a) *Authority:* The ZBA shall have the power to authorize specific variances from specific site development standards of this Ordinance, such as lot area and width requirements, building height and setback requirements, yard width and depth requirements, lot depth to width ratio requirements, off-street parking and loading space requirements, and sign requirements. The ZBA shall not have the power to authorize variances pertaining to permitted uses of land in a District.

(b) *Standards:* The ZBA shall have the power to authorize variances from specific site development requirements provided that all of the standards listed below are met and the record of proceedings of the ZBA contains evidence supporting each conclusion.

(1) That there are practical difficulties that prevent carrying out the strict letter of this Ordinance due to unique circumstances specific to the property such as its narrowness, shallowness, shape, or topography, that do not generally apply to other property or uses in the same district, and shall not be recurrent in nature. These difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular property.

(2) That the practical difficulty or special circumstance is not a result of the actions of the applicant.

(3) That the variance will relate only to property described in the variance application.

(4) That the variance will be in harmony with the purpose of this Ordinance and the intent of the District, including the protection of public health, safety and welfare in general and vehicular and pedestrian circulation specifically.

(5) That the variance will not cause a substantial adverse effect upon surrounding property including property values and the development, use and enjoyment of property in the neighborhood or District.

(6) That strict compliance with the site development requirement in question would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

(7) That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty.

(c) *Procedures*

(1) *Application Requirements:*

a. *Processing:* A written application for a variance shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The Community Development Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, the Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application's deficiency. The Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for a variance shall specify, at a minimum, the name, address, and phone number of the applicant; the legal description for the lot subject to the variance; a specification of the Ordinance's standards for which a variance is sought and the specific variance being requested; and a plot plan, site plan, elevation drawing or similar



drawing prepared by a registered land surveyor or registered engineer that clearly illustrates property lines, property line bearings and dimensions, existing buildings and structures; the proposed improvements to the lot for which the variance is requested; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

c. *Applicant's Responsibility:* It shall be the responsibility of the applicant to provide any information the applicant may find beneficial in demonstrating conformance with the standards of subsection 94-367(b).

- (2) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney.

- (3) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record of the findings and determination of the ZBA, and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to grant a variance.

a. *Conditions:* In granting a variance, the ZBA may prescribe appropriate conditions the conditions may be intended to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. All conditions shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the ZBA and the applicant. The ZBA shall maintain a record of conditions that are changed. Conditions imposed shall meet all of the following requirements:

1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

b. *Performance Guarantee:* The ZBA may require that a performance guarantee be furnished as a condition of approval in granting a variance, in accordance with section 94-100.

(d) *Time Restriction/Voidance:* A variance shall become null and void unless the construction authorized by such variance has been commenced within one-hundred eighty (180) days after the granting of the variance, and there is a continuous good faith intention to continue construction to completion. The ZBA may extend this time limit upon its finding that no substantial changes have occurred to ordinance regulations, abutting properties, or other conditions that undermine the basis for the original issuance of the variance.

(e) *Resubmittal:* No application for a variance that has been acted upon shall be resubmitted for a period of one (1) year from the date of denial, except on the grounds of newly-discovered evidence or proof of changed conditions having bearing on the basis for the original denial, in the discretion of the ZBA.

#### **Section 94-368 Review by Circuit Court**

(a) *Circuit Court Review:* The decision of the ZBA shall be final. However, any party aggrieved by an order, determination or decision of the ZBA may obtain a review thereof in the Circuit Court provided that application is made to the Court within thirty (30) days after the ZBA issues its decision in writing signed by the chairperson, or within twenty-one (21) days after the ZBA approves the minutes of its decision. The Circuit Court shall review the record and decision of the ZBA to insure that the decision:

- (1) Complies with the constitution and laws of the State.
- (2) Is based upon proper procedure.
- (3) Is supported by competent, material, and substantial evidence on the record.
- (4) Represents the reasonable exercise of discretion granted by law to the ZBA.

**Sunset Provision.** None.

**Effective Date.** This ordinance shall take effect immediately upon publication of the notice of adoption in a newspaper of general circulation within the city.

The foregoing Ordinance was moved for adoption by Council Member \_\_\_\_\_ and supported by Council Member \_\_\_\_\_, with a vote thereon being: YES ( ) NO ( ), at a regular meeting of the City Council held pursuant to public notice in compliance with the Michigan Open Meetings Act, on the \_\_\_\_ day of \_\_\_\_\_, 2018. Ordinance No. 219 declared adopted this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Russell Whipple, Mayor

\_\_\_\_\_  
Sarah J. Jarvis, City Clerk

\_\_\_\_\_  
Thomas M. Hitch (P25558)  
Mason City Attorney  
601 Abbot Road, PO Box 2502  
East Lansing, MI 48826-2502

MEMO

TO: ELIZABETH HUDE, COMMUNITY DEVELOPMENT DIRECTOR

FROM: THOMAS M. HITCH, CITY ATTORNEY

RE: REVIEW OF ZONING ORDINANCE AMENDMENT - ARTICLE XI, ZONING BOARD OF APPEALS (ZBA)

DATE: May 17, 2018

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The purpose of this memorandum is to transmit my comments on the zoning ordinance amendment prepared by Landplan. My suggestions are few. It is my opinion that this ordinance is well drafted and properly addresses all of the issues highlighted in the memo of November 22, 2017, as prepared by Mark Eidelson.

The changes are very minor, and specifically refer to duties of the City Attorney. At section 94-363(f), it is provided that the City Attorney shall provide legal counsel to the ZBA when requested. It goes on to provide, as the current ordinance provides, that the ZBA may retain other specialized legal counsel following approval by the City Council. I would recommend a change in the language which provides that the City Attorney will be specifically consulted and will make a recommendation as to such legal counsel, who would be appointed special legal counsel, if approved by the City Council. It would be my recommendation that subsection (f) in section 94-363 be replaced with the following language:

“(f) Legal Counsel: The City Attorney shall provide legal counsel to the ZBA when requested. The ZBA may retain other specialized legal counsel as it may deem necessary. If it makes such a request, it shall consult with the City Attorney regarding the appointment of special legal counsel and, upon the City Attorney’s recommendation, if approved by the City Council, shall be appointed as special legal counsel.”

The only other change is that I recommend that section 94-366(b)(2) be modified to add reference to the City Attorney in this subsection. It is my opinion that it just makes it clearer that the ZBA has the authority to confer with the City Attorney regarding the provisions subject to interpretation.

As I indicated before, with these modifications, the amendment as proposed is fine.

TMH:ddy

**Date:** November 22, 2017

**To:** Elizabeth Hude, AICP, City of Mason Community Development Director

**From:** Mark A. Eidelson, AICP

**Re:** ***Zoning Ordinance Amendment – Article XI, Zoning Board of Appeals (ZBA)***

The following presents an initial draft of a new Article XI of the Zoning Ordinance, addressing the Zoning Board of Appeals (ZBA). The overall intent of this updated Article is to provide City/ZBA officials, applicants and the general public with a clearer set of ZBA procedures and standards of review, and to address important matters about which the current Article XI is silent. An effort has been made to make the provisions more concise where practical and to expand the provisions where deemed beneficial. Draft Sections 94-365, 94-366 and 94-367 address, in a consistent and systematic manner and format, the authority, procedures and standards for the consideration of appeals of administrative decisions, interpretations, and variances – the three principal duties of the ZBA.

Please note the following:

- 1) In all relevant subsections of this updated Article, the draft provisions require the submittal of a minimum of ten copies of an application except where the Community Development Director permits a lesser number. The current Article XI is silent on this matter.
- 2) Draft Sec. 94-361 presents a purpose statement for the Article, something that is recommended for all major sections of a zoning ordinance but which the current Zoning Ordinance does on a sporadic basis. The current Article XI is void of a purpose statement.
- 3) Draft Sec. 94-362 and Sec. 94-363 incorporate the Michigan Zoning Enabling Act's (MZEA) requirements regarding ZBA membership, meetings, conflict of interest, alternate members and other general matters. The provisions carry forward the current sitting ZBA. The provisions are substantively similar to the current Sections 94-361 and Sec. 94-362 except as follows:
  - The substance of current Sec. 94-361(4), regarding participation by dual members, has been relocated to draft Sec. 94-365(c)(5), which addresses administrative appeals specifically. This dual participation matter is specific to administrative appeals and it is for this reason that these provisions have been placed in draft Sec. 94-365(c)(5).
  - Draft Sec. 94-363(a) requires that the ZBA adopt rules of procedures (bylaws). The MZEA implies that such rules may be adopted but does not require so. The draft provisions make it mandatory because of the importance of having an official set of procedures to ensure consistency in operations including meetings, hearings, addressing conflicts of interest, and related matters.
  - Draft Sec. 94-363(a) requires that ZBA to annually elect a chairperson, vice-chairperson, and secretary, a matter about which the current ZBA provisions are silent. The MZEA implies that a chairperson will be selected but makes no specific requirements for the election of any officers. It is recommended to elect a chairperson, vice-chairperson, and secretary.

- Draft Sec. 94-363(b) requires that ZBA meetings comply with the Open Meetings Act, a matter about which the current ZBA provisions are silent.
  - Draft Sec. 94-363(e) does not require that the record of a case include an affidavit of publication of a hearing notice as this is no longer required by the MZEA. The city is free to continue this practice but it may not want to make it mandatory under the Article as it currently does.
  - Draft Sec. 94-363(g) requires that the ZBA must act on a complete application within 60 days. The current provisions merely provide that action shall occur “*within a reasonable time.*” The proposed text is clearer, not open to variable interpretations, and better ensures reasonable due process.
- 4) Draft Sec. 94-365 addresses administrative appeals. These provisions are substantively similar to the current Section 94-364 except as follows:
- Draft Sec. 94-365(a) specifies certain minimum information that must be submitted as part of an application, a matter about which the current Article XI is silent.
  - Draft Sec. 94-365(b) presents standards by which an administrative appeal is to be evaluated. The current provisions are silent on the matter of standards. The standards are based on case law.
  - Draft Sec. 94-365(c)(3)(a) prohibits the ZBA from considering new information which had not been presented to the administrative official or body that made the decision subject to the appeal, except only after the ZBA first remands the matter back to the body that made the original administrative decision. The current Article XI is silent on this matter.
- 5) Draft Sec. 94-366 addresses ZBA interpretations, a matter about which the current Article XI is largely silent despite interpretations being one of the primary responsibilities of the ZBA.
- 6) Draft Sec. 94-367 addresses variances. These provisions are substantively similar to the current Section 94-365 except as follows:
- The variance approval standards are more developed in the draft Sec. 94-367(b). This includes more descriptive text in the case of some of the standards as well as the introduction of two new standards – a variance shall apply only to the property described in the application and that, without the requested variance, the owner would be prohibited from using the property for a permitted purpose.
  - Draft Sec. 94-367(c) specifies certain minimum information that must be submitted as part of an application, a matter about which the current Article XI is silent. The draft provisions also emphasize the applicant’s responsibility to submit information in support of the application.
  - Draft Sec. 94-367(c)(3) specifies the minimum requirements for the content of a motion on the variance application.
  - Draft Sec. 94-367(c)(3) provides a more comprehensive set of provisions regarding the placement of conditions on an approval of a variance as compared to the current Sec. 94-365(d)(1). These provisions are largely excerpts from the MZEA.
  - Draft Sec. 94-367(d) provides that a variance shall become null and void unless the construction authorized by such variance has been commenced within 180 days after the granting of the variance, and there is a continuous good faith intention to continue construction to completion. The current Article XI is silent on this matter.
  - Draft Sec. 94-367(e) prohibits the resubmittal of a variance application following the initial denial for a minimum period on one year. The current provisions are silent on this matter.

- 7) Draft Sec. 94-368 is an excerpt from the MZEA and is included to highlight the significance of the ZBA's actions and the circuit court's responsibility when reviewing a ZBA decision. The current Article XI does not address this matter nor is it required to do so. The draft provisions apply irrespective of whether the Ordinance includes the provisions because the provisions are dictated by the MZEA.

I am available to meet with you and/or other city officials to review this material and respond to any questions and/or otherwise address revision issues.

## **Article XI**

### **ZONING BOARD of APPEALS (ZBA)**

#### **Sec. 94-361. Purpose.**

The purpose of this Article is to establish a Zoning Board of Appeals (ZBA) pursuant to Public Act 110 of 2006, as amended, including its responsibilities, procedures, and standards of review, to ensure that the objectives of this Ordinance are fully and equitably achieved.

#### **Sec. 94-362. Creation and Membership.**

(a) *Establishment and Appointment of Members:* The ZBA previously created under the City of Mason Zoning Ordinance, Ord. 152 of 2006, as amended, shall continue to function under this Ordinance, and each member shall remain in office until such time that the member is not reappointed or otherwise no longer eligible to serve. The ZBA is retained in accordance with Public Act 110 of 2006 as amended. The ZBA shall consist of seven (7) members, appointed by the City Council by majority vote. One (1) of the members shall be a member of the Planning Commission. One (1) regular or alternate member of a ZBA may be a member of the City Council but shall not serve as the chairperson. The remaining regular members, and any alternate members, shall be selected from the electors of the City residing within. The members selected shall be representative of the population distribution and of the various interests present in the City. An employee or contractor of the City Council may not serve as a member of the ZBA.

(b) *Alternate Members:* The City Council may appoint not more than two (2) alternate members to the ZBA. The alternate members shall be called on a rotating basis to sit as regular members of the ZBA in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings of the ZBA. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member shall serve on a case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the ZBA.

(c) *Terms of Appointment:* ZBA members, including alternate members, shall be appointed for three (3) year terms except in the case of a Planning Commission and/or City Council member serving on the ZBA, whose terms on the ZBA shall be limited to the time they are members of the Planning Commission or City Council. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired.

(d) *Removal from Office / Conflict of Interest:* A member of the ZBA may be removed by the City Council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from deliberations and a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from deliberations and a vote in which the member has a conflict of interest constitutes malfeasance in office.

## **Sec. 94–363. Organization and General Procedures.**

- (a) *Rules of Procedure and Officers:* The ZBA shall adopt rules of procedure for the conduct of its meetings and the implementation of its duties. The ZBA shall annually elect from its members a chairperson, vice-chairperson, and secretary.
- (b) *Meetings and Quorum:* Meetings of the ZBA shall be held at the call of the chairperson and at such other times as the ZBA in its rules of procedure may specify. A majority of the regular membership of the ZBA shall comprise a quorum, being four (4) members, which may include an alternate member(s) sitting in for a regular member(s). The ZBA shall not conduct official business unless a quorum is present. All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act, Public Act 267 of 1976, as amended.
- (c) *Oaths and Witnesses:* The chairperson may administer oaths and compel the attendance of witnesses.
- (d) *Minutes:* Minutes of all meetings shall be recorded and made available in accordance with the Michigan Open Meetings Act (MCL 15.261 et seq.) and shall contain the grounds of every determination made by the ZBA including all evidence and data considered, all findings of fact and conclusions drawn, the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the city clerk and shall be available to the public.
- (e) *Records:* The ZBA shall maintain a record of its proceedings which shall be filed in the office of the City Clerk, and shall be a public record according to the Freedom of Information Act. The record of proceedings for the ZBA shall contain the following information as applicable:
- (1) Minutes for all meetings during which an application is considered and a record of testimony heard and evidence or documents presented including any reports, plans, surveys and photos. See Sec. 94-363(d) regarding required content of minutes.
  - (2) The completed application for an appeal, variance, or interpretation.
  - (3) Notice of the public hearing.
  - (4) Letter from the zoning official granting or denying the application or referring it to the zoning board of appeals and all other relevant records related to the case.
  - (5) A copy of relevant sections of the zoning ordinance that may be in question.
  - (6) Briefs, correspondence or other communications made to the zoning board of appeals.
  - (7) A copy of correspondences to the appellant regarding the request.
- (f) *Legal Counsel:* The city attorney shall provide legal counsel to the ZBA when requested. The ZBA may retain other specialized legal counsel as it may deem necessary following approval by the city council.
- (g) *Timely Decisions and Effective Date:* The ZBA shall take action on an application within sixty (60) days of the receipt of a complete application except where the applicant and ZBA mutually agree to an extended time period, such as in the case of the need for additional information from the applicant. A decision of the ZBA shall not become final until the expiration of five days from the date of the decision unless the ZBA shall find the immediate effect of the decision is necessary to adequately preserve public health, safety and/or welfare, including the applicant specifically.
- (h) *Deferment of Decision:* When considering an appeal pursuant to subsection 94-365 or a variance pursuant to subsection 94-367, the ZBA shall defer all proceedings upon the request of the applicant when less than six members of the ZBA are present for consideration of and voting on said appeal or variance. The right of deferment shall be considered waived by the applicant if deferment is not requested immediately upon the opening of the hearing on the matter. When deferment is requested as required, the ZBA shall, at that time, determine the date of a future regular or special meeting for the continuation of the hearing and consideration of the matter. Notice of the rescheduled meeting and hearing made available during the initial meeting at which action is deferred shall constitute notice of the future hearing date with no further notice required except as may be otherwise required by the Open Meetings Act.



## **Sec. 94–364. Jurisdiction.**

The ZBA shall act upon questions as they arise in the administration of this Ordinance and take other actions as specified in this Ordinance. The ZBA shall perform its duties and exercise its powers as provided in Public Act 110 of 2006, as amended. The ZBA shall not have the power to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but shall have the power to act on those matters so specified in this Ordinance including Ordinance interpretations, variances, and the review of an order, requirement, decision, or determination made by an administrative official or body charged with the administration or enforcement of this Ordinance.

## **Sec. 94–365. Appeals for Administrative Reviews**

(a) *Authority:* The ZBA shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, or decision by the Zoning Administrator or by any other body or official in administering or enforcing the provisions of this Ordinance. Within this capacity the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of such body or official. The ZBA shall have all the powers of the body or official that made the decision subject to the appeal. This authority shall not extend to decisions on Special Land Use applications and ordinance amendment petitions.

(b) *Standards:* The ZBA shall reverse or otherwise modify the decision of such body or official from whom the appeal is taken only if it finds that the action or decision appealed meets one (1) or more of the following:

- (1) Was arbitrary or capricious.
- (2) Was based upon an erroneous finding of a material fact.
- (3) Constituted an abuse of discretion.
- (4) Was based upon erroneous interpretation of the Zoning Ordinance or zoning law.
- (5) Did not follow required procedures.

(c) *Procedures:*

(1) *Application Requirements:*

a. *Processing:* A written application for an appeal shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The application shall be submitted within twenty-one (21) days after the date of the meeting during which the meeting minutes addressing the decision being appealed was approved. The Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, the Community Development Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application's deficiency. The Community Development Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for an administrative review shall specify, at a minimum, the name, address, and phone number of the applicant; the decision being appealed; the basis for the appeal; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

(2) *Stay:* An appeal of an administrative decision shall stay all proceedings in furtherance of the action appealed unless the officer or body from whom the appeal is taken certifies to the ZBA, after the notice of appeal is filed, that by reason of facts stated in the certification, a stay would, in the opinion of the officer or body, cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the ZBA or by the circuit court, on application, on satisfactory demonstration of due cause.

(3) *Record of Facts / Transmission of Record:* Upon receipt of an application for administrative review, the Community Development Director shall transmit to the ZBA all papers constituting the record associated with the decision being appealed. In hearing and deciding administrative appeals, the ZBA's

review shall be based upon the record of the administrative decision being appealed.

a. The ZBA shall not consider new information which had not been presented to the administrative official or body that made the decision subject to the appeal except where the ZBA first remands the matter back to the body that made the original administrative decision with an order to consider the new information and affirm or modify its original decision.

(4) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney. See subsection (5) regarding participation at the hearing by a member of the ZBA who is also a member of the Planning Commission or the City Council.

(5) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record of the findings and determination of the ZBA and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse or otherwise modify the action subject to the appeal. A member of the ZBA who is also a member of the Planning Commission or the City Council shall not participate in a public hearing, deliberation, or vote, on the same matter that the member voted on as a member of the Planning Commission or the City Council. However, the member may consider and vote on other unrelated matters involving the same property.

## **Sec. 94-366. Interpretations**

(a) *Authority:* The ZBA shall hear and decide upon requests to interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning, including the determination of the precise location of the boundary lines between zoning districts, application of off-street parking requirements for a specific use, and whether a particular use is authorized in a particular district.

(b) *Standards:* In deciding on an interpretation, the ZBA shall be guided by the following:

(1) All interpretations shall take into account any relevant interpretations previously issued by the ZBA and any relevant past ordinance administration practices.

(2) Prior to deciding a request for an interpretation, the ZBA may confer with City staff and consultants to gain insight into the provision subject to interpretation and any consequences that may result from differing decisions.

(3) An interpretation shall be consistent with the intent and purpose of the Ordinance and the specific Article in which the language in question is contained.

(4) A text interpretation shall apply to the specific provision for which the interpretation is requested, and shall not extend to matters beyond such specific provision.

(5) A zoning district boundary interpretation shall be guided by the following:

a. Boundaries indicated as approximately following roads or highway shall be construed as following the center lines of said roads or highways.

b. Boundaries indicated as approximately following section lines, quarter section lines, quarter-quarter section lines, or lot lines shall be construed as following such lines.

c. Boundaries indicated as approximately following City boundary lines shall be construed as following such boundary lines.

d. Boundaries indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance there from as indicated on the Official Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Official Zoning Map.

e. Boundaries following the shoreline of a stream, lake, or other body of water shall be construed to follow such shorelines. In the event of change in the shoreline, the boundary shall be construed as

moving with the actual shoreline. Boundaries indicated as approximately following the centerlines of streams, canals, or other water courses shall be construed to follow such centerlines.

f. Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two (2) districts, the subject land area shall be construed to be located in the “more restrictive district” and the regulations of such district shall govern. The “more restrictive district” shall be the district that places greater restrictions on development based on such factors as the scope of authorized uses, setbacks, lot coverage, and related development standards.

(c) Procedures:

(1) *Application Requirements:*

a. *Processing:* A written application for an interpretation shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The Community Development Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application’s deficiency. The Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for an interpretation shall specify, at a minimum, the name, address, and phone number of the applicant; the standard, regulation or provision requiring an interpretation; a plot plan, site plan, or similar drawing illustrating the application or relevance of such interpretation; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

(2) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney.

(3) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record of the findings and determination of the ZBA, and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to make an interpretation. A decision providing an interpretation may be accompanied by a recommendation to the Planning Commission for consideration of an amendment of the Ordinance to address what the ZBA may find is a problematic aspect of the Ordinance.

**Sec. 94–367. Variances**

(a) *Authority:* The ZBA shall have the power to authorize specific variances from specific site development standards of this Ordinance, such as lot area and width requirements, building height and setback requirements, yard width and depth requirements, lot depth to width ratio requirements, off-street parking and loading space requirements, and sign requirements. The ZBA shall not have the power to authorize variances pertaining to permitted uses of land in a District.

(b) *Standards:* The ZBA shall have the power to authorize variances from specific site development requirements provided that all of the standards listed below are met and the record of proceedings of the ZBA contains evidence supporting each conclusion.

(1) That there are practical difficulties that prevent carrying out the strict letter of this Ordinance due to unique circumstances specific to the property such as its narrowness, shallowness, shape, or topography, that do not generally apply to other property or uses in the same district, and shall not be recurrent in nature. These difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular property.

(2) That the practical difficulty or special circumstance is not a result of the actions of the applicant.

- (3) That the variance will relate only to property described in the variance application.
- (4) That the variance will be in harmony with the purpose of this Ordinance and the intent of the District, including the protection of public health, safety and welfare in general and vehicular and pedestrian circulation specifically.
- (5) That the variance will not cause a substantial adverse effect upon surrounding property including property values and the development, use and enjoyment of property in the neighborhood or District.
- (6) That strict compliance with the site development requirement in question would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
- (7) That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty.

(c) *Procedures*

(1) *Application Requirements:*

a. *Processing:* A written application for a variance shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The Community Development Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, the Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application's deficiency. The Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for a variance shall specify, at a minimum, the name, address, and phone number of the applicant; the legal description for the lot subject to the variance; a specification of the Ordinance's standards for which a variance is sought and the specific variance being requested; and a plot plan, site plan, elevation drawing or similar drawing prepared by a registered land surveyor or registered engineer that clearly illustrates property lines, property line bearings and dimensions, existing buildings and structures; the proposed improvements to the lot for which the variance is requested; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

c. *Applicant's Responsibility:* It shall be the responsibility of the applicant to provide any information the applicant may find beneficial in demonstrating conformance with the standards of subsection 94-367(b).

(2) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney.

(3) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record of the findings and determination of the ZBA, and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to grant a variance.

a. *Conditions:* In granting a variance, the ZBA may prescribe appropriate conditions the conditions may be intended to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. All conditions shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the ZBA and the applicant. The ZBA shall maintain a record of conditions that are changed. Conditions imposed shall meet all of the following requirements:

1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

b. *Performance Guarantee:* The ZBA may require that a performance guarantee be furnished as a condition of approval in granting a variance, in accordance with section 94-100.

(d) *Time Restriction/Voidance:* A variance shall become null and void unless the construction authorized by such variance has been commenced within one-hundred eighty (180) days after the granting of the variance, and there is a continuous good faith intention to continue construction to completion. The ZBA may extend this time limit upon its finding that no substantial changes have occurred to ordinance regulations, abutting properties, or other conditions that undermine the basis for the original issuance of the variance.

(e) *Resubmittal:* No application for a variance that has been acted upon shall be resubmitted for a period of one (1) year from the date of denial, except on the grounds of newly-discovered evidence or proof of changed conditions having bearing on the basis for the original denial, in the discretion of the ZBA.

#### **Section 94-368 Review by Circuit Court**

(a) *Circuit Court Review:* The decision of the ZBA shall be final. However, any party aggrieved by an order, determination or decision of the ZBA may obtain a review thereof in the Circuit Court provided that application is made to the Court within thirty (30) days after the ZBA issues its decision in writing signed by the chairperson, or within twenty-one (21) days after the ZBA approves the minutes of its decision. The Circuit Court shall review the record and decision of the ZBA to insure that the decision:

- (1) Complies with the constitution and laws of the State.
- (2) Is based upon proper procedure.
- (3) Is supported by competent, material, and substantial evidence on the record.
- (4) Represents the reasonable exercise of discretion granted by law to the ZBA.

Introduced: May 7, 2018

First Reading: May 7, 2018

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

Effective: \_\_\_\_\_

## CITY OF MASON

### OFFICE DISTRICT REGULATION

#### AN ORDINANCE TO AMEND CHAPTER 94 – ZONING – BY ADDING RESIDENTIAL USES TO O-1 GENERAL OFFICE AND O-2 SPECIALIZED OFFICE ZONING DISTRICTS

#### THE CITY OF MASON ORDAINS:

Chapter 94 of the Mason City Code is hereby amended by adding residential uses to Sec. 94-131 and Sec. 94-132, which amended, article shall read as follows:

#### Chapter 94 Zoning

##### Sec. 94-131. 0-1: General office district

- (a) *Intent and purpose.* It is the primary purpose of this district to provide opportunities for business establishments that are predominantly comprised of professional offices, medical offices, administrative offices, and other businesses of a similar office character.
- (b) *Uses permitted by right.*
- (1) Offices for attorneys, accountants, architects, engineers, and similar professions.
  - (2) Offices for financial institutions, real estate offices, insurance offices, investment brokers, credit reporting agencies, business management and consulting, information technology services and consulting, and similar business offices.
  - (3) Photographic studios.
  - (4) Professional services establishments providing human health care on an outpatient basis.
  - (5) Medical, optical and dental offices and laboratories.
  - (6) Offices for non-profit organizations, professional associations, labor unions, civic-social-fraternal organizations, political organizations, and religious organizations.
  - (7) Music, dance, or performing arts studios.
  - (8) Personal service establishments.
  - (9) **Single family residences (refer to section 94-123)**
  - ~~(10) Two-family residences (refer to section 94-124).~~
- (c) *Permitted accessory uses.*
- (1) Accessory uses and structures as defined in this chapter.
  - (2) Automatic teller machines (walk-up only).
- (d) *Uses authorized by special use permit.*
- (1) Religious institutions and structures for religious worship (refer to section [94-192\(8\)](#)).
  - (2) Day care facility or foster care facility providing care for more than six but not more than 12 individuals in a state licensed residential facility, except adult foster care facilities for care and



treatment of persons released from or assigned to or at adult correctional facilities (refer to section [94-192\(8\)](#)).

- (3) Public buildings including nonresidential governmental, utility, or public service use excluding storage yards, transformer stations, and substations (refer to section [94-192\(8\)](#)).
- (4) Public or private educational structures or uses (refer to section [94-192\(8\)](#)).
- (5) Mortuaries and funeral homes (not including crematories).
- (6) Research, development, and prototype manufacturing.
- (7) Any use permitted in this district involving one or more structures that occupy, either individually or collectively, more than 15,000 square feet of gross floor area.

**(8) Two-family residences (refer to section 94-124).**

**Multiple-family residences (refer to section 94-125).**

(e) *Development standards.* Any use of land or structures in this district shall comply with the general development standards of section [94-121\(c\)](#) of this chapter

#### **Sec. 94-132. O-2: Specialized office district.**

(a) *Intent and purpose.* It is the primary purpose of this district to provide in areas of a predominantly residential character, opportunities for office establishments which, because of the uses authorized and the required site development standards, are deemed compatible with such residential areas and which may be a benefit to such areas as a result of the services provided.

(b) *Uses permitted by right.*

- (1) Offices for professional practitioners in the component fields of medicine, dentistry, psychiatry, and psychology including practitioners committed to ministering to individual and community health. These offices can include group or clinical practice and therapeutic paramedical services.
- (2) Offices for the practice of law, professional services, business services, scientific endeavors, creative activities, and the operation of professional associations, societies, and institutes.

**(3) Single family residences (refer to section 94-123).**

(c) *Permitted accessory uses.* Accessory uses and structures as defined in this chapter.

(d) *Uses authorized by special use permit.*

- (1) Day care facility or foster care facility providing care for more than six but not more than 12 individuals in a state licensed residential facility, except adult foster care facilities for care and treatment of persons released from or assigned to or at adult correctional facilities (refer to section [94-192\(8\)](#)).

**(2) Two-family residences (refer to section 94-124)**

~~(2) Owner occupied single family residential use when attached to a permitted office use.~~

(3) Bed and breakfast (refer to section [94-192\(7\)](#)).

- (4) Any use permitted in this district involving one or more structures that occupy, either individually or collectively, more than 15,000 square feet of gross floor area.

(e) *Development standards.* Any use of land or structures in this district shall comply with the general development standards of section [94-121\(c\)](#) of this chapter.

(f) *Uses specifically prohibited.* Consistent with the specialized purpose of this district, the following uses are specifically prohibited.

- (1) Veterinary clinics.
- (2) Hospitals, sanitariums, nursing homes, adult foster care large group home (13 to 20 individuals), and adult foster care congregate facility (more than 20 individuals).
- (3) Retail sales and services.

- (4) Personal services such as hair, cosmetic, and body care.
- (5) Materials processing such as photo labs, chemical and testing labs.
- (6) Mortuaries and funeral homes.
- (7) Any land use which produces noise, glare, vibration, or odor at the property line.
- (8) Any land use which generates vehicular and/or pedestrian movement in excess of that which is normally prevailing in the district or adjoining districts.

**Sunset Provision.** None.

**Effective Date.** This ordinance shall take effect immediately upon publication of the notice of adoption in a newspaper of general circulation within the city.

The foregoing Ordinance was moved for adoption by Council Member \_\_\_\_\_ and supported by Council Member \_\_\_\_\_, with a vote thereon being: YES (    ) NO (    ), at a regular meeting of the City Council held pursuant to public notice in compliance with the Michigan Open Meetings Act, on the \_\_\_\_\_ day of \_\_\_\_\_, 2018. Ordinance No. 218 declared adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Russell Whipple, Mayor

\_\_\_\_\_  
Sarah J. Jarvis, City Clerk



