

7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334  
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www.oshtemo.org

**NOTICE  
OSHTEMO CHARTER TOWNSHIP  
Zoning Board of Appeals**

**Tuesday,  
December 20, 2016  
3:00 p.m.**

**AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Public Comment on Non-Agenda Items
4. Approval of Minutes: October 25, 2016
5. **PUBLIC HEARING: Variance Request (Fishbeck, Thompson, Carr & Huber, Inc. on behalf of Family D, LLC)**  
Applicant is requesting a variance from Subsection 34.820.F of the Village Form-Based Code Overlay Zone to allow a drive-through window on the front building façade of the Harding's Friendly Market located at 6430 Stadium Drive. The subject property is zoned VC: Village Commercial District and the Village Form-Based Code Overlay Zone. Parcel No. 3905-26-465-022.
6. Any Other Business
  - a. 2017 Meeting Dates
7. ZBA Member Comments
8. Adjournment

**Policy for Public Comment**  
**Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

- a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.
- b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be board discussion prior to call for a motion.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment or Citizen Comment on Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 5/9/2000)  
(revised 5/14/2013)

**Policy for Public Comment**  
**6:00 p.m. "Public Comment"/Portion of Township Board Meetings**

At the commencement of the meeting, the Supervisor shall poll the members of the public who are present to determine how many persons wish to make comments. The Supervisor shall allocate maximum comment time among persons so identified based upon the total number of persons indicating their wish to make public comments, but no longer than ten (10) minutes per person. Special permission to extend the maximum comment time may be granted in advance by the Supervisor based upon the topic of discussion.

While this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 2/27/2001)  
(revised 5/14/2013)

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**MINUTES OF A MEETING HELD OCTOBER 25, 2016**

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**Agenda**

**PUBLIC HEARING: VARIANCE REQUEST (DAUSS ARCHITECTS ON BEHALF OF  
GLR MICHIGAN #2), 5431 WEST MAIN STREET)**

**APPLICANT IS REQUESTING A VARIANCE FROM SUBSECTION 78.720 OF THE  
ZONING ORDINANCE TO ALLOW THE PROPOSED SITE LIGHTING TO EXCEED  
THE REQUIRED 0.1 FOOTCANDLES AT THE PROPERTY LINE. THE SUBJECT  
PROPERTY IS ZONED C: LOCAL BUSINESS DISTRICT. (PARCEL #3905-13-401-  
010.)**

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A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday,  
October 25, 2016, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

ALL MEMBERS

WERE PRESENT:

Cheri Bell, Chairperson

Bob Anderson, Alternate

Nancy Culp

Millard Loy

Neil Sikora

L. Michael Smith, Alternate

James Sterenberg, Vice Chairperson

Also present were Julie Johnston, Planning Director, James Porter, Attorney,  
Martha Coash, Meeting Transcriptionist, and three interested persons.

**Call to Order and Pledge of Allegiance**

Chairperson Bell called the meeting to order and invited those present to join in  
reciting the "Pledge of Allegiance."

**Public Comment on Non-Agenda Items**

There were no public comments on non-agenda items.

## **Approval of the Minutes of September 27, 2016**

The Chairperson asked if there were any additions, deletions or corrections to the minutes of September 27, 2016. Hearing none, she asked for a motion of approval.

Mr. Sikora made a motion to approve minutes of September 27, 2016 as presented. Mr. Loy supported the motion. The motion was approved unanimously.

### **PUBLIC HEARING: VARIANCE REQUEST (DAUSS ARCHITECTS ON BEHALF OF GLR MICHIGAN #2), 5431 WEST MAIN STREET)** **APPLICANT IS REQUESTING A VARIANCE FROM SUBSECTION 78.720 OF THE ZONING ORDINANCE TO ALLOW THE PROPOSED SITE LIGHTING TO EXCEED THE REQUIRED 0.1 FOOTCANDLES AT THE PROPERTY LINE. THE SUBJECT PROPERTY IS ZONED C: LOCAL BUSINESS DISTRICT. (PARCEL #3905-13-401-010.)**

Chairperson Bell said the next item was a request from Dauss Architects on behalf of GLR Michigan #2 for a variance to allow proposed site lighting at 5431 West Main Street to exceed the required 0.1 footcandles at the property line and asked Ms. Johnston to review the application.

Ms. Johnston explained the property owner will soon commence a façade update and other site improvements for their Burger King restaurant, located at 5431 West Main Street. As with the ongoing Wendy's restaurant rebuild immediately to the west, this project will include an update to the subject site's lighting. Also similar to Wendy's, the proposed new lighting exceeds the maximum 0.1 foot-candles at the site's boundaries as allowed in section *78.720 Outdoor Lighting Standards* of the Township's Zoning Ordinance. In order to provide adequate and safe lighting for this property, its owners contend, compliance with the light limits dictated by the ordinance is impractical, largely due to the property's relatively narrow width, which is 146 feet east to west. The total property is a little over one acre.

She indicated the subject property is located on the south side of West Main Street between Drake Road and US 131, situated within a busy commercial strip, and all surrounding land is similarly zoned as C: Local Business District. Nine properties in the Township have been granted lighting variances, seven of them along West Main Street. She distributed a revised photometric plan from the applicant that reduced the original request of 1.7 down to 1.2 resulting in foot-candle levels at the property lines as follows: east: 1.1, west: 1.0, south: .7, and north: .2. These levels are in line with what was recently approved for Wendy's.

Ms. Johnston said the revised request meets the Standards of Approval of a Nonuse Variance (practical difficulty) and recommended approval based on the following rationale:

- Granting relief from section 78.720 will not damage the public health, safety, welfare of the community, nor will it be out of character with the surrounding area as six other properties within close proximity have received a similar variance.
- The narrowness of the lot is a unique physical condition that is not self-created and makes compliance with the Ordinance burdensome.
- The Oshtemo Township Zoning Board of Appeals has granted similar relief in the past. Approving this application for a variance would ensure that standards are consistently being applied and substantial justice done.

Chairperson Bell determined there were no questions from the Board and asked if the applicant wished to speak.

Mr. Michael Dauss of Dauss Architects, Anderson Indiana, noted the upgrade in lighting is required by Burger King as part of a remodeling and said the lighting fixtures will be the same as those being installed by the neighboring Wendy's. They are rated at 85 watts instead of the 1000 watts of the current fixtures.

Chairperson Bell thanked Mr. Dauss for his comments and moved to Board Deliberations.

The Board confirmed the 1.2 foot-candle variance would be the same as that granted to Wendy's and reached consensus that granting the variance was appropriate according to the applicable Standards.

Mr. Loy made a motion to approve the variance request as presented, based on the recommendation and rationale from Staff regarding Standards of Approval. Mr. Sterenberg supported the motion. The motion was approved unanimously.

### **Any Other Business / ZBA Member Comments**

Ms. Johnston reported no applications have been received to date that would require a meeting in November.

Chairperson Bell noted she and Mr. Loy would be leaving the Board as of the end of December and that the Board would need a new Chairperson.

Mr. Loy told the Board the recent open house at Drake Farmstead was a big success with 195 people in attendance.

## **Adjournment**

The Chairperson noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, adjourned the meeting at approximately 3:20 p.m.

Minutes prepared:  
October 27, 2016

Minutes approved:  
\_\_\_\_\_, 2016

December 12, 2016



**Mtg Date:** December 20, 2016

**To:** Zoning Board of Appeals

**From:** Julie Johnston, AICP  
Planning Director

**Applicant:** Ryan Musch  
Fishbeck, Thompson, Carr & Huber, Inc.

**Owner:** Family D, LLC

**Property:** 6430 Stadium Drive, parcel number 3905-26-465-022

**Zoning:** VC: Village Commercial District  
Village Form-Based Code Overlay Zone

**Request:** Variance from the requirement that drive-through windows must be placed at the rear of a building.

**Section(s):** Section 34.800: General Provisions  
Section 34.820.F: Drive-Through Windows

**Project Name:** Harding's Friendly Market

## OVERVIEW

The applicant, representing Family D, LLC, requests a variance from the Village Form-Based Code Overlay Zone, specifically Section 34.820.F, which states that drive-through windows must be located along the rear façade of a building. Harding's Friendly Market would like to develop a pharmacy with a drive-through window at their existing facility at the corner of Stadium Drive and South 9<sup>th</sup> Street. The current location of the building and rear building wall, which is approximately 10 feet from the northern property line, does not offer adequate space for the development of a drive through window while meeting all other Ordinance requirements.

## APPROVAL CRITERIA

The Zoning Enabling Act of Michigan outlines that when considering a variance request, the Zoning Board of Appeals must ensure that the "spirit of the ordinance is observed, public safety secured, and substantial justice done." The Michigan courts have added that variances should

only be granted in the case of a practical difficulty for a nonuse (dimensional) variance. In addition, applicants must demonstrate that their plight is due to the unique circumstances particular to that property and that the problem is not self-created.

The request by the applicant is a nonuse variance. The ZBA should review the following standards in considering the variance request:

Standards of Approval of a Nonuse Variance (practical difficulty):

*Standard: Conformance Unnecessarily Burdensome*  
*Are reasonable options for compliance available?*  
*Does reasonable use of the property exist with denial of the variance?*

**Comment:** The Ordinance requirement for placing the drive-through lane in the rear yard or along the rear facade is intended to support the overall goals of the Village Form-Based Code, which is to create a compact, walkable, mixed-use neighborhood. In addition, the Form-Based Codes are intended to foster a visual aesthetic along roadways, with buildings placed close to the right-of-way and to each other, as well as architectural improvements that evoke a village theme. In most cases, placing a drive through within the front or side yard would be detrimental to this intent.

The current location of the existing Harding's Market does not provide much in the way of additional options for the placement of a drive-through window. This circumstance is exacerbated by the subject site having two front yards. Staff requested the applicant review positioning the drive-through window along the east side façade. This location would require the drive-through window to be as close to the front façade as possible to provide enough space for vehicles to make the turn south to exit. Based on this configuration, cars would still be required to queue along the front façade.

Reasonable use of the property currently exists as the Harding's Market has been in that location for many years. Staff considered that the applicant wanted to add a pharmacy to allow them to be as competitive as other Harding's Markets in the area. When we polled 10 Kalamazoo county Harding stores, we found only half of them contained a pharmacy, which does not substantiate this argument. The current use and configuration of the property could remain and not be unlike 50 percent of the other Harding's Markets in the area.

The location of the store does provide some relief from the expectations outlined in the Form-Based Codes. The building is setback approximately 300 feet from the

Stadium Drive right-of-way, which makes compliance with the intent of the Form-Based Codes difficult to achieve. In addition, the pharmacy drive-through is planned along the eastern side of the front building façade, which would be approximately 220 feet from South 9<sup>th</sup> Street. The existing location of the front façade from either road right-of-way does not meet the intent of the Form-Based Codes. The best possible scenario for the site would be for the existing building to be demolished and a new structure, which meets all of the requirements of the Form-Based Codes, developed. Staff is unaware of any plans to demolish the building and bring the site into compliance.

*Standard: Substantial Justice*  
*Applied to both applicant as well as to other property owners in district.*  
*Review past decisions of the ZBA for consistency (precedence).*

**Comment:** The requirement for drive-through windows on the rear façade is only found in the Village Form-Based Code Overlay. This requirement would be applied to all other properties within this district, but not to buildings outside of the area effected by the Form-Based Codes. From our research, we were unable to find a similar variance request within the Village area.

The only variance staff was able to find that went before the Zoning Board of Appeals since the Form-Based Codes were adopted was for property owned by the Township along Atlantic Avenue. The property used to be an AT&T easement which was deeded to the Township for a public benefit. The Township wished to split the easement into separate parcels to allow the adjoining property owners the ability to redevelop and/or gain access to Atlantic. Variances were needed because the new parcels did not meet minimum area and frontage requirements.

*Standard: Unique Physical Circumstances*  
*Are there unique physical limitations or conditions which prevent compliance?*

**Comment:** The physical circumstance that is preventing compliance is the current location of the Harding's Market building. At 10 feet from the rear property line, a single-lane drive-through facility is technically feasible, however a variance for the required landscape buffer would be required and mechanical equipment found in the rear yard would have to be moved.

*Standard: Self-Created Hardship*  
*Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?*

**Comment:** The development of a pharmacy drive-through is a new addition to an existing business. While the physical restrictions found on the property force a front façade placement, the desire to have the drive-through window is self-created. However, it is not an unusual request for a grocery store to have a pharmacy for the convenience of their patrons.

**Standard:** *Will the spirit of the Ordinance be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted?*

**Comment:** The site plan provided with the application indicates three stacking spaces for the pharmacy drive-through, which meets regulatory requirements per Section 68.300.G: *Drive-Through Windows* of the Off-Street Parking Ordinance. There is some concern that pharmacy traffic will have to cross a west bound circulation lane to enter the drive-through. But, the placement of bollards to delineate the drive-through lane should help mitigate this concern.

## **RECOMMENDATION**

As stated, the outcome staff would like to see for this site is the redevelopment of the Market into a building that fits within the standards of the Village Form-Based Code Overlay Zone. However, until such time as redevelopment occurs, the current location of the building does not offer alternatives for the placement of the drive-through window outside of a variance request. With that in mind, staff recommends approval of the variance from *Section 34.820.F: Drive-Through Windows* for the following reasons:

- Compliance is unnecessarily burdensome due to the location of the existing building, which is approximately 10 feet from the rear property line.
- This existing physical limitation on the site is not self-created.
- Outside of a variance request, no other reasonable options are available for the placement of the drive-through window.

Respectfully Submitted,



Julie Johnston, AICP  
Planning Director

Attachments: Application, Aerial Map, Site Plan



7275 W. Main Street, Kalamazoo, Michigan 49009-9334  
Phone: 269-216-5223 Fax: 269-375-7180

PLEASE PRINT

PROJECT NAME & ADDRESS HARDINGS FRIENDLY MARKET - PHARMACY DRIVE-UP WINDOW

PLANNING & ZONING APPLICATION

Applicant Name : RYAN MUSCH  
Company FTEH  
Address 1515 ARBORETUM DR. SE  
GRAND RAPIDS, MI 49546  
E-mail rdmusch@fteh.com  
Telephone 616.464.3905 Fax \_\_\_\_\_  
Interest in Property ARCHITECT.

THIS SPACE FOR TOWNSHIP USE ONLY

OWNER\*:

Name Family D, LLC  
Address 1025 4-Mile Road NW Fee Amount \_\_\_\_\_  
Grand Rapids, MI 49544 Escrow Amount \_\_\_\_\_  
Email dwhaler@dwhalersfamilyfoods.com  
Phone & Fax 616-774-0788 616-774-0029 11/17/2016

NATURE OF THE REQUEST: (Please check the appropriate item(s))

- Planning Escrow-1042
- Site Plan Review-1088
- Administrative Site Plan Review-1086
- Special Exception Use-1085
- Zoning Variance-1092
- Site Condominium-1084
- Accessory Building Review-1083
- Land Division-1090
- Subdivision Plat Review-1089
- Rezoning-1091
- Interpretation-1082
- Text Amendment-1081
- Sign Deviation-1080
- Other: \_\_\_\_\_

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary): \_\_\_\_\_

DRIVE-UP WINDOW FOR PHARMACY AT HARDING'S FRIENDLY MARKET.

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

SEE ATTACHED PLAN & PRINT.

PARCEL NUMBER: 3905- 05-26-465-022

ADDRESS OF PROPERTY: 6430 STADIUM DR., KALAMAZOO, MI

PRESENT USE OF THE PROPERTY: MARKET / GROCERY STORE

PRESENT ZONING VC (VILLAGE COMM. DIST.) SIZE OF PROPERTY 3.27 Acres  
VILLAGE FORM BASED CODE  
OVERLAY ZONE

NAME(S) & ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS  
HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:

Name(s)

Address(es)

Two sets of horizontal lines for entering names and addresses.

SIGNATURES

I (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning & Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.

*[Handwritten Signature]* - Manager

Owner's Signature (\* If different from Applicant)

9-8-2016

Date

*[Handwritten Signature]*

Applicant's Signature

11/15/2016

Date

- Copies to:
- Planning -1
- Applicant -1
- Clerk -1
- Deputy Clerk -1
- Attorney-1
- Assessor -1
- Planning Secretary - Original

\*\*\*\*

PLEASE ATTACH ALL REQUIRED DOCUMENTS

# TRANSMITTAL

Ms. Julie Johnston  
Oshtemo Township  
7275 West Main Street  
Kalamazoo, MI 49009

November 15, 2016

Re: Special Exception Application Package  
Harding's Friendly Market – Parkview Ave and South 9th Street

Project No. G160300

- FOR REVIEW  
 FOR YOUR USE  
 AS REQUESTED

Sent By: Ryan D. Musch, P.E., LEED AP BD+C/JC2

COPIES	DATE	DESCRIPTION
1	11/15/2016	Application Form
7	09/08/2016	Drawings (C201, A101, A201)
1	09/08/2016	Environmental Permits Checklist
1	09/08/2016	Hazardous Substance Reporting Form

## COMMENTS

Attached is the application package requesting Special Use Exception for a drive-up window for the Harding's Friendly Market, located in Oshtemo Township. We anticipate being included on the December 20th ZBA Agenda.

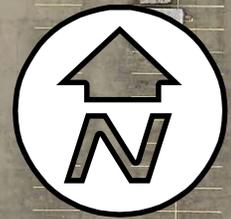
A review fee was submitted in our initial September 8th Site Plan Approval package submittal. The applicant respectfully requests Special Use Exception based on the following hardships:

1. The property has two frontages (Stadium Drive and 9<sup>th</sup> Street), limiting the applicants' ability to place a drive-up pharmacy window in the "rear of the building", as required by Zoning Ordinance Section 34.820.F: Drive-thru.
2. The existing building is set on the rear edge of the property, which doesn't allow the applicant to place a drive-thru window in the rear of the building.
3. The only area considered to be "rear" or "side" of the property would be east of the building. We have studied this area for a pharmacy drive-up window; however, it requires additional infrastructure such as a pneumatic drive-thru tube system, and would require an un-safe condition where vehicles stack to the side of the building, out of normal visibility lines from the store entry, lighted parking lot and public street. The applicant believes this configuration is not ideal and not feasible from an operational standpoint.

Please review and let us know if you have any comments or questions. You can reach me at [rdmusch@ftch.com](mailto:rdmusch@ftch.com) or 616-464-3905.

By mail

Harding's Market, 6430 Stadium Drive



Sunset Rd

Mill Creek Dr

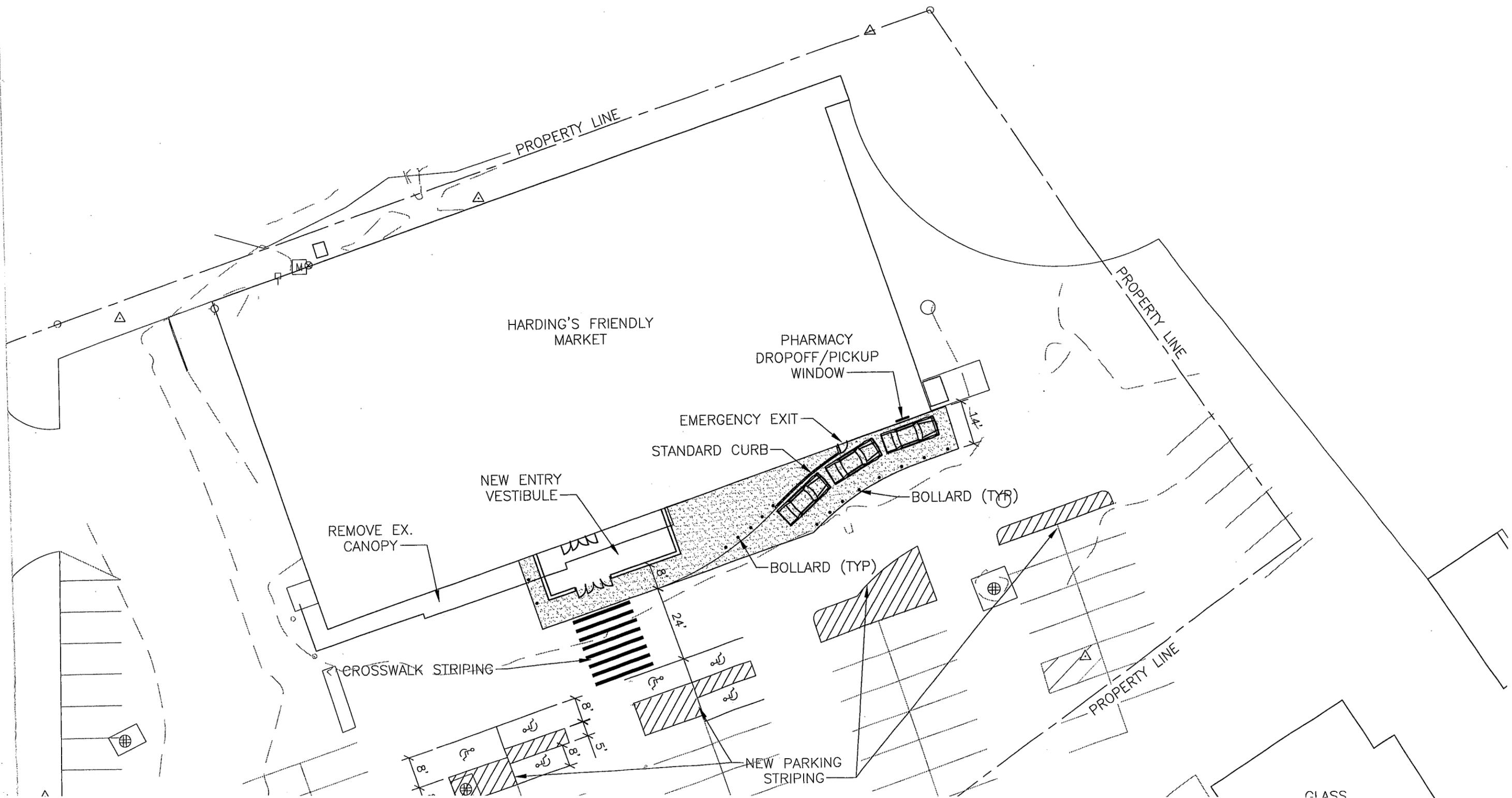
S 9th St

Stadium Ave

0 50 100 200 Feet

-  Subject Property
-  Other Property Line





PROPERTY LINE

HARDING'S FRIENDLY MARKET

PHARMACY DROPOFF/PICKUP WINDOW

EMERGENCY EXIT

STANDARD CURB

NEW ENTRY VESTIBULE

BOLLARD (TYP)

REMOVE EX. CANOPY

BOLLARD (TYP)

CROSSWALK STRIPING

NEW PARKING STRIPING

PROPERTY LINE

PROPERTY LINE

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

***2017 MEETING DATES  
Fourth Tuesday of the month***

Submitted December 20, 2016

<b><i>Month</i></b>	<b><i>Meeting Date</i></b>
January	24
February	28
March	28
April	25
May	23
June	27
July	25
August	22
September	26
October	24
November	21*
December	19*

\*Changed from normal meeting date to 3<sup>rd</sup> Tuesday

**JOINT MEETINGS (tentative)**

February 21  
May 16  
September 19