



MCKENNA

September 25, 2024

Board of Zoning Appeals
Village of Lake Orion
21 E. Church Street
Lake Orion, MI 48362-3274

Subject: **Case A-24-05 Fourth Floor Setback Dimensional Variance – Review #1** (Plans dated September 3, 2024)

Location: **44 E. Flint Street – Parcel #s 09-02-481-008 and 09-02-481-007** (Southwest corner of Flint and S. Anderson Streets)

Zoning: **DC, Downtown Center in the Height Overlay District**

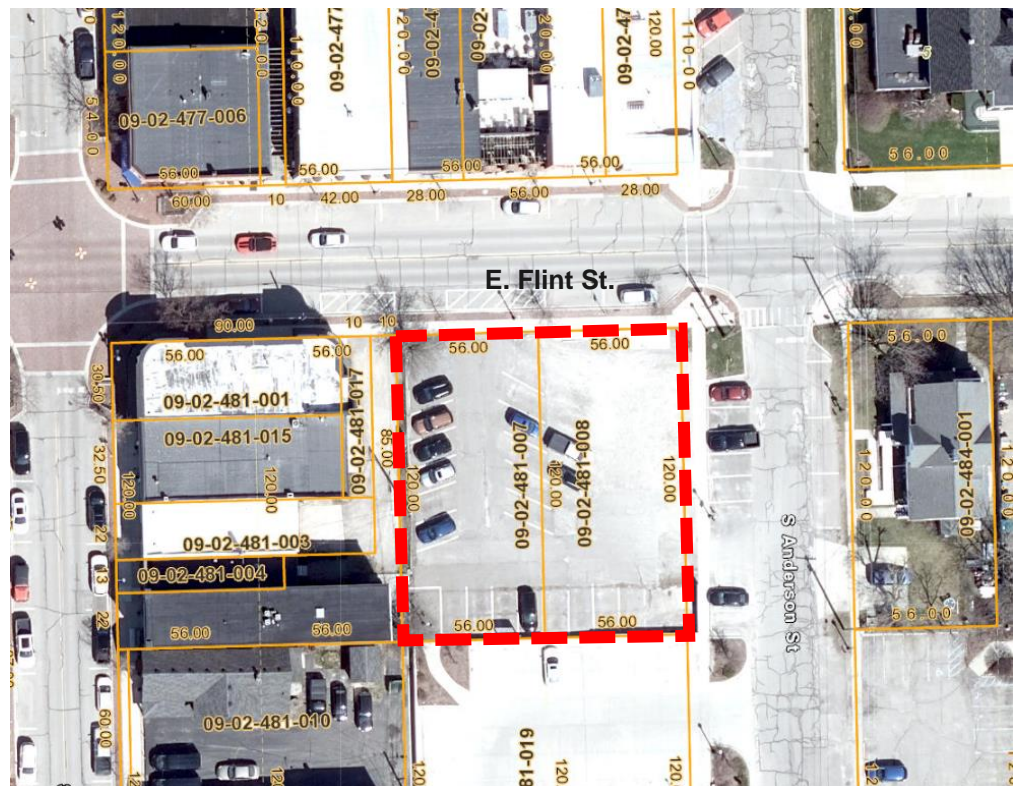
Dear Commissioners:

At the Village's request, we have reviewed the above referenced variance application from property owner JS Capitol Equities, LLC. Krieger Klatt Architects and Stonefield Engineering are design professionals assisting the owner on this project.

EXISTING AND PROPOSED USE

The site is comprised of two tax parcels and is approximately 13,440 square feet (SF) in area. It is located on the southwest corner of Flint Street and S. Anderson Street and is currently occupied by a surface parking lot. The site is zoned DC, Downtown Center and is located in the Height Overlay District. An aerial photo of the subject site and the surrounding area is provided for context. (Source: Oakland County Property Gateway)

On August 5, 2024, the applicant was granted site plan approval to construct a four story mixed use building. The first floor will be occupied by 3,477 SF of retail space and the second floor will be occupied by 6,526 SF of office space. A total of 10 apartments will be located on the third and fourth floors. Nineteen off-street parking spaces will be located on the south side of the site.



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ZONING ORDINANCE STANDARD AND REQUESTED VARIANCE

As a condition of the site plan approval, the applicant must obtain a variance from an applicable zoning ordinance standard. The applicant is proposing that the front facade of the fourth floor apartments be located 8.25 feet (or eight (8) feet three (3) inches) from the main E. Flint Street building façade. The zoning ordinance requires that the fourth story shall be setback a minimum of ten (10) feet from main building facade. The proposal requires the following variance from the Zoning Ordinance:

1. ARTICLE 10, HD-HEIGHT OVERLAY DISTRICT, SECTION 10.05 DEVELOPMENT STANDARDS

Fourth Story (North) Setback:	10.0 feet minimum required 0.0 feet existing / 8.25 feet proposed 1.75 foot variance requested
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VARIANCE STANDARDS FOR APPROVAL

A variance must meet the standards specified in Section 19.04.D.1 of the Zoning Ordinance. Each of the required standards is described below followed by an analysis of whether those conditions exist in this particular case. The Board may grant a dimensional variance upon a finding that a practical difficulty exists. To meet the test of practical difficulty, the applicant must demonstrate compliance with the following:

A. Prevents Use of the Property or Is Unnecessarily Burdensome. *Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.*

Compliance with the 10 ft. setback would not prevent the owner from using the property. Compliance would result in a reduced floor area for the two 2-bedroom apartments along the E Flint St front façade.

Zoning ordinance Sec. 10.05.B requires the 10 foot setback in order to “incorporate building height modulation to reduce the building scale at the street edge.” The applicant is providing building modulation by providing the 8.25 foot setback. The applicant is also utilizing different materials and colors between the main building façade (comprised of light color brick masonry) and the fourth story façade (comprised of dark colored metal panels.) The top of the third floor wall will also use a brick soldier course and cornice detailing that will provide a very evident change in the building modulation. These architectural details will create a very effective distinction between the mass of the first three floors and the fourth floor. The design of the building will reduce its scale along the street edge. If the fourth floor wall was setback an additional 1.75 feet it would add very little to no effect on reducing the building scale than what has already been accomplished through the current design. Compliance with the 10 foot setback could be determined as being unnecessarily burdensome.

B. Substantial Justice. *The variance will provide substantial justice to the applicant, as well as other property owners.*

Granting of the variance would give substantive relief to the owner of the property involved and be more consistent with justice to other property owners. The only other four story building in the Village is located at 120 S. Broadway Street. While that building was constructed under the PUD standards and approved prior to the height overlay district, the Village did promote building modulation and a fourth floor setback to minimize the scale along the street. We find that granting the requested variance would provide substantial justice to the applicant similar to other owners of property with similar building configurations.



- C. Minimum Variance Necessary.** *The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.*

The applicant is proposing an 8.25 ft setback from the main building façade. The proposed setback does provide building modulation and does reduce the scale along the street. It would appear the requested 1.75 ft variance can meet the desired floor configurations of the applicant while also achieving the intent of the fourth floor setback standard. The requested variance could be determined to be the minimum variance necessary.

- D. Unique Circumstances of the Property.** *The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.*

The site is slightly larger than some of the other lots within the four main blocks of downtown. However, when comparing the site to all the properties along S. Broadway St/M-24 that are located in the height overlay district, this site does not have the depth from the front lot line of other properties. A vast majority of other sites in the height overlay district are larger in lot area and lot depth. Those sites have sufficient size to comply with all dimensional standards, including the fourth floor façade setback. The site can be considered as a unique configuration when compared with all other properties in the height overlay district.

- E. Request Is Not Self-Created.** *The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, and not by the applicant or applicant's predecessors; it is not self-created.*

The variance request is partially self-created. The reduction of the fourth floor façade setback by 1.75 feet is based on the need of the applicant to provide apartments of a certain size. However, it is also noted that the depth of the lots impacts how large the building footprint can be while also providing the necessary off-street parking. While the applicant did not create the lot configuration that affects the overall building footprint, the applicant's subsequent need for floor area is also impacting the variance request.

RECOMMENDATION

The Board of Zoning Appeals shall only grant a variance from the requirements of the Zoning Ordinance upon making a determination that a practical difficulty exists. In making your variance determination, the ZBA must specify the grounds for the decision. Subject to any additional information presented and discussed by the applicant, Board, and/or the public during the public hearing and incorporated into the record prior to any findings being made, we recommend that the Board of Zoning Appeals **grant** the requested variance for the property located at 44 E. Flint Street, based on the following findings of fact:

1. Compliance with the ordinance standards would be unnecessarily burdensome given that the proposed building configuration and architectural details achieves the intent of the standard in the zoning ordinance.
2. Substantial justice would be provided to the applicant that has been afforded to other similarly designed developments in the Village.
3. The variance requested is the minimum possible, as compliance with the intent of the standard has been achieved by the setback provided and the design of the building.
4. The property is unique in lot area and depth when compared to other properties in the height overlay district.
5. The need for the variance is partially self-created.



We look forward to reviewing these findings and recommendations with you. Please feel free to contact us with any questions.

Respectfully submitted,

McKENNA

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