

City of Manistee
Zoning Board of Appeals
City Hall
70 Maple Street
Manistee, Michigan

There will be a meeting of the City of Manistee Zoning Board of Appeals to be held on Monday, November 20, 2006 at 5:30 p.m. in the **Second Floor Conference Room, City Hall, 70 Maple Street, Manistee, Michigan.**

AGENDA

- I Roll Call
- II Site Inspection:
 - 1.
- III Public Hearing:
 - 1. Manistee G.B. LLC (Goodwill), 282 Twelfth Street
 - 2.
- IV Approval of Minutes:
 - 1. Approval of Minutes (2/9/06)
- V Business Session:
 - A. Action on Pending Case:
 - 1. Manistee G.B. LLC (Goodwill), 282 Twelfth Street
 - 2.
 - B. Old Business:
 - 1. By-Law Review and Approval
 - C. Other Business of the Appeals Board:
 - 1.
- VI Questions, Concerns of Citizens in Attendance
- VII Adjournment

cc: Zoning Board of Appeals Members
Bruce Gockerman, City Attorney
Mitch Deisch, City Manager
Julie Beardslee, City Assessor



PLANNING AND ZONING
COMMUNITY DEVELOPMENT
231.398.2805
FAX 231.723-1546
www.ci.manistee.mi.us

MEMORANDUM

TO: Zoning Board of Appeals Members
FROM: Denise Blakeslee 
DATE: November 2, 2006
RE: Meeting - November 20, 2006

Good Morning!

A meeting has been scheduled for 5:30 p.m., Monday, November 20, 2006. The meeting will be held in the Second Floor Conference Room, City Hall, 70 Maple Street at City Hall.

A Public Hearing has been scheduled in response to a request from Manistee G.B. LLC for a Goodwill Store to be located at 282 Twelfth Street (former Rich's Daisy A Day). They are requesting a variance to reduce the front yard set back on Twelfth Street from 30 feet to 20 feet to construct an addition on the rear of the building. A copy of the request and site plan are enclosed for your review.

We still need to finalize the By-Laws. With the adoption of the new Zoning Ordinance and the Zoning Enabling Act some additional changes have been made to the previous draft. We incorporated language to operate under any form of parliamentary procedure approved by City Council. We have not had an opportunity for a presentation on Robert's Rules -vs- Modern Parliamentary Procedures. This language allows us to finalize and adopt the By-Laws.

If you have any questions, or are unable to attend the meeting please call me at 398-2805.

:djb



REQUEST FOR APPEAL
CITY OF MANISTEE
ZONING BOARD OF APPEALS

Name: MANISTEE GB, LLC
Address: 105 W. EXCHANGE STREET
City, State, Zip Code: SPRING LAKE, MICHIGAN 49456
Phone Numbers: (work) 616 846 0620 (home)
Agent Name & Phone Number if applicable: JAMES T. NORDLUND JR

FEE FOR APPEAL \$250.00

OFFICE USE ONLY
Appeal Number: ZBA-2006-02 Date Received: 11.30.06
Receipt Number/Fee Amt: \$250.00 ck #1253 Hearing Date: 11.20.06
Zoning District for Property: C-1 Parcel Code Number: 51-51-6661-001-00
Type of Request:
[X] Variance Request [] Ordinance or Map Interpretation
[] Appeal from Administrative Decision [] Other Authorized Review

PLEASE NOTE: All questions must be answered. Incomplete applications will be returned to be completed before processing. If additional space is needed, number and attach additional sheets.

State exactly what is intended to be done on, or with the property which necessitates a variance from the Zoning Board of Appeals:

APPLICANT DESIRES TO CONSTRUCT A GOODWILL RETAIL STORE. AS PART OF THE CONSTRUCTION REQUIREMENTS, A COVERED DROP-OFF AREA FOR DONATIONS MUST BE PROVIDED, AS WELL AS A LOADING DOCK/TRASH COMPACTOR. IN ADDITION, THE EXISTING BUILDING MUST HAVE AN ADDITION ON THE WEST SIDE OF BUILDING FOR PROCESSING DONATIONS. DUE TO THE TOPOGRAPHY, EXISTING BLDG LAYOUT AND PROPERTY CONFIGURATION, IT IS NECESSARY TO ENCROACH IN 9.5' INTO THE 12TH STREET SETBACK (FRONTYARD)

PROPERTY INFORMATION:

Tax Roll Parcel Code # 51-51-661-001-00

Property Address: 282 12TH STREET, MANISTEE, MI

Names & Addresses of all other persons, firms or corporations having a legal or equitable interest in the land. _____

Present use of parcel: RETAIL/DONATION RECEIPT

List of all deed restrictions (attache additional sheets if necessary): _____

Has a previous appeal been made with respect to this property? Yes No

If a previous appeal, re-zoning or special use permit application was made state the date, nature of action requested and the decision: _____

DETAILED REQUEST AND JUSTIFICATION:

Please identify each requested variance:

	Required by Zoning	Requested by Appellant
<input checked="" type="checkbox"/> Front-Yard Set-Back	from <u>30'</u>	to <u>20'</u>
<input type="checkbox"/> Side-Yard Set-Back	from _____	to _____
<input type="checkbox"/> Side-Yard Set-Back	from _____	to _____
<input type="checkbox"/> Rear-Yard Set-Back	from _____	to _____
<input type="checkbox"/> Waterfront Set-Back	from _____	to _____
<input type="checkbox"/> Height	from _____	to _____
<input type="checkbox"/> Area Requirements	from _____	to _____
<input type="checkbox"/> Off-street Parking	from _____	to _____
<input type="checkbox"/> Other	_____	_____

Please mark all characteristics of your property which require the granting of a variance.

Dimensional information

- Too Narrow _____
- Too Small _____
- Too Shallow _____
- Elevation (height) _____
- Slope HILLSIDE RESTRICTS VEHICLE CROSS AND PARKING
- Shape TRIANGULAR SHAPE RESULTS IN DRIVE LANE WITHIN SETBACK.
- Soil _____
- Subsurface _____
- Other (Specify) _____

Variances. The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height regulations, yard and depth regulations, and off-street parking and loading space requirements provided it finds that **all of the Basic Conditions** and **any one (1) of the Specific Conditions** set forth herein can be satisfied. The appellant shall submit, along with the established fee and other materials, a narrative demonstrating why a variance is sought.

1. **Basic Conditions.** The Board shall find that a variance request meets all of the following conditions.

- a. The requested variance shall not be contrary to the public interest or to the intent and purpose of this Ordinance.
 Yes No
- b. The requested variance shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a special land use permit is required.
 Yes No
- c. The requested variance shall not cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located.
 Yes No
- d. The conditions or situations which necessitate the requested variance is not so general or of such recurrent nature as to make the formulation of a general regulation for such conditions reasonably practical.
 Yes No
- e. The requested variance shall relate only to property that is under control of the applicant.
 Yes No
- f. The requested variance shall not be necessitated by any self-created condition or action taken by the applicant or property owner.
 Yes No
- g. There is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.

Yes No

h. The requested variance is the minimum variance that will make possible the reasonable use of the land.

Yes No

2. Special Conditions. When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:

a. Where there are practical difficulties which prevent full compliance with the requirements of this

Ordinance. Such practical difficulties shall be evaluated in terms of the use of a particular parcel of land. Neither the fact that the appellant could: (a) incur additional costs to achieve full compliance, or (b) receive additional income with less than full compliance shall be determined a practical difficulty for the purposes of this paragraph.

Yes No

Justification: 1) The applicants are required to install a truck dock & covered drive-through facility for donations. The fact that an existing building is present is a difficulty. 2) The parcel is located on a corner lot w/ two front yard setbacks, there is no side yard in this property.

b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district.

Yes No

Justification: The property is exceptional with respect to shape and topography. Even though there is a public alley present at the east side of the property, the extreme topography does not allow the applicant to utilize the alley.

c. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

Yes No

Justification: Other uses on adjoining parcels in this zoning district include retail. The requirement of a truck loading/unloading facility and a drop-off covered facility is in common use throughout this district. Unfortunately, the (MOOT imposed) limited accessibility requires the applicant to install the truck loading facility within the Twelfth Street front-yard setback.

3. Rules. The following rules shall be applied in the granting of variances:

a. The Board may specify, in writing, such conditions regarding the character, location, and other features that will in its judgment, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted.

b. Each variance granted under the provisions of this Ordinance shall become null and void unless:

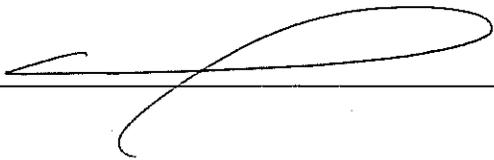
The construction authorized by such variance has received a City zoning permit within one (1) year after the granting of the variance; and the occupancy of land, premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance, unless an extension of time has been granted by the Zoning Board of Appeals.

c. No application for a variance which has been denied wholly or in part by the Board shall be re-submitted for a period of one (1) year from the date of the last denial, except on the grounds of

newly discovered evidence of changed conditions found, upon inspection by the Board, to be valid. For such newly discovered evidence to be considered, an applicant shall submit a detailed description of such evidence to the Zoning Administrator who shall place it on the agenda of the Zoning Board of Appeals along with a report and recommendation on the nature of such newly discovered evidence and whether it may have been pertinent to the decision of the Zoning Board of Appeals. If the Zoning Board of Appeals determines that the newly discovered evidence would have been pertinent to its decision, it shall direct the Zoning Administrator to accept a new application for the previously denied variance. An application considered under the terms of this subparagraph shall be considered a new application and shall be subject to all hearing, notice and fee requirements of this Ordinance.

AFFIDAVIT:

The undersigned acknowledges that if a variance is granted or other decisions favorable to the undersigned is rendered upon this appeal, the said decision does not relieve the applicant from compliance with all other provisions of the City of Manistee Zoning Ordinance; the undersigned further affirms that he/she or they is (are) the (owner/lessee/authorized agent for the owner) involved in the appeal and the answers and statements herein contained and the information herewith submitted are in all respects true and correct to the best of his, her or their knowledge and belief. By signing this affidavit permission is given for Zoning Board of Appeals Members to make a site inspection if necessary.

Signature  _____ Date 10/24/06

Signature _____ Date _____

Representation at the Public Hearing by either the applicant or agent is encouraged.

March 2006



Member

NORDLUND & ASSOCIATES INC.

CONSULTING ENGINEERS AND SURVEYORS SINCE 1972



Member

James T. Nordlund, Sr., P.E., P.S. • James T. Nordlund, Jr., P.E. • John Kiefer, P.E. • Holly Mulherin, P.E. • Tracy Hutchinson, P.E.

Victoria Heidelberg, Engineer • Robert Siawinski, P.S. • Gerald A. Nordlund, Surveyor

October 26, 2006

Narrative:

Request for Variance from 30' Front Yard Setback

City of Manistee, Michigan

Property: Former Rich's Daisy-a-Day Site

12th Street and US 31

To the Members of the City of Manistee Zoning Board of Appeals:

The development of the former Rich's Daisy-a-Day Site into a new Goodwill Retail Store will require the following modifications/additions to the structure in order to comply with the construction requirements for all new Goodwill Retail Store Buildings:

1. A location for a truck-well must be provided. This truck well will contain both a trash compactor/dumpster, as well as a loading dock for loading and off loading trucks.
2. A covered car-port must also be provided to allow passenger cars to unload donations under a canopy or roof.

In order to accommodate both of the building design requirements – several layouts were attempted on the site to try to fit both the donation drop-off and truck well within the setback distances.

One alternative that was deemed not feasible had the donation drop-off located on the south side of the building, and the truck well configured on the north side of the building. Unfortunately, the extreme topography on the site would require the vehicle to climb to an elevation of 645 from 631, in a distance of 93'. This results in a 15% grade, which is too steep to be safe and practical. **Please refer to the attached alternate layout for a plan view of another possible layout that was deemed infeasible.**

After initial review of the first site plan submitted to the City of Manistee, the developers reconsidered the location of the parking areas in the front of the store. Even though the paved parking area is pre-existing, the developers reconsidered the layout of the parking to better serve the customers – i.e. parking closer to the building. Incidentally, this results in the existing facilities better conformance with the present zoning – elimination of parking within the front setback. However, three parallel parking spaces and portions

813 E. Ludington Avenue
Ludington, Michigan 49431
(231) 843-3485 • (231) 843-7676 Fax
email: nordlund@t-one.net • nordlund2@t-one.net

62 West State Road, Unit D
Newaygo, MI 49331
(231) 652-2322 • (231) 652-2324 Fax
email: Nordlund@NCATS.net

267 River Street
Manistee, Michigan 49660
(231) 723-6460 • (231) 723-6642 Fax
email: nordlund3@t-one.net

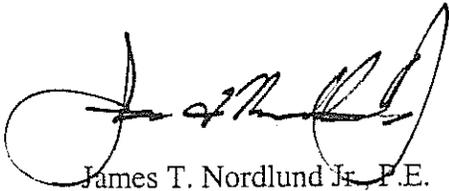
of three parking spaces on the existing asphalt parking surface fall within the 30' setback. All new parking spaces conform to the 30' setback requirement.

The extent of the variance requested by the developer includes a 10' wide portion of the new addition and concrete truck well located within the Twelfth Street 30' Sideyard Setback. The topography of the site is such that the hillside will hide much of this encroachment, plus the addition of vegetation can easily disguise the building.

Included with this application are site plans for the proposed development, showing the site topography, site photographs and an alternate layout that was not considered because of the extreme slope of the access road.

We would like to thank you for consideration of this matter.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'J. Nordlund Jr.', with a large, stylized flourish at the end.

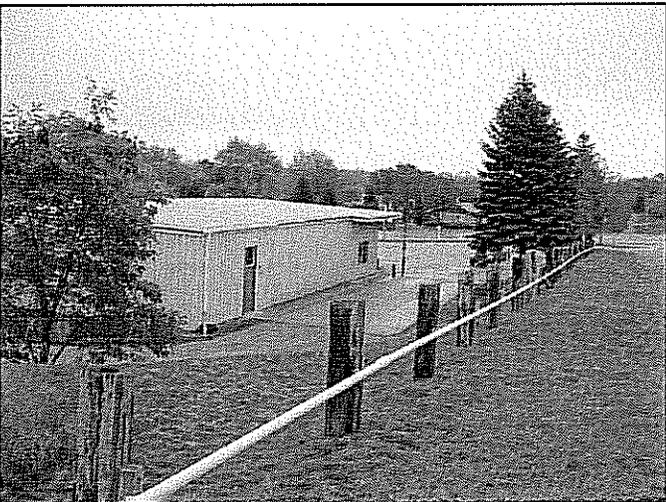
James T. Nordlund Jr., P.E.
Nordlund & Associates, Inc.



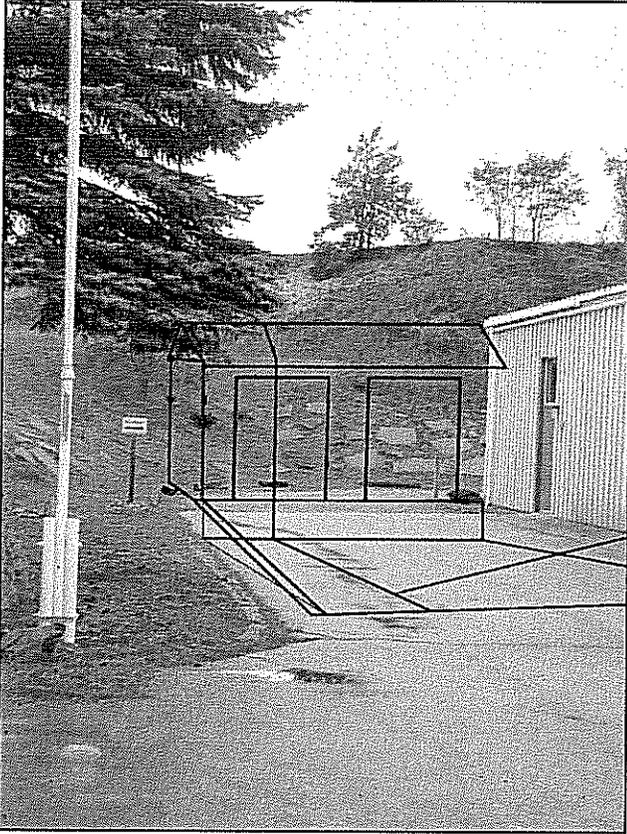
Photograph #1
View of Property from
Twelfth Street and US 31
Intersection.



Photograph #2
View of Property from
across Twelfth Street -
looking at the area where
the building addition will be
located.

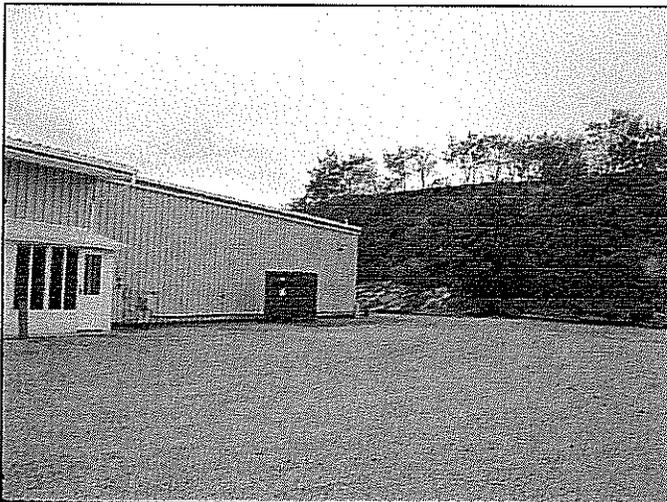


Photograph #3
View of from across Twelfth
Street - R.O.W. (RR Ties w/
Yellow Pipe) Looking at the
areas where the proposed
building would be located.



Photograph #4
View of Proposed Variance -
Required to construct a
truck dock and covered
area for trash compaction
and loading/unloading

Approximate view of the
10' Encroachment into the
12th St. Front-Yard Setback.



Photograph #5
A view of the north side of
the building. Note the large
hillside on the property. This
area will have the Covered
Donation/Drop Off Area -
Required by all new Goodwill
Stores.



PLANNING AND ZONING
COMMUNITY DEVELOPMENT
231.398.2805
FAX 231.723-1546
www.ci.manistee.mi.us

MEMORANDUM

TO: Zoning Board of Appeals Members

FROM:  Jon R. Rose
Community Development Director

DATE: November 2, 2006

RE: Variance Request - 282 Twelfth Street

Good Morning!

We have received a request for a Variance from Manistee G.B., LLC to allow an addition to be constructed for a proposed Goodwill Retail Store. This addition would be constructed 10 feet into the front yard set back on Twelfth Street. Staff review and recommendation is as follows:

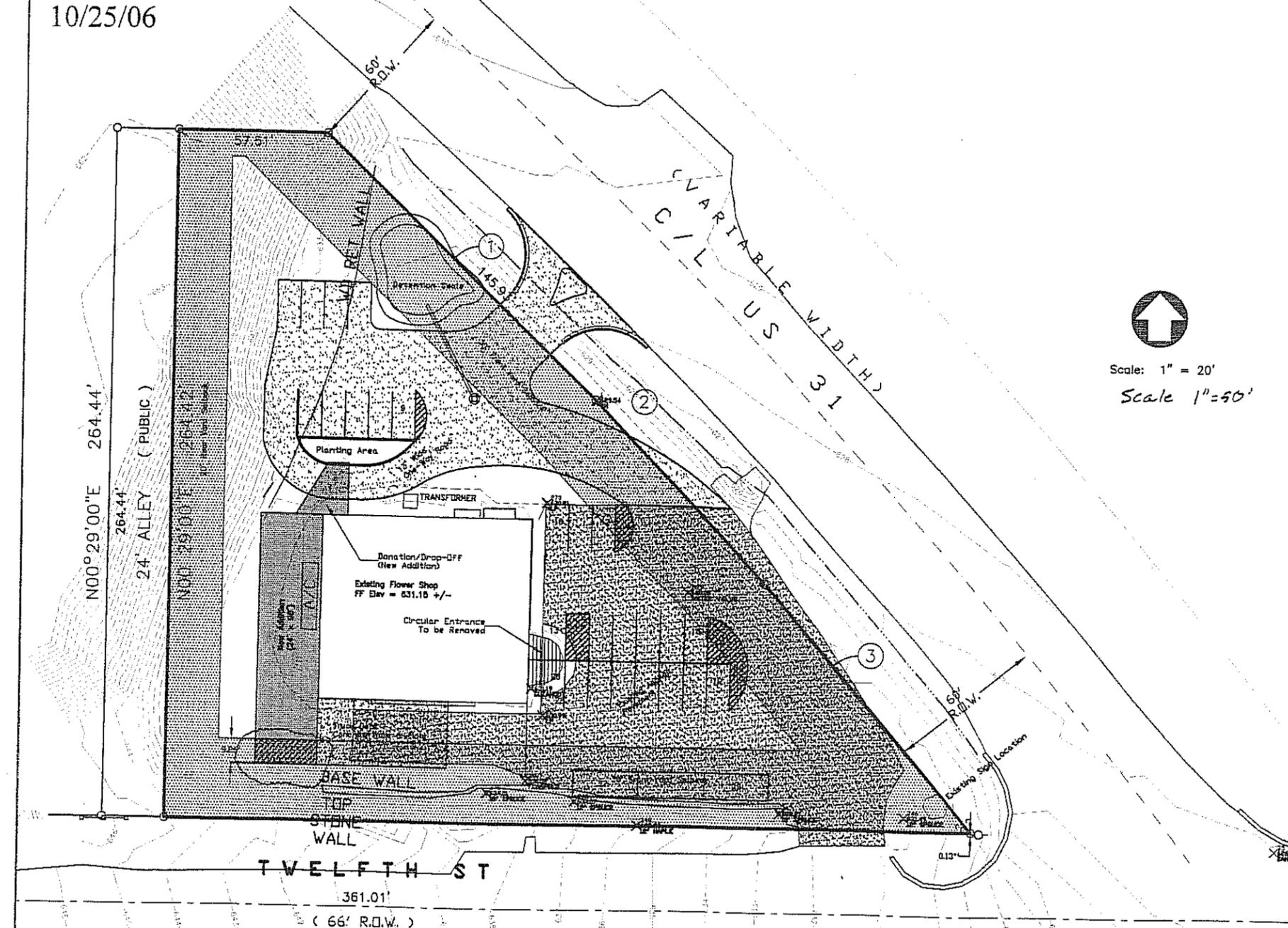
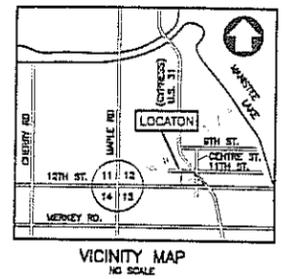
- ◆ This property has a unique topography and shape which limits the development of the property.
- ◆ Over 2/3 of the site is bounded by a street. The amount of property which must meet a front yard set back is unique.
- ◆ There would be minimal impact from the proposed addition and it does not impact the front yard set back on U.S. 31.
- ◆ The developer has investigated methods to eliminate the need for a variance but this plan seems to be the most practical with the least impact.
- ◆ The encroachment will have little visual impact because it will be lower than the grade of Twelfth Street because of the topography of the property.

This request seems to be reasonable and meets the intent of the ordinance.

JRR:djb



Redstone Commercial Investment
 New Manistee Goodwill Store
 10/25/06



Scale: 1" = 20'
 Scale 1"=50'

Present Zoning: C-1 Regional Commercial
 Legal Description: Lot 1: Amended Plat of Lake Winnegone Suburb
 Area: 1.15 Acres
 Proposed Use: Retail
 Parking Proposed: 33 Spaces
 (Parking within Zoning Ordinance: 14 Spaces)
 Building Encroaches ~10' into 12th Street Front Yard Setback
 Truck Dock also Encroaches ~10' into 12th Street Front Yard Setback
 Owner/Applicant:
 Redstone Commercial-Investment
 105 West Exchange Street
 Spring Lake, Michigan 49456
 616-848-0820

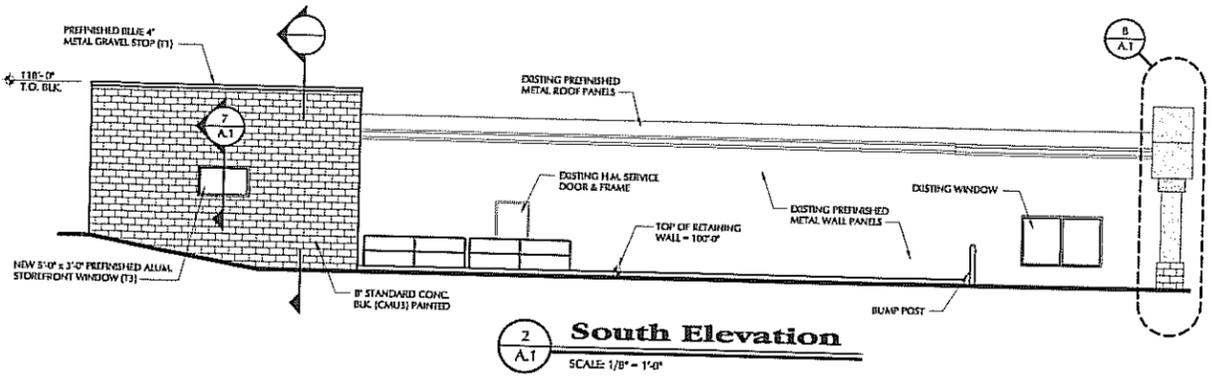
CURVE DATA:

CHD BEARING	CHD LENGTH	DELTA	BACKSIGHT LENGTH	FORESIGHT LENGTH
1 54°56'01"E	146.81'	03°01'44"	248.84'	146.83'
2 54°00'08"E	85.23'	02°12'14"	246.64'	96.65'
3 84°37'04"E	134.18'	02°51'42"	248.84'	124.22'

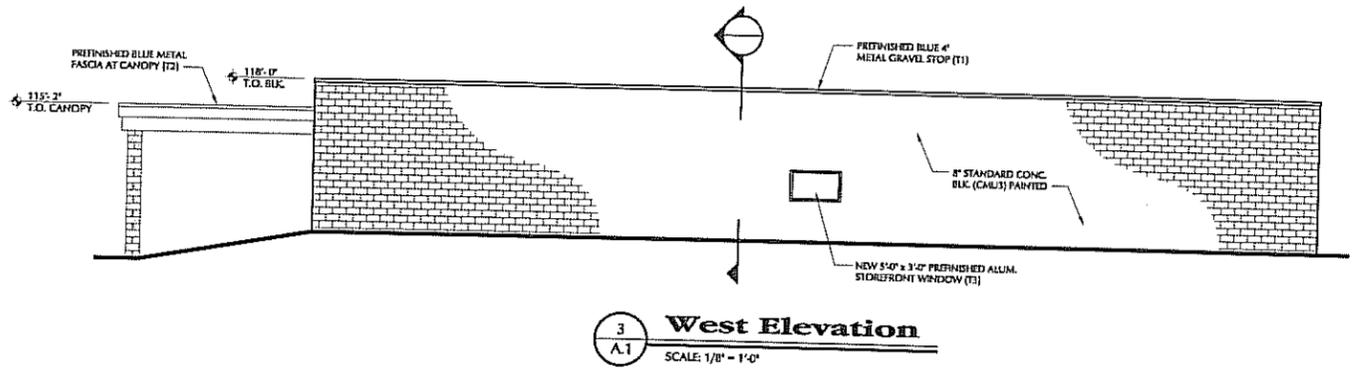
REV	DESCRIPTION	BY	DATE
 NORDLUND & ASSOCIATES, INC. Providing Complete Engineering & Surveying Services Since 1972 Ludington, MI 49421 Manistee, MI 49660 Newaygo, MI 49337 (231) 843-3485 (231) 723-6460 (231) 652-2322			
CLIENT:	Redstone Commercial-Investment	DRAWN BY:	JKH Jr.
		CHECKED BY:	
		SCALE:	1" = 20'
		DATE:	10/18/06
DESCRIPTION:	New Goodwill Store - Manistee Michigan	JOB NUMBER:	1016-4
		SHEET:	1 OF 1



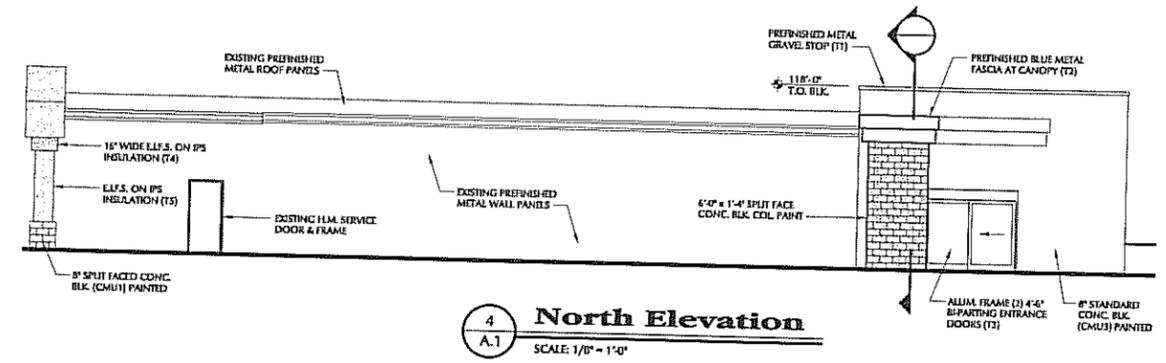
1 East Elevation
SCALE: 1/8" = 1'-0"



2 South Elevation
SCALE: 1/8" = 1'-0"

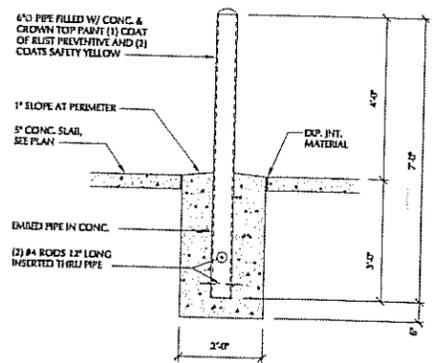


3 West Elevation
SCALE: 1/8" = 1'-0"

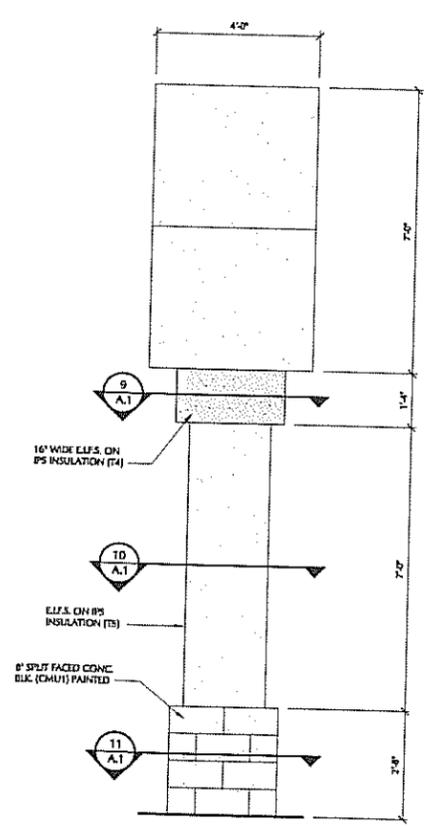


4 North Elevation
SCALE: 1/8" = 1'-0"

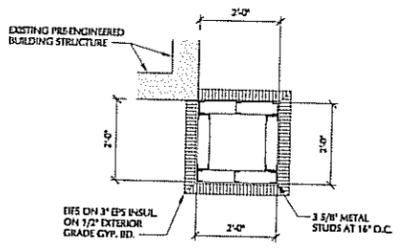
Exterior Finish Schedule		
SYMBOL	MATERIAL	REMARKS
CMU1	PAINTED SPLIT FACE CONCR. BLK. COLOR: VERIFY	(1) COATS OF H & G COVERAGE STAIN BY SHERWIN WILLIAMS
CMU2	NOT USED	
CMU3	PAINTED STANDARD CONCR. BLK. COLOR: VERIFY	(1) COAT OF BLOCK FILLER AND (2) COATS OF FLAT LATEX
T1	PREFINISHED METAL CORNING/GRAVEL STOP COLOR: "BERSHIRE BLUE"	
T2	PREFINISHED METAL CANOPY AND SORFIT COLOR: "BERSHIRE BLUE"	
T3	PREFINISHED ALUMINUM STOREFRONT FRAMING, AUTOMATIC DOORS, WINDOWS, AND FRAMES COLOR: DARK ANODIZED	
T4	16" WIDE EIFS. ON 3" EPS INSULATION COLOR: VERIFY	
T5	EIFS. ON 1" EPS INSULATION COLOR: VERIFY	



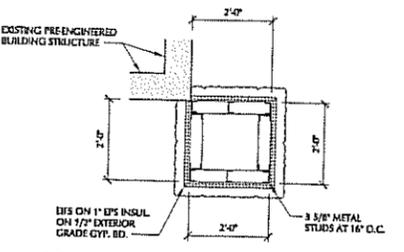
6 Bump Post Detail
SCALE: 1/2" = 1'-0"



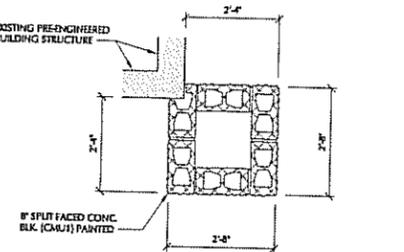
8 Column Detail
SCALE: 1/2" = 1'-0"



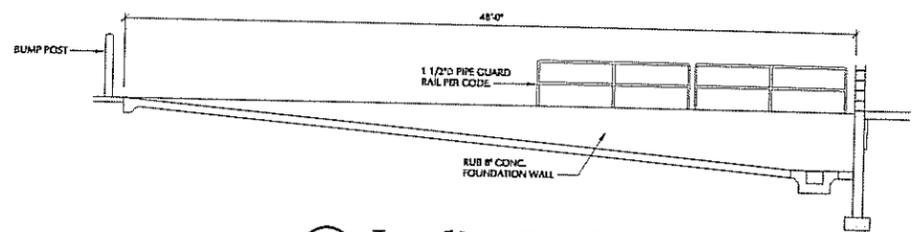
9 Column Detail
SCALE: 1/2" = 1'-0"



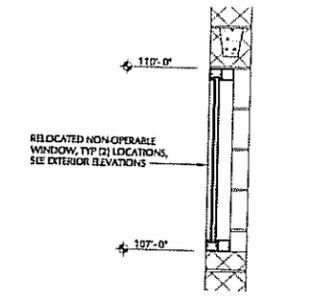
10 Column Detail
SCALE: 1/2" = 1'-0"



11 Column Detail
SCALE: 1/2" = 1'-0"



5 Loading Dock Elev.
SCALE: 1/8" = 1'-0"



7 Window Detail
SCALE: 3/4" = 1'-0"

CITY OF MANISTEE
ZONING BOARD OF APPEALS
BY-LAWS AND RULES OF PROCEDURES

1. AUTHORITY

These By-laws and Rules of Procedures are adopted by the Zoning Board of Appeals of the City of Manistee, County of Manistee, (hereinafter known as Appeals Board) pursuant to Public Act 110 of 2006, as amended, the Michigan Zoning Enabling Act; the City of Manistee Zoning Ordinance, and the Public Act 267 of 1976, as amended, the Open Meetings Act.

2. OFFICERS

2.1 Selection. At the Organizational meeting in January, the Appeals Board shall elect a chair, vice-chair and secretary who shall serve for the next twelve (12) months and who shall be eligible for re-election. Vacancies in an office of the Appeals Board shall be filled at the next meeting of the Appeals Board. The membership shall elect one of its members to fill the vacancy until the next annual election.

2.2 Duties. The chair shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein.

The vice-chair shall act in the capacity of the chair in the absence of the chair or in the event of a vacancy in the office of chair; in which case, the Appeals Board shall select a successor to the office of vice-chair at the earliest practicable time.

The Secretary, or a Recording Secretary appointed by the Secretary shall be responsible for the preparation of minutes, keeping of pertinent public records, delivering communications, reports, and related items of business of the Appeals Board, issuing notices of public hearings and performing related administrative duties to assure efficient and informed Appeals Board operations. In the event the Secretary is absent, the chair or acting chair shall appoint a temporary secretary for such meeting.

2.3 Tenure. The officers shall take office immediately following their election. They shall hold their office for a term of one year, or until their successors are elected and assume office.

3. MEETINGS

3.1 Meetings. Meetings shall be scheduled upon receipt of a complete application. The business which the Appeals Board may perform shall be conducted at a public meeting of the Appeals Board held in compliance with the Michigan Zoning Enabling Act. Public Notice of the time, date, and place of the meeting shall be given in a manner as required by the Michigan Zoning Enabling Act.

- 3.2 Meeting Notice. Notice of all meetings shall be posted at City Hall. The notice shall include the date, time and place of the meeting. Any changes in the date or time of the meetings shall be posted and noticed in the same manner as originally established.
- 3.3 Attendance. A member may be removed from office by the appointing City Council for neglect of official duty or misconduct in office after being given a written statement for reasons and an opportunity to be heard thereon. Un-excused absences may be reason for removal and three (3) un-excused absences in a row shall be reported in writing to the City Manager. An un-excused absence is defined as not notifying the Recording Secretary prior to the meeting.
- 3.4 Special Meetings. A special meeting may be called by two members of the Appeals Board upon written request to the Secretary or by the Chairperson. The business which the Appeals Board may perform shall be conducted at a public meeting of the Appeals Board held in compliance with the Open Meeting Act. Public Notice of the time, date, and place of the special meeting shall be given in a manner as required by the Open Meeting Act, and the Secretary or Recording Secretary shall provide notice to members of the Appeals Board by writing, telephone, or e-mail.
- 3.5 Quorum. In order for the Appeals Board to conduct business or take any official actions, a quorum consisting of at least three of the five members and two alternates of the Appeals Board shall be present. When a quorum is not present, no official action, except for the closing of the meeting may take place. The members of the Appeals Board may discuss matters of interest, but shall take no action until the next regular or special meeting. All public hearings without a quorum shall be scheduled for the next regular or special meeting and no additional public notice is required provided the date, time and place is announced at the meeting.
- 3.6 Public Hearings. Hearings shall be scheduled and due notice given in accordance with the provisions of the Acts and Ordinance cited in Section 1. Public hearings conducted by the Appeals Board shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure.
1. The Chair of the Appeals Board shall announce that a public hearing will be conducted on a request.
 2. The Chair shall read the public hearing announcement as published in the newspaper and give a brief description of the hearing subject and the public notice procedure.
 3. The Chair shall announce the following hearing rules:
 - a. The Chair will recognize each speaker. When a speaker has the floor, he/she is not to be interrupted unless time has expired. Persons speaking without being recognized shall be out of order.

- b. Each speaker shall state their name and address for the record and may present written comments for the record.
 - c. Speakers shall address all comments and questions to the Appeals Board and comments will be limited to the subject matter of the Public Hearing.
 - d. Unless waived by the Appeals Board for a specific meeting or a specific speaker, public comment shall be limited to five (5) minutes per speaker. If a group of people wish to be heard on one subject, a spokesperson may be designated who may request that more than five (5) minutes be permitted for collective comments of the group as presented by that speaker.
 - e. The Chair may allow people to speak a second time after everyone has had the opportunity to speak. The Chair may request that repetitive comments be limited or abbreviated in the interest of saving time and allowing others to speak.
 - f. The Chair may establish additional rules of procedure for particular hearings as he/she determines appropriate.
 - g. Normal civil discourse and decorum is expected at all times. Applause, shouting, outbursts, demonstrations, name-calling or other provocative speech or behavior may result in removal from the hearing or an adjournment.
4. Once all public comments have been stated, the Chair shall close the hearing. Any voting member of the Appeals Board may initiate a motion to close the hearing.
 5. Public Hearings shall be carried out in the following format:
 - a. The Chair shall open the hearing.
 - b. The Applicant shall present any comments and explanation of the case. Applicants presentation shall not be subject to the five (5) minute limitation.
 - c. The City staff and any consultants serving the City shall present their reports.
 - d. The hearing will be opened for public comment.
 - e. The public comment period will be closed.
 - f. Deliberation and discussion by the Appeals Board.
 - g. Disposition of the case by the Appeals Board.

3.7 Misfeasance, Malfeasance, or Nonfeasance/Conflict of Interest. A member of the Zoning Board of Appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

3.8 Motions. Every Motion shall require a second. Motions shall be restated by the Chair before a vote is taken. The name of the maker and second of each motion shall be recorded.

3.9 Voting. An affirmative vote of the majority of the Appeals Board shall be required for the approval of any requested action or motion placed before the Appeals Board. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if requested by any Appeals Board member or directed by the Chairperson. All members of the Appeals Board including the Chairperson shall vote on all matters, but the Chairperson shall vote last.

3.10 Order of Business. A written agenda for all regular meetings shall be prepared as followed. The order of business shall be:

Call to Order.

Roll Call

Approval of Agenda

Site Inspection

Public Hearings.

Approval of Minutes.

Business Session.

 Action on Pending Case

 Old Business

 Other Business of the Appeals Board

Public Comments and Communications concerning items not on the agenda.

Adjournment.

A written agenda for special meeting shall be prepared and followed, however the form as enumerated above shall not be necessary.

3.11 Rules of Order. All meetings of the Appeals Board shall be conducted in accordance with generally accepted parliamentary procedure, as adopted by City Council for all Boards and Commissions within the City of Manistee.

3.12 Agenda Items. For an item to be considered at a regular Appeals Board meeting, it must be submitted to the City Community Development Department no later than the established policy of the City prior to the next scheduled Appeals Board Meeting.

4. MINUTES

4.1 Preparation. Appeals Board minutes shall be prepared by the Secretary or Recording Secretary of the Appeals Board. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, action and resolutions shall be attached to the minutes.

5. OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

- 5.1 All meetings of the Appeals Board shall be open to the public and held in a place available to the general public.
- 5.2 All deliberations and decision of the Appeals Board shall be made at a meeting open to the public.
- 5.3 A person shall be permitted to address a hearing of the Appeals Board under the rules established in subsection 3.5, and to address the Appeals Board concerning non-hearing matters at the time designated for such comments.
- 5.4 A person shall not be excluded from a meeting of the Appeals Board except for breach of the peace, committed at the meeting.
- 5.5 All records, files, publications, correspondences, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act.

6. ANNUAL REVIEW OF BY-LAWS

The Appeals Board shall annually review their By-Laws at their Organizational Meeting in January after the election of Officers.

7. AMENDMENTS

These rules may be amended by the Appeals Board by a concurring vote to subsection 3.7, during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be considered.

I HEREBY CERTIFY that the above Bylaws were adopted the ___ day of _____, 2006.

Marlene McBride, Secretary

CITY OF MANISTEE
ZONING BOARD OF APPEALS
BY-LAWS AND RULES OF PROCEDURES

1. AUTHORITY

These By-laws and Rules of Procedures are adopted by the Zoning Board of Appeals of the City of Manistee, County of Manistee, (hereinafter known as Appeals Board) pursuant to **Public Act 110 of 2006, as amended, the Michigan Zoning Enabling Act**; the City of Manistee Zoning Ordinance, and the Public Act 267 of 1976, as amended, the Open Meetings Act.

2. OFFICERS

2.1 Selection. At the Organizational meeting in January, the Appeals Board shall elect a chair, vice-chair and secretary who shall serve for the next twelve (12) months and who shall be eligible for re-election. Vacancies in an office of the Appeals Board shall be filled at the next meeting of the Appeals Board. The membership shall elect one of its members to fill the vacancy until the next annual election.

2.2 Duties. The chair shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein.

The vice-chair shall act in the capacity of the chair in the absence of the chair or in the event of a vacancy in the office of chair; in which case, the Appeals Board shall select a successor to the office of vice-chair at the earliest practicable time.

The Secretary, or a Recording Secretary appointed by the Secretary shall be responsible for the preparation of minutes, keeping of pertinent public records, delivering communications, reports, and related items of business of the Appeals Board, issuing notices of public hearings and performing related administrative duties to assure efficient and informed Appeals Board operations. In the event the Secretary is absent, the chair or acting chair shall appoint a temporary secretary for such meeting.

2.3 Tenure. The officers shall take office immediately following their election. They shall hold their office for a term of one year, or until their successors are elected and assume office.

3. MEETINGS

3.1 Meetings. Meetings shall be scheduled upon receipt of a complete application. The business which the Appeals Board may perform shall be conducted at a public meeting of the Appeals Board held in compliance with the **Michigan Zoning Enabling Act**. Public Notice of the time, date, and place of the meeting shall be given in a manner as required by the **Michigan Zoning Enabling Act**.

- 3.2 Meeting Notice. Notice of all meetings shall be posted at City Hall. The notice shall include the date, time and place of the meeting. Any changes in the date or time of the meetings shall be posted and noticed in the same manner as originally established.
- 3.3 Attendance. A member may be removed from office by the appointing City Council for neglect of official duty or misconduct in office after being given a written statement for reasons and an opportunity to be heard thereon. Un-excused absences may be reason for removal and three (3) un-excused absences in a row shall be reported in writing to the City Manager. An un-excused absence is defined as not notifying the Recording Secretary prior to the meeting.
- 3.4 Special Meetings. A special meeting may be called by two members of the Appeals Board upon written request to the Secretary or by the Chairperson. The business which the Appeals Board may perform shall be conducted at a public meeting of the Appeals Board held in compliance with the Open Meeting Act. Public Notice of the time, date, and place of the special meeting shall be given in a manner as required by the Open Meeting Act, and the Secretary or Recording Secretary shall provide notice to members of the Appeals Board by writing, telephone, or e-mail.
- 3.5 Quorum. In order for the Appeals Board to conduct business or take any official actions, a quorum consisting of at least three of the five members and two alternates of the Appeals Board shall be present. When a quorum is not present, no official action, except for the closing of the meeting may take place. The members of the Appeals Board may discuss matters of interest, but shall take no action until the next regular or special meeting. All public hearings without a quorum shall be scheduled for the next regular or special meeting and no additional public notice is required provided the date, time and place is announced at the meeting.
- 3.6 Public Hearings. Hearings shall be scheduled and due notice given in accordance with the provisions of the Acts and Ordinance cited in Section 1. Public hearings conducted by the Appeals Board shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure.
1. The Chair of the Appeals Board shall announce that a public hearing will be conducted on a request.
 2. The Chair shall read the public hearing announcement as published in the newspaper and give a brief description of the hearing subject and the public notice procedure.
 3. The Chair shall announce the following hearing rules:
 - a. The Chair will recognize each speaker. When a speaker has the floor, he/she is not to be interrupted unless time has expired. Persons speaking without being recognized shall be out of order.

- b. Each speaker shall state their name and address for the record and may present written comments for the record.
 - c. Speakers shall address all comments and questions to the Appeals Board and comments will be limited to the subject matter of the Public Hearing.
 - d. Unless waived by the Appeals Board for a specific meeting or a specific speaker, public comment shall be limited to five (5) minutes per speaker. If a group of people wish to be heard on one subject, a spokesperson may be designated who may request that more than five (5) minutes be permitted for collective comments of the group as presented by that speaker.
 - e. The Chair may allow people to speak a second time after everyone has had the opportunity to speak. The Chair may request that repetitive comments be limited or abbreviated in the interest of saving time and allowing others to speak.
 - f. The Chair may establish additional rules of procedure for particular hearings as he/she determines appropriate.
 - g. Normal civil discourse and decorum is expected at all times. Applause, shouting, outbursts, demonstrations, name-calling or other provocative speech or behavior may result in removal from the hearing or an adjournment.
4. Once all public comments have been stated, the Chair shall close the hearing. Any voting member of the Appeals Board may initiate a motion to close the hearing.
5. Public Hearings shall be carried out in the following format:
- a. The Chair shall open the hearing.
 - b. The Applicant shall present any comments and explanation of the case. Applicants presentation shall not be subject to the five (5) minute limitation.
 - c. The City staff and any consultants serving the City shall present their reports.
 - d. The hearing will be opened for public comment.
 - e. The public comment period will be closed.
 - f. Deliberation and discussion by the Appeals Board.
 - g. Disposition of the case by the Appeals Board.

If more than one public hearing has been scheduled for the meeting. The public hearings will be held in the order in which received. Deliberation and disposition by the Appeals Board will be held after all public hearings have been closed.

- 3.7 **Misfeasance, Malfeasance, or Nonfeasance/Conflict of Interest.** A member of the Zoning Board of Appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

- 3.8 Motions. Motions shall be restated by the Chair before a vote is taken. The name of the maker and second of each motion shall be recorded.
- 3.9 Voting. An affirmative vote of the majority of the Appeals Board shall be required for the approval of any requested action or motion placed before the Appeals Board. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if requested by any Appeals Board member or directed by the Chairperson. All members of the Appeals Board including the Chairperson shall vote on all matters, but the Chairperson shall vote last.
- 3.10 Order of Business. A written agenda for all regular meetings shall be prepared as followed. The order of business shall be:
- Call to Order.
 - Roll Call
 - Approval of Agenda
 - Approval of Minutes.
 - Site Inspection
 - Public Hearings.
 - Business Session.
 - Action on Pending Case
 - Old Business
 - Other Business of the Appeals Board
 - Public Comments and Communications concerning items not on the agenda.
 - Adjournment.
- A written agenda for special meeting shall be prepared and followed, however the form as enumerated above shall not be necessary.
- 3.11 Rules of Order. All meetings of the Appeals Board shall be conducted in accordance with generally accepted parliamentary procedure, as **adopted by City Council for all Boards and Commissions within the City of Manistee.**
- 3.12 Agenda Items. For an item to be considered at a regular Appeals Board meeting, it must be submitted to the City Community Development Department no later than the established policy of the City prior to the next scheduled Appeals Board Meeting.
- 3.13 Conflict of Interest:
1. As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:
 - a. A commission member issuing, deliberating, voting or reviewing a case concerning himself.

- b. A commission member issuing, deliberating, voting or reviewing a case concerning work on land owned by himself.
 - c. A commission member issuing, deliberating, voting or reviewing a case involving a corporation, company, partnership, or other entity in which he is a part owner, or any other relationship where he may stand to have a financial gain or loss.
 - d. A commission member issuing, deliberating, voting or reviewing a case which is an action which results in a pecuniary benefit to himself.
 - e. A commission member issuing, deliberating, voting or reviewing a case concerning his spouse, children, step-child, grandchildren, parents, brother, sister, grandparents, parents in-law, grandparents in-law or member of his household.
 - f. A commission member may consider the possibility of declaring a conflict of interest if his/her home falls within a notification radius used for a Public Hearing. Because the sending of the notice automatically presumes some degree of interest, this fact should be recognized by declaring a conflict, particularly if a financial impact is likely.
 - g. A commissioner who feels, in his/her judgement that his/her job, scope of duties and/or position may be at risk, pending the outcome of the permitting process.
 - h. The Planning Commission Representative to the Appeals Board will abstain from any case where as a member of the Planning Commission he/she made a decision which resulted in the appeal.
2. A commission member shall, when he/she has a conflict of interest do the following immediately, upon the first review of the case and determining a conflict exists:
- a. declare a conflict exists at the beginning of the meeting where the case appears on the agenda, or when the topic brought up so such declaration is recorded in the minutes, and
 - b. refrain from participating in the discussion, site inspection or review of the case, except where specific information has been requested by the commission, and
 - c. refrain from casting a vote on any motion having to do with the case.

4. MINUTES

- 4.1 Preparation. Appeals Board minutes shall be prepared by the Secretary or Recording Secretary of the Appeals Board. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, action and resolutions shall be attached to the minutes.

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6. ANNUAL REVIEW OF BY-LAWS

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7. AMENDMENTS

These rules may be amended by the Appeals Board by a concurring vote to subsection 3.7, during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be considered.

I HEREBY CERTIFY that the above Bylaws were adopted the ___ day of _____, 2006.

Marlene McBride, Secretary

LANGUAGE FOR CITY COUNCIL APPROVAL