

ZONING BOARD OF APPEALS AGENDA

Regular Meeting

October 3, 2024 at 7:00 PM



- 1) **CALL TO ORDER**
- 2) **ROLL CALL**
- 3) **ELECTION OF OFFICERS**
 - A. Election of Chair
 - B. Election of Vice Chair
- 4) **APPROVAL OF AGENDA** - Items can be added or deleted from the Agenda by City Council action.
- 5) **APPROVAL OF MINUTES** - Items can be added or deleted from the Agenda by board action.
 - A. December 14, 2023 Meeting
- 6) **PUBLIC COMMENT ON AGENDA ITEMS** Persons addressing the board are required to give their name and address for the record when called upon by the Chair. Members of the public shall be limited to speaking for a maximum of five (5) minutes. Comments should address AGENDA ITEM topics. Public Hearing items should be addressed during the PUBLIC HEARING portion of the meeting agenda. Non-Agenda items should be addressed during the PUBLIC COMMENT-NON-AGENDA ITEMS portion of the meeting agenda.
- 7) **PUBLIC HEARINGS & SUBSEQUENT BOARD ACTION**
- 8) **OLD BUSINESS**
- 9) **REPORTS AND RECOMMENDATIONS/NEW BUSINESS**
 - A. Appeal 2024.01- 15861 W Michigan Ave Dimensional Variance
- 10) **PUBLIC COMMENT ON NON-AGENDA ITEMS** Persons addressing the board are required to give their name and address for the record when called upon by the Chair. Members of the public shall be limited to speaking for a maximum of five (5) minutes. Comments should address NON-AGENDA ITEM topics. Public Hearing items should be addressed during the PUBLIC HEARING portion of the meeting agenda. Agenda items should be addressed during the PUBLIC COMMENT-AGENDA ITEMS portion of the meeting agenda.
- 11) **BOARD REPORTS**
- 12) **ADJOURNMENT**

**MINUTES
MARSHALL CITY ZONING BOARD OF APPEALS
THURSDAY, DECEMBER 14, 2023**

In a regular session, Thursday, December 14, 2024, 2023 at 7:00 p.m. held at City Hall, Council Chambers, 323 West Michigan Avenue, Marshall, Michigan, the Marshall Zoning Board of Appeals meeting was called to order by Chair Fisher-Short.

ROLL CALL

Members Present: Members Byrne, Fisher-Short, Hill, Karnes, and Wolfersberger
Members Absent:

Staff Present: Eric Zuzga, Director of Community Services

AGENDA

MOTION by Karns, supported by Byrne, to accept the agenda for December 14, 2023 regular meeting as presented. On a voice vote; **MOTION CARRIED.**

PUBLIC COMMENTS ON AGENDA

None

OLD BUSINESS

None

NEW BUSINESS

1. APPEAL #23.05 – Consumers Credit Union, 1114 West Michigan Avenue, for a use variance to allow a drive through financial institution in B-4 Zoning District and a dimensional variance from ordinance 5.1 (signs) to allow for a larger LED sign.

CASE ANALYSIS

The applicant, Consumers Credit Union, is seeking relief from requirement section: 3.1.10 B-4 Regional Commercial District Uses. The owner is seeking a Use Variance to develop this property for the development of a 1,185 sq ft. Financial Institution with a drive-through ITM. Currently, banks and financial institutions with accessory drive-through facilities are only allowed as a special land use in the POSD zoning district.

Staff feels rezoning this property is not a favorable option and would create more of a spot zoning issue; therefore, feels the requesting a Use variance is the best route to pursue. Staff feels a Financial Institution is directly in line with the intent of the B-4 zoning district. The intent of the B-4 Zoning District is as follows:

The B-4 Regional Commercial district is intended to alleviate undue traffic congestion, promote efficient traffic flow, and provide an appropriate location for commercial and service-oriented uses which serve the needs of persons traveling and to a lesser extent the community's immediate population

This is a similar request that was approved by the ZBA in 2022 for another credit union. At that time, the ZBA requested that the Planning Commission work on this issue. As they have not been able to fix this issue, staff is recommending approval of the use variance.

MOTION by Hill, supported by Byrne to approve APPEAL #23.05 – Consumers Credit Union, 1114 West Michigan Avenue, for a use variance to allow a drive through financial institution in the B-4 Zoning District. On a roll call vote; ayes- Byrnes, Fisher-Short, Hill, Karns, and Wolfersberger; nays- N/A; **MOTION CARRIED.**

Consumers Credit Union requested a dimensional variance for a larger LED sign ordinance. Staff is recommending that the Planning Commission review the sign ordinance and update as necessary. ZBA members indicated that they were not comfortable approving a variance prior to the ordinance being updated. The applicant was given the opportunity to withdraw the application until the zoning ordinance was updated, but requested a vote on the issue.

Motion by Wolfersberger, with support by Karns to approve the sign variance request: ayes N/A; nays Byrnes, Fisher-Short, Hill, Karns, and Wolfersberger. **MOTION DEFEATED**

PUBLIC COMMENTS ON NON-AGENDA ITEMS

None

REPORTS

The board asked for the Board portal signup to be resent.

ADJOURN

The Zoning Board of Appeals adjourned at 7:50p.m.

Submitted by,

Eric Zuzga



ITEM 9.A

TO: Zoning Board of Appeals
FROM: Michelle Eubank, City Clerk
DATE: October 3, 2024
SUBJECT: Appeal 2024.01- 15861 W Michigan Ave Dimensional Variance

See staff report from McKenna

RECOMMENDATION:



City of Marshall
ZONING BOARD OF APPEALS VARIANCE APPLICATION

Telephone
(269) 781-3985

Address:
323 W Michigan Ave, Marshall,
Michigan 49068

Fax
(269) 789-4628

RESIDENTIAL FEE: \$400

COMMERCIAL FEE: \$400

Petitioner Name: Richard Lindsey - Attorney for BR Great Northern Mall LLC
Address: 405 South Jackson Street, Jackson, MI 49204
Phone: (269) 317-5905 Email: rlindsey@atbplclaw.com

Property Address for Variance: 15861 W Michigan Avenue, Marshall, MI 49068

Are you the owner? Yes ☐ No ☒ (Owner is required to sign this form)

Current Zone Commercial Current Use Retail/Vacant

Zoning of abutting parcels Commercial Dimensional Variance ☒ Use Variance ☐

Required attachments

☒ Plot Plan Attached *(According to ordinance, you must include a plot plan of the site, drawn to scale, with a north arrow, all lot lines shown, street right-of-ways, any easements, any structures, setback dimensions, any parking areas, driveways, sidewalks, and any other site improvements)*

☐ Reasons for variance *(A letter must be submitted with this application addressing how you feel you meet the criteria for a Dimension or Use variance-see back)*

*The ZBA meets on the 3rd Thursday of each month. Application must be received on or before the deadline date for the next scheduled meeting.

I understand that I am expected to attend the ZBA public hearing pertaining to this matter. If I am unable to attend, I will send a representative in my place. I understand that the application fee is non-refundable and does not apply to any future permits. Furthermore, if the variance is granted, I agree to obtain the appropriate permits before commencing work.

Signature of Petitioner:

Date: August 28, 2024

Signature of Owner:

Date: August 28, 2024

Questions concerning these requirements should be directed to the Planning and Zoning Office

Eric Zuzga

Zoning Administrator – ezuzga@cityofmarshall.com

269-781-3985 x 1145

DIMENSIONAL VARIANCE

Please attach a letter addressing how your situation meets these criteria:

The granting of a variance from particular area, setback, frontage, height, bulk, density or other dimensional (non-use) standards of this Ordinance shall require a finding of practical difficulties based upon the following criteria:

1. Strict Compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.
2. The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners.
3. The need for the variance is due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district.
4. The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.
5. The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the City and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare.
6. The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return.

USE VARIANCE

Please attach a letter addressing how your situation meets these criteria:

The granting of a variance from the use provisions of this Ordinance shall require a finding of unnecessary hardship, based upon the following criteria:

1. The current zoning ordinance prohibits the property owner from securing any reasonable economic return or making any reasonable use of the property. Under this standard, the ZBA must find that the property (land, structures and other improvements) is not suitable for uses permitted in the zoning district.
2. The landowner's plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions. Circumstances common to the larger neighborhood may reflect the unreasonableness of the zoning itself, which should be addressed through a rezoning or other legislative action.
3. The use variance, if granted, would not alter the essential character of the neighborhood. This standard requires consideration of whether the intent and purpose of the Ordinance and zoning district will be preserved, and the essential character of the area will be maintained.
4. The hardship is not the result of the applicant's actions. Under this standard, the ZBA must determine that the hardship that led to the use variance request was not self-created by the applicant. Purchase of a property with a pre-existing hardship does not constitute a self-created hardship. Financial hardships that would prevent reasonable use of the property shall be considered, but shall not be the only determining factor in granting a use variance.

Questions concerning these requirements should be directed to Trisha Nelson, Planning & Zoning Administrator at: (269) 781-5183.

LAW OFFICES
ABBOTT, THOMSON, MAULDIN, PARKER, BEER & LINDSEY, PLC

WILLIAM M. ABBOTT
KEVIN M. THOMSON
KURT J. PARKER
BRENDON R. BEER
RICHARD C. LINDSEY, JR.

405 SOUTH JACKSON STREET
POST OFFICE BOX 450
JACKSON, MICHIGAN 49204-0450
(517) 787-8570
FAX: (517) 787-8571

OF COUNSEL:
CLYDE W. MAULDIN

September 5, 2024

City of Marshall
Zoning Board of Appeals
323 W. Michigan Avenue
Marshall, Michigan 49068

**RE: Application for Variance Side Yard Setback – 15861 W. Michigan Avenue
(split into 3 new parcels)**

Dear Members of the Zoning Board of Appeals:

My firm represents BR Great Northern Malls, LLC (“BR”). Approximately 2 years ago, BR purchased from KC Holding Corporation what we in Marshall would refer to as “the former K-Mart.” Parcel 53-002-592-00, as shown on the map attached as Exhibit A, includes the parking lots to the south of the large building and the driveways and access lanes to the north (the “Parcel”). The Parcel includes frontage on Michigan Avenue and an area to the south of the main building which has long been intended to be an out-lot that could be used for the development of a separate freestanding retail/commercial business. BR has made nationwide efforts to lease the entire retail space for the last two years and has been unsuccessful in finding a tenant.

In late 2023, BR applied for and received Planning Commission and City Council approvals for the permits and site plan necessary for a lease to open a Tractor Supply Company (“TSC”) in approximately the west 1/3 of the building. The TSC is complete and the opening is planned for later in September. BR is pleased for the opportunity to bring this new retail location, along with the associated jobs and tax base, to the City of Marshall. BR is also developing a new location for a Dollar Tree in a smaller space next to the TSC.

In seeking the best opportunity to market the remaining space, BR has determined that it would be beneficial to divide the Parcel into three separate legal parcels for separate sale and leasing. Parcel #1 would include the existing TSC and the new Dollar Trees as well as 94 parking spaces. Parcel #2 would include the connected building to the east and 123 of the parking spaces. Parcel #3 would include the entire parcel’s road frontage along W. Michigan Avenue which includes 125 parking spaces. Parcel #3 is slated for eventual separate development of a free-standing retail space.

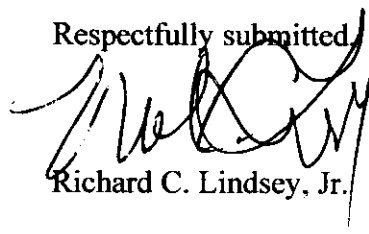
BR submitted this proposal to the City of Marshall and on August 20, 2024, received the attached Lot Split Review letter indicated that a side lot variance is necessary in order to create separate lots 1 and 2 (Exhibit B). By filing this application, BR is seeking a variance relative to the 25-foot setback required for lots in a B-4 district.

As to the 6 requirements for granting a dimensional variance, BR submits the following:

1. BR has attempted for almost two years to lease or otherwise redevelop the parcel as one large store/retail space. BR, after national search efforts, has been unable to locate any tenant with interest in the space as it was configured for the former K-Mart. BR seeks to use the parcels as retail spaces, consistent with the B-4 zoning district. Granting the variance would allow additional re-development of the space creating retail opportunities, job, and increased tax base.
2. This variance will do substantial justice to BR as well as to other property owners. The surrounding property owners are all parts of the former K-Mart plaza development and therefore will benefit from increased retail traffic or the owner of the Taco Bell parcel which will also benefit from increased commercial/retail traffic. The variance will permit the effective redevelopment of the largest space in the former K-Mart plaza.
3. The parcel is unique in regard to the size of the space which limits the parties interested in re-development. The variance will allow an effective re-development of the space.
4. The need for the variance was created by a change in the demand for retail space in Marshall and generally and not through any actions of the owner or former owner.
5. As stated above, the adjacent properties will not suffer any adverse impacts and, in fact, all will benefit from increased retail and commercial customers using the re-developed Parcel.
6. The hardship is that the space will sit undeveloped as extensive efforts by the owner have not resulted in a tenant interested in the larger space. The empty retail space could develop into an eye-sore rather than being developed into bustling retail space for the benefit of the entire Marshall community.

For the reasons stated above, BR respectfully requests that the variance be granted relative to the 25-foot side yard setback for the B-4 District (as to Parcels 1 and 2).

Respectfully submitted,



Richard C. Lindsey, Jr.

Cc: Client

Enclosures

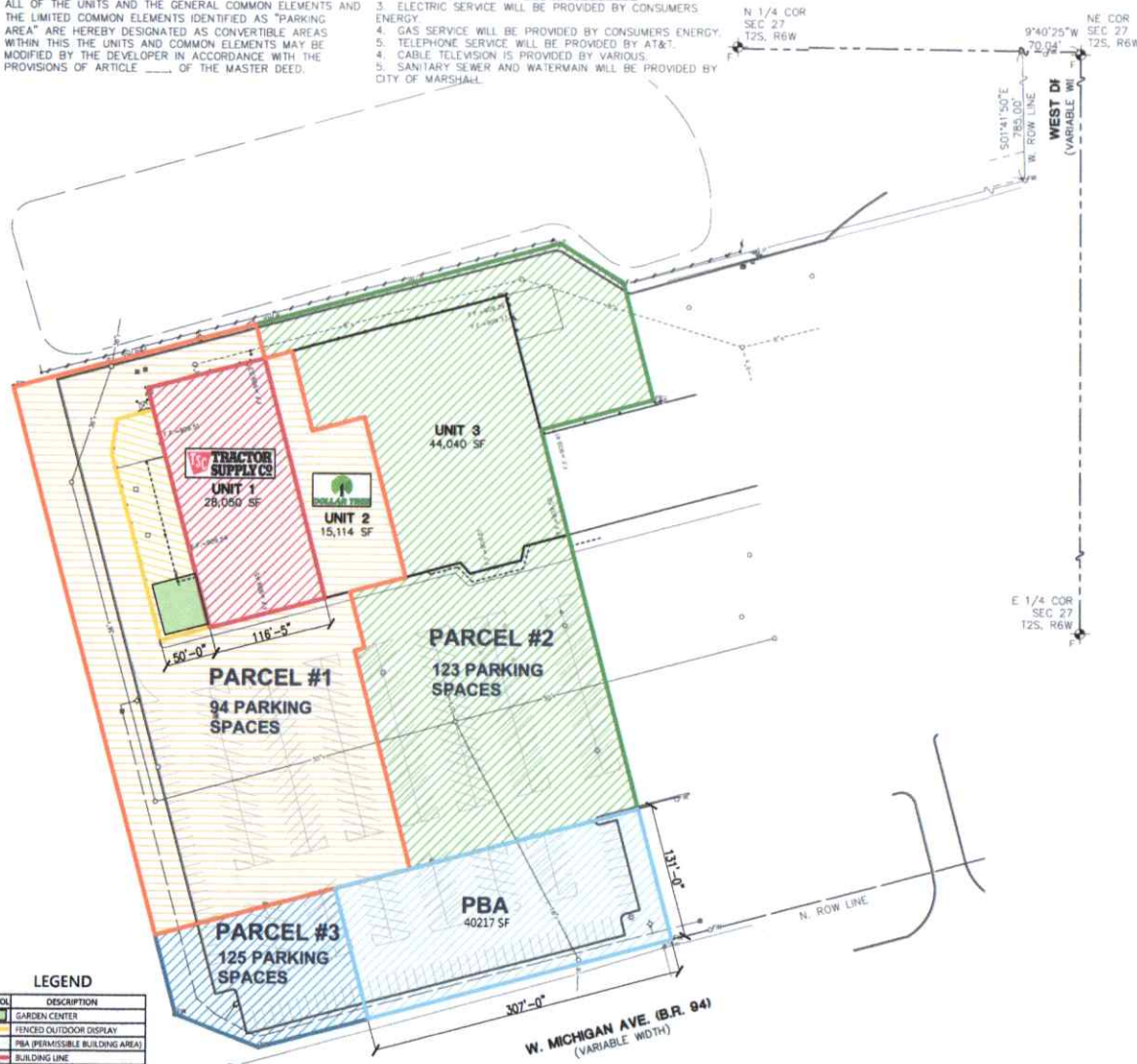
EXHIBIT A – PARCEL MAP

NOTES:

1. ALL UTILITIES HAVE BEEN BUILT.
2. UNITS 1, 2 AND 3 HAVE BEEN BUILT.
3. ALL UTILITY MAINS THAT SERVICE UNITS 1, 2 AND 3, HAVE BEEN BUILT.
4. ALL OF THE UNITS AND THE GENERAL COMMON ELEMENTS AND THE LIMITED COMMON ELEMENTS IDENTIFIED AS "PARKING AREA" ARE HEREBY DESIGNATED AS CONVERTIBLE AREAS WITHIN THIS THE UNITS AND COMMON ELEMENTS MAY BE MODIFIED BY THE DEVELOPER IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE ____ OF THE MASTER DEED.

NOTES:

1. ALL UTILITIES MUST BE BUILT.
2. STORM SEWER, SANITARY SEWER AND WATERMAIN WERE TAKEN FROM APPROVED CONSTRUCTION PLANS PREPARED BY ____.
3. ELECTRIC SERVICE WILL BE PROVIDED BY CONSUMERS ENERGY.
4. GAS SERVICE WILL BE PROVIDED BY CONSUMERS ENERGY.
5. TELEPHONE SERVICE WILL BE PROVIDED BY AT&T.
6. CABLE TELEVISION IS PROVIDED BY VARIOUS.
7. SANITARY SEWER AND WATERMAIN WILL BE PROVIDED BY CITY OF MARSHALL.



LEGEND

SYMBOL	DESCRIPTION
[Symbol]	GARDEN CENTER
[Symbol]	FENCED OUTDOOR DISPLAY
[Symbol]	PBA (PERMISSIBLE BUILDING AREA)
[Symbol]	BUILDING LINE



SCALE: 1" = 50'

LEGEND

[Symbol]	SET 4" CONCRETE MONUMENT
[Symbol]	SET 5/8" IRON ROD
[Symbol]	LIMITS OF OWNERSHIP (UNIT)
[Symbol]	EXIST. UTILITY POLE
[Symbol]	EXIST. UTILITY POLE W/ TRANS
[Symbol]	EXIST. GUY POLE
[Symbol]	GUY WIRE
[Symbol]	ELEC. TRANSFORMER
[Symbol]	EXIST. AC UNIT
[Symbol]	EXIST. GENERATOR
[Symbol]	EXIST. OVERHEAD UTILITY LINE
[Symbol]	EXIST. LIGHT POLE
[Symbol]	EXIST. TELEPHONE LINE
[Symbol]	EXIST. ELECTRIC LINE
[Symbol]	EXIST. GAS LINE
[Symbol]	EXIST. FIBER OPTIC LINE
[Symbol]	EXIST. WATER MAIN
[Symbol]	EXIST. HYDRANT
[Symbol]	EXIST. GATE VALVE IN BOX
[Symbol]	EXIST. GATE VALVE IN WELL
[Symbol]	EXIST. CURB STOP & BOX
[Symbol]	REDUCER
[Symbol]	EXIST. BLOW-OFF
[Symbol]	EXIST. POST INDICATOR VALVE
[Symbol]	THRUST BLOCK
[Symbol]	EXIST. FIRE DEPT. CONNECTION
[Symbol]	EXIST. STORM SEWER
[Symbol]	EXIST. CATCH BASIN OR INLET
[Symbol]	EXIST. BEEHIVE INLET
[Symbol]	END SECTION
[Symbol]	HEAD WALL
[Symbol]	CULVERT
[Symbol]	EXIST. DOWNSPOUT
[Symbol]	EXIST. SANITARY SEWER
[Symbol]	EXIST. CLEANOUT
[Symbol]	SIGN
[Symbol]	MAILBOX
[Symbol]	TELEPHONE RISER
[Symbol]	CABLE TELEVISION RISER
[Symbol]	ELECTRIC METER
[Symbol]	WATER METER
[Symbol]	SPRINKLER CONTROL BOX
[Symbol]	GAS METER
[Symbol]	GAS LINE MARKER
[Symbol]	FIBER OPTIC MARKER
[Symbol]	PEDESTRIAN CROSSING SIGNAL
[Symbol]	TRAFFIC SIGNAL CONTROL BOX

MIDWESTERN CONSULTING



KMART-MARSHALL
EXHIBIT 'B' TO THE MASTER DEED
UTILITY PLAN

4

24142	DATE: 10/1/2004	BY: M.V.
	DATE: 10/1/2004	BY: M.V.
	DATE: 10/1/2004	BY: M.V.
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	DATE: 10/1/2004	BY: M.V.
	DATE: 10/1/2004	BY: M.V.
	DATE: 10/1/2004	BY: M.V.

MARK VANDER VEEN, PROFESSIONAL SURVEYOR #56788
PROPOSED DATED:

EXHIBIT B – LOT SPLIT REVIEW LETTER



August 20, 2024

Sanjiv Chadha
NWS Architects Inc.
230 W. Monroe St. Suite 1550
Chicago, IL 60606

**Subject: Lot Split Review
15861 W. Michigan Ave.
Marshall, MI 49068**

Dear Mr. Chadha,

We have received your application, noted above, to split the lot line boundary at 15861 West Michigan Avenue (Parcel #53-002-592-00) in the B-4 – Regional Commercial Zoning District. This application may be approved administratively and does not require Planning Commission approval.

The proposed lot split would create three separate parcels. Parcel #1 would include the existing Tractor Supply Co. and Dollar Tree businesses as well as 94 parking spaces. Parcel #2 would include the connected building to the East and 123 of the parking spaces shared by the lot. Parcel #3 would include the entire parcel's road frontage along W. Michigan Ave. which covers a total of 125 parking spaces from the shared lot.

1.) Dimensional Requirements. Below, we have analyzed the dimensions of each proposed parcel:

Parcel 1:	Parcel 2:	Parcel 3:
Area: ~3.43 acres	Area: ~3.02 acres	Area: ~1.45 acres
Road Frontage: 0 feet	Road Frontage: 0 feet	Road Frontage: ~415 feet
Parcel Depth: ~545 feet	Parcel Depth: ~545 feet	Parcel Depth: ~132 feet
Front Yard Setback: ~275 feet	Front Yard Setback: ~255 feet	Front Yard Setback: N/A
Side Yard Setback: <u>0 feet</u>	Side Yard Setback: <u>0 feet</u>	Side Yard Setback: N/A
Rear Yard Setback: ~32 feet	Rear Yard Setback: ~32 feet	Rear Yard Setback: N/A

The proposed side yard setback is in violation of the required 25-foot side yard setback for the B-4 District. The applicant must seek a variance prior to lot split approval to relieve the required 25-foot side yard setback.

2.) Frontage on Streets Required. Section 5.5 of the Zoning Ordinance states:

"No dwelling unit shall be built, moved or converted upon a lot having a frontage of less than 20 feet upon a public street that has been certified for maintenance by the City, or upon an approved private street or other permanent easement giving access to a public street."



- a. *No zoning permit shall be issued for any new construction or building additions located on any lot in the City that does not abut on a public street or highway or have access to a public street or highway.*
- b. *All access to a public street or upon a private street or other permanent easement giving access to a public street shall be hard surfaced with concrete or plant-mixed bituminous material, and shall meet the standards of Section 5.14.*

Based on the above provisions, the applicant must pursue a reciprocal access easement between all parcels to ensure that access is provided to all proposed parcels and meets the requirements of the Zoning Ordinance.

- 3.) **Collective Use of Spaces.** Section 5.14.4.D of the Zoning Ordinance states provisions for the collective use of spaces. Specifically, point D.ii states that an agreement between two or more non-residential uses may collectively provide required off-street parking for the parcels. A copy of this agreement must be filed with the City to collectively provide parking for the lots.

Additionally, Section 5.14.11.C of the Zoning Ordinance covers shared access of joint driveways and parking lots. As the existing parking lot is adjacent to all three parcels, subsections ii and iv require all three parcels to submit letters of agreement or access easements to the City for all affected property owners.

DECISION

At this time, the application is **NOT APPROVED**.

Please submit a revised site plan with the following revisions:

1. The applicant receives a variance for the required 25-foot side yard setback from the Zoning Board of Appeals.
2. The applicant creates a notarized, written easement agreement recorded by the Calhoun County Notary's Office regarding the access of all parking spaces and submit a copy to the City of Marshall.
3. The applicant creates a notarized, written shared lot maintenance agreement recorded by the Calhoun County Notary's Office and submit a copy to the City of Marshall.

Please do not hesitate to contact us with any questions you may have.

Respectfully submitted,
McKENNA

Christopher Khorey, AICP
Vice President

Ethan Walthorn,
Assistant Planner

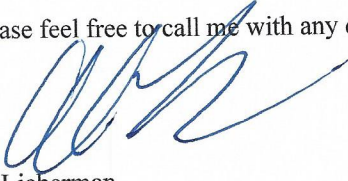
9/5/2024

To: City of Marshall, Michigan

REF: Marshall Plaza, 15861 W Michigan Avenue Marshall, MI

I, Al Lieberman as an officer of BR Great Northern Mall and have authority to sign the zoning board of appeals variance application as attached.

Please feel free to call me with any questions.



Al Lieberman
Principal
B. Riley Real Estate

Al Lieberman

From: Jennifer Pickford <jpickford@cityofmarshall.com>
Sent: Thursday, September 5, 2024 2:18 PM
To: Al Lieberman
Subject: Re: letter.

[EXTERNAL]

We would need something on letterhead stating who is responsible for our files.



Jennifer Pickford

Deputy Clerk
Administrative Assistant

Jpickford@cityofmarshall.com
Phone: 269.781.3985
323 W Michigan Ave.
Marshall, MI 49068
cityofmarshall.com

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From: Al Lieberman <alieberman@brileyfin.com>
Sent: Thursday, September 5, 2024 2:22 PM
To: Jennifer Pickford <jpickford@cityofmarshall.com>
Subject: FW: letter.

Jennifer will this be ok it comes from our general counsel.

From: Rebecca Hollander <rhollander@brileyfin.com>
Sent: Thursday, September 5, 2024 1:20 PM
To: Al Lieberman <alieberman@brileyfin.com>; Michael Jerbich <mjerbich@brileyfin.com>
Subject: RE: letter.

You're the Principal of the entity – it's an officer position. Who do they want this letter to come from? You're already authorized.

B | RILEY
Financial

www.brileyfin.com
NASDAQ: RILY



Rebecca Hollander
Vice President & Assistant General Counsel

Email: rhollander@brileyfin.com
Direct: (212) 271-4564

299 Park Avenue, 21st Floor
New York, NY 10171



MCKENNA

September 18, 2024

Zoning Board of Appeals
City of Marshall
323 W. Michigan Ave.
Marshall, MI 49068

Subject: Review of Variance for 15861 W. Michigan Ave.

Dear Board Members:

We have reviewed the application for a variance for the required 25-foot side yard setback for a proposed lot split located at 15861 W. Michigan Avenue. The parent parcel sits within the B-4 – Regional Commercial District. Below is an explanation of the background of the parcel and a review of the requirements of a variance within the City of Marshall.

BACKGROUND

The subject parcel, addressed 15861 W. Michigan Ave. and parcel #53-002-592-00, is zoned B-4 – Regional Commercial. For reference, the minimum lot dimensions in the B-4 District are as follows:

- Minimum Area: None
- Minimum Width: 100 feet
- Front Yard Setback: 20 feet
- Side Yard Setback: 10 feet (one side), 25 feet (total)
- Rear Yard Setback: 25 feet

The applicant is proposing to split the subject parcel into three separate parcels for smaller commercial developments as opposed to the single, large retail space that currently exists. McKenna has suggested the applicant apply for a site condominium in place of a variance, but the applicant does not wish to pursue a site condominium for the site. The applicant will be required to ensure that the parcels will all have the appropriate road access through a reciprocal access easement between all parcels involved, as well as the parcel further east where the shared driveway to Michigan Avenue is located.

As proposed, two of the newly created lots will have a side yard setback of zero feet, which is less than the required 25-foot side yard setback. All other proposed dimensions are in compliance with the Zoning Ordinance.

VARIANCE

The applicant seeks the following variance, pursuant to the Zoning Ordinance:

A variance from Section 3.1.10.D to reduce the required 25-foot side yard setback and allow the split of the parcel into three smaller parcels.

CRITERIA FOR APPROVAL

Section 7.8.7 of the City of Marshall Zoning Ordinance grants the ZBA the power to grant a requested variance only upon a finding that practical difficulties exist and that the need for the variance is due to unique circumstances peculiar

GRAND RAPIDS

124 East Fulton Street
6th Floor, Suite B
Grand Rapids, Michigan 49503

O 616.226.6375
F 248.596.0930
MCKA.COM

Communities for real life.



to the property and not generally applicable in the area or to other properties in the same zoning district. In determining whether practical difficulties exist, the ZBA shall consider the following factors:

1. *Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.*

The need for a variance is due to the side yard setback for two of the proposed parcels being zero feet, which is less than the required 25-foot side yard setback listed in the Zoning Ordinance. The applicant has stated that they have tried to redevelop the site as one large retail space to no avail. Strict compliance with the required side yard setback would create an unnecessary burden on the applicant by requiring the demolition and relocation of a portion of the existing building to create standalone structures that comply with the side yard requirement of 25 feet.

2. *The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners.*

Granting the variance would provide substantial justice to the applicant by allowing the effective redevelopment of a currently abandoned space and would provide substantial justice to surrounding property owners by providing an increase in commercial/retail traffic to the surrounding commercially-zoned parcels.

3. *The need for the variance is due to unique circumstances peculiar to the land or structures involved, that are not applicable to other land or structures in the same district.*

The need for the variance is due to the unique circumstance of being unable to find a suitable tenant for such a large retail space connected to a strip mall. The granting of the variance would allow for the large retail space to be condensed into smaller spaces to be more easily leased to potential tenants.

4. *The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.*

The need for a variance was not self-created by the applicant or predecessors, as the change in demand for different types of storefronts could not have been predicted at the time of construction for the existing building. This requested variance provides an opportunity to allow smaller developers to come in and redevelop the blighted space.

5. *The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the City, and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare.*

The requested variance would likely not cause significant adverse impacts to the surrounding area, though a potential increase in traffic along Michigan Ave. could likely be expected with more retail development, which could be considered both beneficial and detrimental.

6. *The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return.*



Failure to grant the requested variance would create practical difficulties for the applicant by limiting the potential development to tenants who are solely interested in big box stores as opposed to more sustainable developments.

FINDINGS

Based on the above analysis, the following findings are pertinent:

1. The need for a variance is due to the required 25-foot setback not being met by the proposed lot split.
2. The granting of the requested variance would provide the applicant with substantial justice by easing the redevelopment of an abandoned parcel by limiting the size of the commercial developments. Surrounding parcels would receive substantial justice by increasing the potential retail traffic through the area and the elimination of a nearby blight source.
3. The granting of the variance would likely not cause any detriment to the surrounding community, but would rather likely improve the existing site, as the site has been abandoned for a number of years and could potentially be redeveloped into a better use of the existing property.
4. The applicant's hardship is not self-created, and a granting of the requested variance would provide substantial justice to the applicant and surrounding community by redeveloping a large, abandoned retail space into a more accommodable layout to attract smaller businesses as opposed to large department stores.
5. The redeveloped parcels would likely provide an increase to retail traffic for the surrounding parcels, which could be beneficial due to increased sales activity, but could also be detrimental by putting additional stress on the shared access easement connected to W. Michigan Avenue.
6. Failure to grant the variance to the parcel would continue to limit development options for the abandoned Kmart present on site by restricting potential redevelopment to the existing big box store.

RECOMMENDATION

The request for a variance passes all criteria as listed in the City of Marshall Zoning Ordinance. We recommend that the variance be granted to allow the development of two separate parcels with no side yard setback and an additional parcel which would meet the required setbacks.

Please let us know if you have any questions or concerns.

Respectfully submitted,

McKENNA ASSOCIATES

Jeff Keesler
Associate Planner

Ethan Walthorn,
Assistant Planner

CITY OF MARSHALL
PUBLIC HEARING NOTICE

The City of Marshall Zoning Board of Appeals will hold a public hearing on Thursday – October 3, 2024 at 7:00 p.m. IN THE COUNCIL CHAMBERS OF CITY HALL located at 323 West Michigan Avenue, Marshall, MI 49068 to hear public comments on the following:

Appeal #24.01 for 15861 W Michigan Ave. An appeal for a dimensional variance to allow a side yard setback for the B-4 District (split into 3 parcels).

The Zoning Board of Appeals under certain circumstances may grant a variance to the Zoning Regulations upon presentation of sufficient evidence to support the variance request.

Any property owner or their representative, or any interested person is invited to attend the meeting to be held as noticed above. Written response can be sent to the attention of the Director of Community Services, 323 W. Michigan Ave., Marshall, Michigan 49068. Please direct any questions to Jennifer Pickford, 269-781-3985 or jpickford@cityofmarshall.com.

The City of Marshall will provide necessary and reasonable auxiliary aids and services to individuals with disabilities at the hearing upon reasonable notice to the City Clerk of the need for the same. Individuals with disabilities requiring auxiliary aids or services should contact the office of the City Clerk at least four (4) days prior to the hearing. The City Clerk's Office can be reached at phone: 269-781-5183 or in-person at the location and times indicated below.

A copy of the variance requests may be obtained, inspected, or reviewed in the Office of the Clerk, Monday-Friday, between the hours of 8:30AM-12:00PM and 1:00PM- 4:00PM. The Clerk's Office is located at City Hall, 323 West Michigan Avenue, Marshall, MI 49068. The Clerk's Office can be reached at 269-781-5183.