NOTICE

A meeting of the City of Evansville Plan Commission will be held on the date and time stated below at City Hall, 31 South Madison Street, Evansville, Wisconsin 53536. Notice is further given that members of the City Council might be in attendance. Requests for persons with disabilities who need assistance to participate in this meeting should be made by calling City Hall: (608)-882-2266 with as much advanced notice as possible. Please silence cell phones and electronic devices during the meeting.

City of Evansville **Plan Commission**
Regular Meeting
Monday, January 7, 2019, 6:00 p.m.
City Hall (Third Floor), 31 South Madison Street

AGENDA

1. Call to Order
2. Roll Call
3. Motion to Approve Agenda
4. Motion to waive the reading of the minutes from the December 3, 2018 Meeting and approve them as printed.
5. Civility Reminder
6. Citizen appearances other than agenda items listed
7. New Business
   A. Public Hearing and Review of Conditional Use Application CUP-2018-12 to allow Outdoor Display on Parcel 6-27-958.091A2 at 801 Brown School Road (Ace Hardware)
      i. Initial staff and applicant comments
      ii. Public Hearing
      iii. Plan Commissioner questions and comments
      iv. Motion with Conditions
   B. Discussion of Removal of Roundabout at 6th and Badger
8. Old Business
   A. Zoning Ordinance Updates (Placeholder)
9. Monthly Reports
   A. Report from the Community Development Director
      i. Report on permitting activity by Zoning Administrator
      ii. Report on building permits and enforcement
      iii. Other
   B. Report of the Evansville Historic Preservation Commission
   C. Report on Common Council actions relating to Plan Commission recommendations
   D. Report on Board of Appeals actions relating to zoning matters
   E. Planning education/news: "Zoning Practice, Fair Housing"
10. Next Meeting Dates: Monday; February 4; March 4; April 1, and May 6, 2019 at 6:00pm
11. Motion to Adjourn

-Mayor Bill Hurtley, Plan Commission Chair

These minutes are not official until approved by the City of Evansville Plan Commission.

City of Evansville **Plan Commission**
Special Meeting
December 3, 2018, 6:00 p.m.
City Hall (Third Floor), 31 South Madison Street

MINUTES

1. **Call to Order** at 6:05 pm.

2. **Roll Call:**

Members	Present/Absent
Mayor Bill Hurtley	P
Alderperson Rick Cole	A
Alderperson Erika Stuart	A
Bill Hammann	P
John Gishnock	P
(Vacant)	-
Susan Becker	P

Others Present
John Morning, Applicant
Andy Phillips, Applicant
Jim Gerber, Applicant
Other members of the public

3. ***Motion to approve the agenda, moving items 7C and 7D before 7A by Hammann, seconded by Becker. Approved unanimously.***

4. ***Motion to waive the reading of the minutes from the November 17, 2018 Special Meeting and approve them as printed by Hammann, seconded by Becker. Approved unanimously.***

5. **Civility Reminder.** Hurtley noted the City's commitment to civil discourse.

6. **Citizen appearances other than agenda items listed.** None.

7. **New Business**
   A. **Public Hearing and Review of Extraterritorial Jurisdiction Land Division Application LD-2018-09 on parcel 6-12-75A and 6-12-75A1 at 4917 N Cty M to adjust the lot lines of existing lots and create no new parcels.**
      i. **Initial staff and applicant comments.** Sergeant noted this is a lot line adjustment request.
      ii. **Public Hearing.** Hurtley opened the public hearing at 6:18pm, and closed it at 6:19pm. No comments were brought forward from those in attendance.
      iii. **Plan Commissioner Questions and comments.** None
      iv. **Motion with Conditions.** ***Motion to recommend to Common Council approval of the extraterritorial land division application to adjust the lot lines of existing parcel 6-12-75A (Tax ID 024014004) and 6-12-75A1(Tax ID 024014005) and create no new parcels, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the condition the***

applicant files the final CSM with Rock County Register of Deeds. Motion by Hammann, second by Becker, approved unanimously.

B. **Concept Discussion regarding Conditional Use Application CUP-2018-12 to allow Outdoor Display on Parcel 6-27-958.091A2 at 801 Brown School Road (Ace Hardware).** Sergeant summarized the overall project. Gerber added the goal is to provide a spot to get convenience lumber. Commission discussed a 6 foot tall chain-link fence, adding landscaping to screen structures and encouraging "phase 2" structure to be built first. Gishnock clarified structure height to be about 18 feet. Applicant will return with more in depth landscaping plans and elevations.

C. ***Motion to approve minor exterior design and site plan revisions for CUP-2018-04 on Parcel 6-27-959.3 (Lot 1) on Brown School Road as illustrated*** by Hammann/Becker. Approved Unanimously.

D. ***Motion to approve minor exterior design and site plan revisions for CUP-2018-09 on Parcel 6-27-958.091a1 on Brown School Road for white vinyl siding and black vinyl windows as illustrated*** by Hammann/Becker. Approved Unanimously.

E. ***Motion to Approve 2019 Meeting Schedule*** by Hammann/Becker. Approved Unanimously.

8. **Old Business**
   A. **Zoning Ordinance Updates (Placeholder). Sergeant shared an overview of required ordinance changes.** Becker asked how the Chicken Keeping Ordinance can be updated. Commission discussed various ways to update ordinances. Gishnock pointed out some of the ordinance relating the businesses are more important to get updated more quickly.

9. **Monthly Reports**
   A. **Report from the Community Development Director**
      i. **Report on permitting activity by Zoning Administrator.** None
      ii. **Report on building permits and enforcement.** 317 Cherry Street was in County Court, with the judge ruling the home has to be razed by Dec 26th, 2018.
      iii. **Other.** None
   B. **Report of the Evansville Historic Preservation Commission.** None
   C. **Report on Common Council actions relating to Plan Commission recommendations.** None
   D. **Report on Board of Appeals actions relating to zoning matters.** Board met, approved fence on Prairie View Drive.
   E. **Planning education/news:** ***Planning, October 2018: "People over Parking" and "Parking Price Therapy".*** Commission discussed importance of prioritizing pedestrians and using share lots.

10. **Next Meeting Dates: Monday; January 7; February 4; March 4; and April 1, 2019 at 6:00pm**

11. ***Motion to Adjourn by Hammann, seconded by Becker, passed unanimously.***

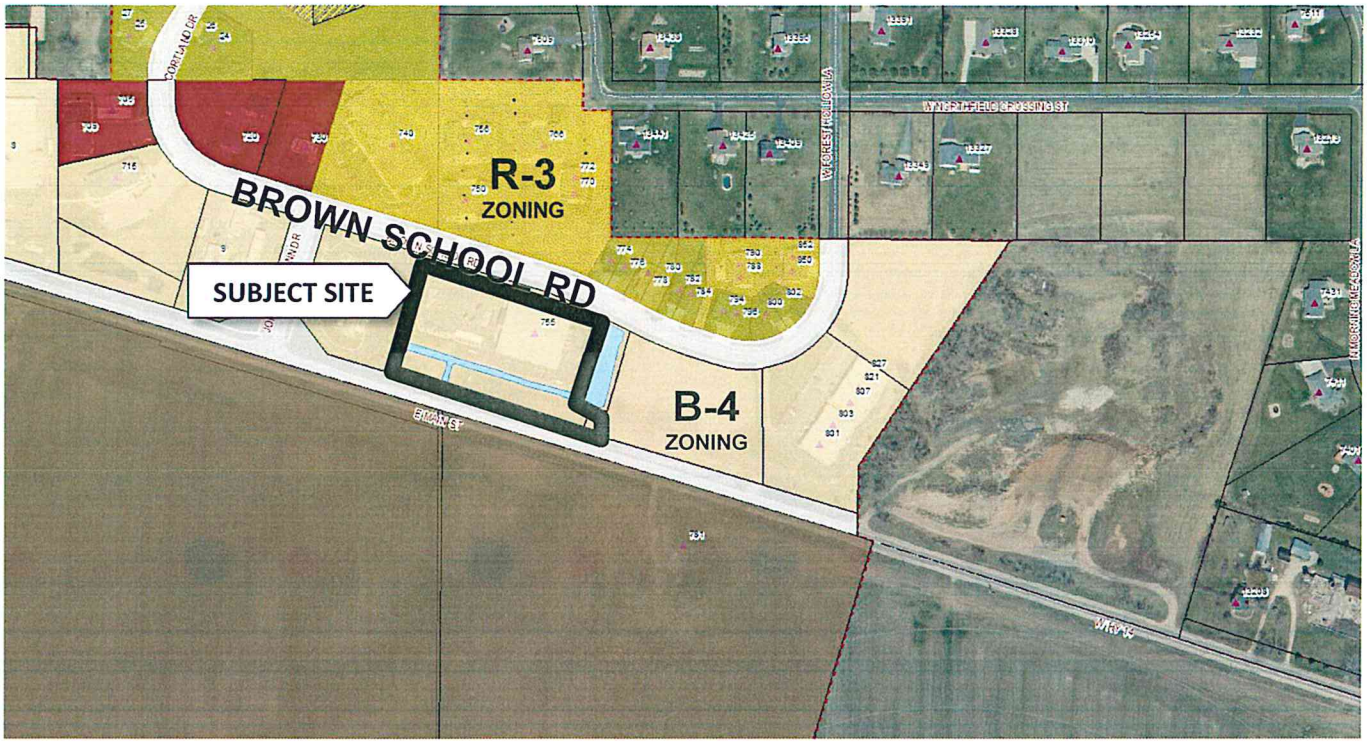
CONDITIONAL USE PERMIT APPLICATION – STAFF REPORT

Application Number: CUP-2018-12 Applicant: Jim Gerber

Parcel 6-27-958.091A (755 Brown School Rd.)

January 7, 2019

Prepared by: Jason Sergeant, Community Development Director
Prepared for: City of Evansville Plan Commission



Description of request: The applicant is seeking approval of an application for a conditional use permit on parcel 6-27-958.091A (Tax ID 22207000101) located at 755 Brown School Road has been submitted for consideration by the Plan Commission. **The request is to allow Outdoor Display per Section 130-404 and 130-527 to construct an outdoor convenience lumber yard.** The parcel is zoned Business District (B4.)

Staff Analysis of Request: The proposal is believed to meet the minimum standards of the district with conditions. The applicant intends to construct three project in three phases.

Required Plan Commission findings for Conditional Use Permit request: Section 130-104 (3) of the Municipal Code, includes criteria that should be considered in making this decision:

1. **Consistency of the use with the comprehensive plan.** The proposed use in general and in this specific location is consistent with the city's comprehensive plan of November 2015.
   Staff Comment: The Comprehensive plan indicates a desire to promote good expansion of existing business.

2. **Consistency with the City's zoning code, or any other plan, program, or ordinance**. The proposed use in general and in this specific location is consistent with City's zoning code, or any other plan, program, or ordinance, whether adopted or under consideration pursuant to official notice of the city.
   Staff comment: The proposed construction is consistent with the City's zoning code and other plans, programs, and ordinances.
3. **Effect on nearby property**. The use will not result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the City's zoning code, the comprehensive plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the city.
   Staff Comment: No adverse effect is anticipated on nearby property.
4. **Appropriateness of use**. The use maintains the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property.
   Staff Comment: Limited outdoor display is appropriate in the zoning district
5. **Utilities and public services**. The use will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by the City or any other public agency serving the subject property.
   Staff Comment: the property is currently served by public utilities

Required Plan Commission conclusion: Section 130-104(3)(f) of the Municipal Code requires the Plan Commission to determine whether the potential public benefits of the conditional use do or do not outweigh any and all potential adverse impacts. The proposed motion below states that benefits do in fact outweigh any and all potential adverse impacts.

Staff recommended motion for CUP: ***The Plan Commission approves issuance of a Conditional Use Permit for outdoor display and construction of an outdoor convenience lumber yard on parcel 6-27-958.091A, (Tax ID 22207000101) finding that the benefits of the use outweigh any potential adverse impacts, and that the proposed use is consistent with the required standards and criteria for issuance of a CUP set forth in Section 130-104(3)(a) through (e) of the Zoning Ordinance, subject to the following conditions:***

1. ***Conditional Use Permit is recorded with the Rock County Register of Deeds***
2. ***The business operator shall comply with all provisions in the city's zoning code and conditional use regulations, as may be amended, per section 130-408.***
3. ***The business operator shall obtain and maintain all city, state, and county permits and licenses as may be required now and in the future.***
4. ***Any substantial changes to the business model or change in type of business, shall require a review of the existing conditional use permit and may require the application, fee, review and issuance of a new conditional use permit.***
5. ***The use shall not cause a public or private nuisance as defined by State law.***
6. ***Landscaping plan approved by staff within 90 days of approval to screen the lumberyard from Hwy 14 and Brown School Road***
7. ***Sidewalk added along Brown School Road and connection to main entrance within 3 years of date of approval.***

CONDITIONAL USE APPLICATION
Evansville, Wisconsin
Version: December 2017

General instructions. Complete this application as it applies to your project. Submit one copy of the application form, **20 copies of any maps**, and the required application fee to the Community Development Director. Before you formally submit your application and fee, you may submit one copy to the Community Development Director, who will ensure it is complete. If you have any questions, contact the Interim Community Development Director at 608.882.2285 or jason.sergeant@ci.evansville.wi.gov. You may download this file off of the City's website at: www.ci.evansville.wi.gov.

PLEASE COMPLETE ALL SECTIONS OF THIS APPLICATION AND INCLUDE ALL REQUESTED MAPS. THE APPLICATION WILL NOT BE REVIEWED UNTIL THE ENTIRE APPLICATION IS COMPLETED.

- Office Use Only -

Initial application fee	$300
Receipt number	1.132067
Date of pre-application meeting	NOV 2018
Date of determination of completeness	1/4/2018
Name of zoning administrator	J. Sergeant
Date of Plan Commission review	1/7/18
Application number	CUP-2018-12

1. Applicant information

Applicant name	JIM GERBER
Street address	3188 DEER POINT DR
City	Stoughton
State and zip code	WI 53589
Daytime telephone number	608-873-4141
Fax number, if any	608-873-4140
E-mail, if any	JG1640@AOL.COM

2. Agent contact information. Include the names of agents, if any, that helped prepare this application including the supplemental information. Agents may include surveyors, engineers, landscape architects, architects, planners, and attorneys.

	Agent 1	Agent 2	Agent 3
Name	Jeff GROENIER		
Company	Concepts in Architecture		
Street address	W125 Amidon Rd		
City	Brooklyn		
State and zip code	WI 53521		
Daytime telephone number	608-698-3196		
Fax number, if any			
E-mail, if any	JbgROENIER@MSN.com		

3. Subject property information

Street address	755 BROWN SCHOOL Rd
Parcel number	6-27-958.091A — Note: the parcel number can be found on the tax bill for the property or may be obtained from the City.
Current zoning classification(s)	Agricultural District: A Residential Districts: RR LL-R12 LL-R15 R-1 R-2 R-3 Business Districts: B-1 B-2 B-3 B-4 B-5 Planned Office District: O-1 Industrial Districts: I-1 I-2 I-3

Paid To:
City of Evansville

Receipt: 1.132067 300.00
EVANSVILLE HARDWARE I I C
Dec 28, 2018 11:23AM

CONDITIONAL USE APPLICATION
Evansville, Wisconsin
Version: December 2017

Describe the current use	RETAIL HARDWARE -
Full legal description *You can request this information from Real Property Division of Rock County *This may be attached as a separate file	SEE ATTACHED

4. **Proposed use.** Describe the proposed use.

RETAIL HARDWARE - CONVENIENCE LUMBER

5. **Operating conditions.** For non-residential uses, describe anticipated operating conditions (hours of operation, conditions that may affect surrounding properties, etc.)

7-8 pm MONDAY - FRIDAY
7-6 pm SATURDAY
9 - 4 pm SUNDAY

6. **Potential nuisances.** Describe any potential nuisances relating to street access, traffic visibility, parking, loading, exterior storage, exterior lighting, vibration, noise, air pollution, odor, electromagnetic radiation, glare and heat, fire and explosion, toxic or noxious materials, waste materials, drainage, and hazardous materials.

WILL INCREASE EXTERIOR STORAGE AND INCREASED STREET TRAFFIC

7. **Review criteria.** Describe the reasons why you believe the proposed use is in keeping with the City's master plan. Refer to Section 130-104(3)a-f of the Municipal Code for the review criteria.

WILL ADD VALUE to RETAIL EXPERIANCE FOR EVANSVILLE AND SURROUNDING AREA

CONDITIONAL USE APPLICATION
Evansville, Wisconsin
Version: December 2017

8. **Other information.** Provide any other information relating to the intended project and its relation to nearby properties.

9. **Site plan.** Include **20 copies** of a site plan (11" x 17") with the application. In addition, the Community Development Director may require one copy that is 24" x 36". A checklist of items that must be shown on the site plan is included at the end of this application.

10. **Location map.** Include a map (8 ½ " x 11") that shows the subject property and all parcels lying within 250 feet of the subject property. This map shall be reproducible with a photocopier, at a scale which is not less than one inch equals 600 feet. It shall include a graphic scale and a north arrow.

11. **Applicant certification**

- I certify that the application is true as of the date it was submitted to the City for review.
- I understand that I may be charged additional fees (above and beyond the initial application fee) consistent with the Municipal Code.

Applicant Signature | Date

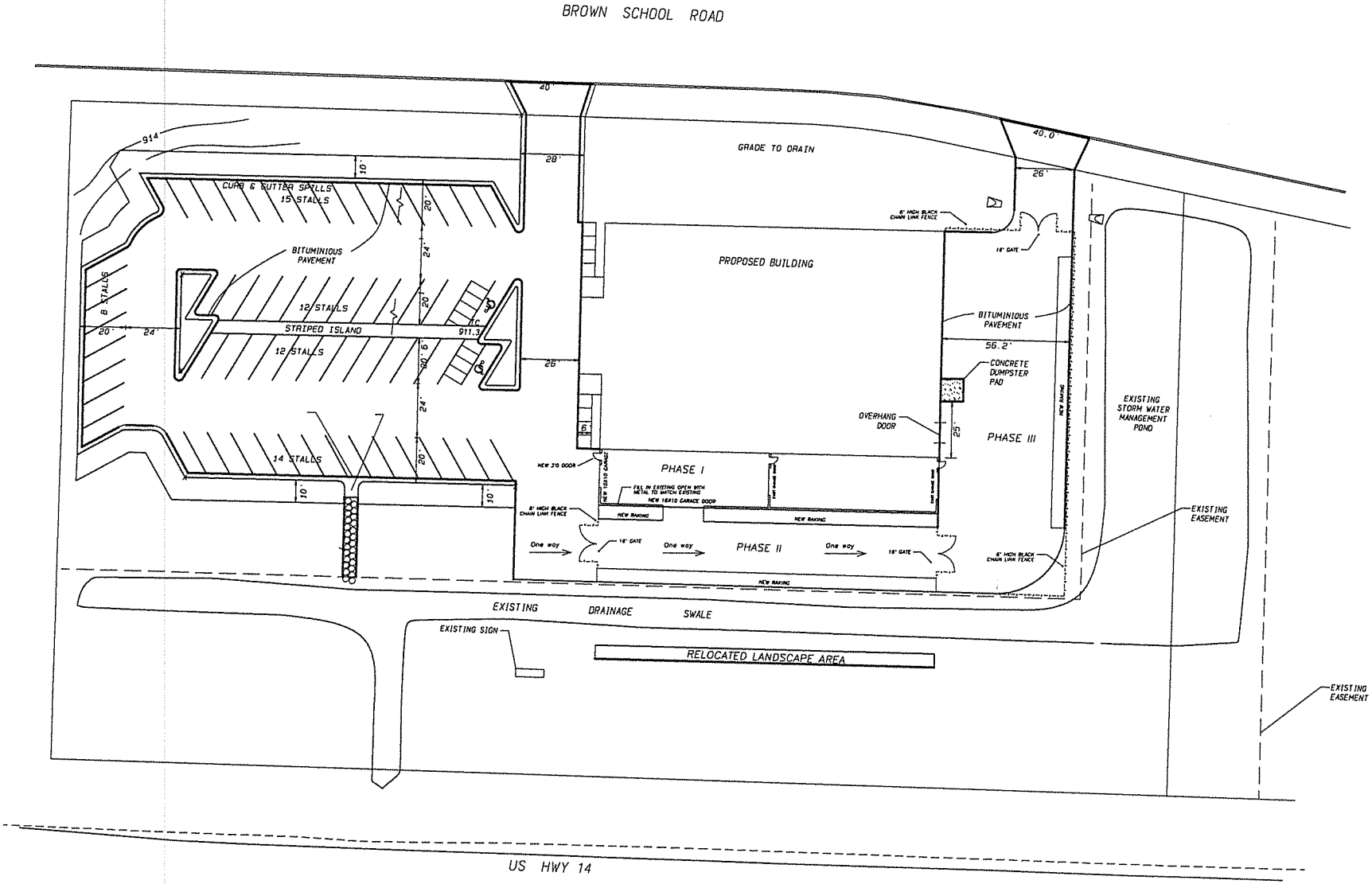
12. **Landlord certification (if applicable)**
**If you do not own the building that houses your business, you must have your landlord sign this application*

- I certify that the application is true as of the date it was submitted to the City for review.
- The applicant has discussed their plans with me, and I support their application for this conditional use permit in my building.

Ryan M. Berg MEMBER	12/28/18

Landlord Signature MORNING-BERG LLC | Date

Governing Regulations	The procedures and standards governing this application process are found in Chapter 130, Article 2, Division 8, of the Municipal Code.



Jeffery Groenier, Architect
W125 Amidon Road
Brooklyn, WI 53521
608-698-3196

Concepts In Architecture, LLC

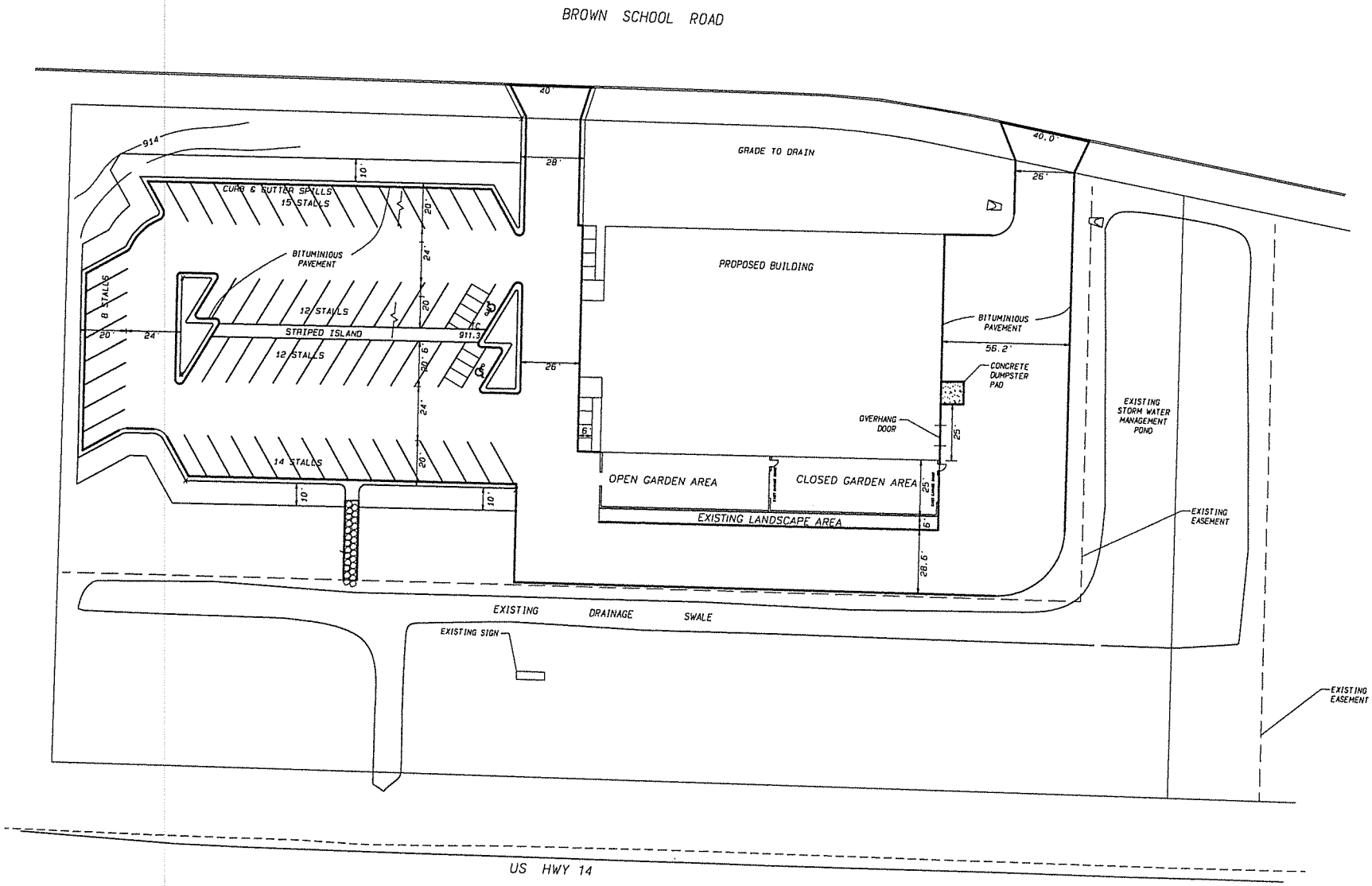
Proposed for: Morning Berg LLC
Jim Gurber
Address: 102 E Main Street
Evansville WI 53536
608-516-9899

Project: Hardware Store
Address: Evansville, WI

Sheet Title: New Site Plan

Date: 12-26-2018
Scale: As Noted
Job #: 05-01

SHEET
C2



Jeffery Groenier, Architect
W125 Amidon Road
Brooklyn, WI 53521
608-698-3196

Concepts In Architecture, LLC

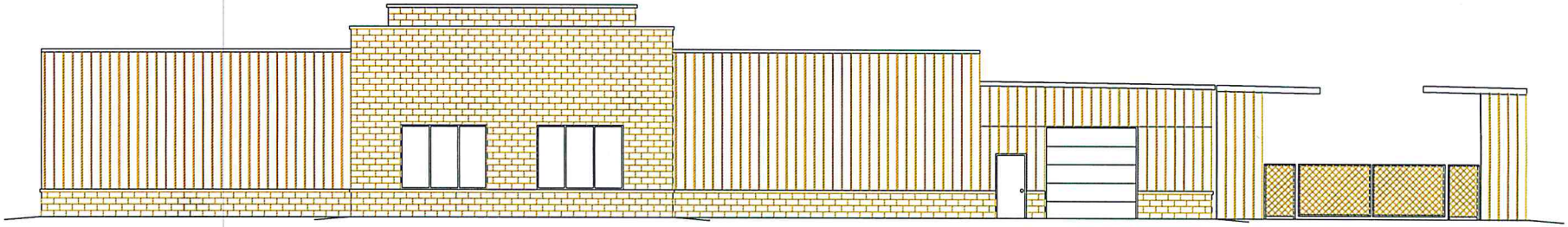
Proposed for: Morning Berg LLC
Jim Gerber
Address: 102 E Main Street
Evansville WI 53536
608-516-9899

Project: Hardware Store
Address: Evansville, WI

Sheet Title: Existing Site Plan

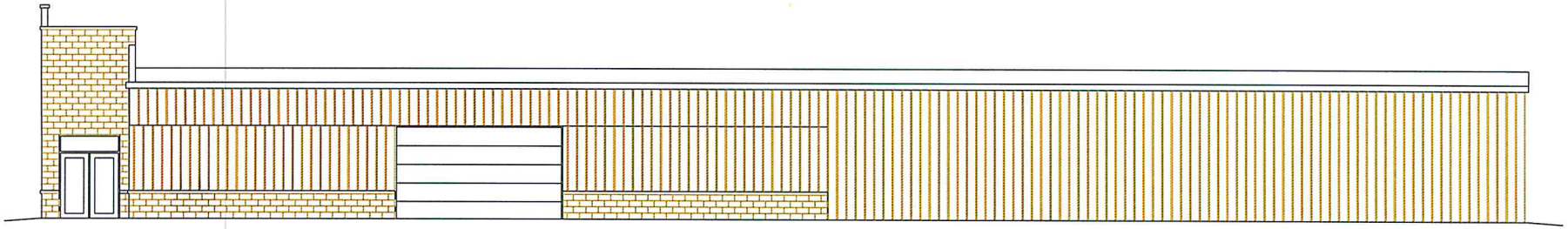
Date: 12-16-2018
Scale: As Noted
Job #: 05-01

SHEET
C1



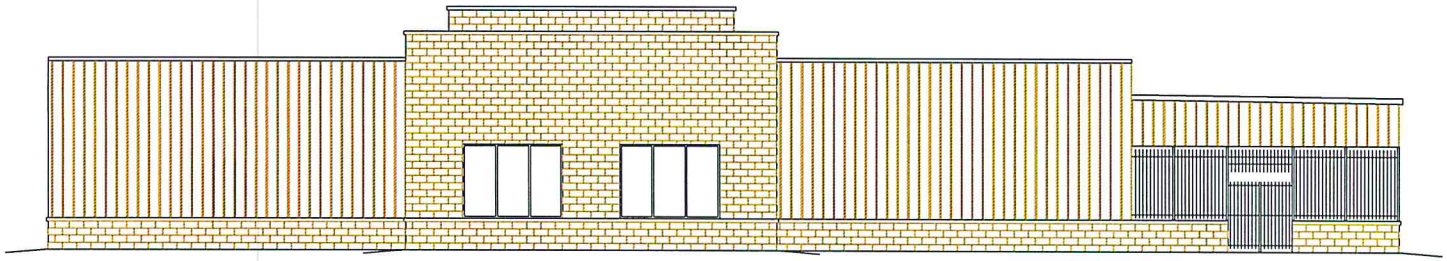
New West Elevation

Scale = 3/16"=1'-0"



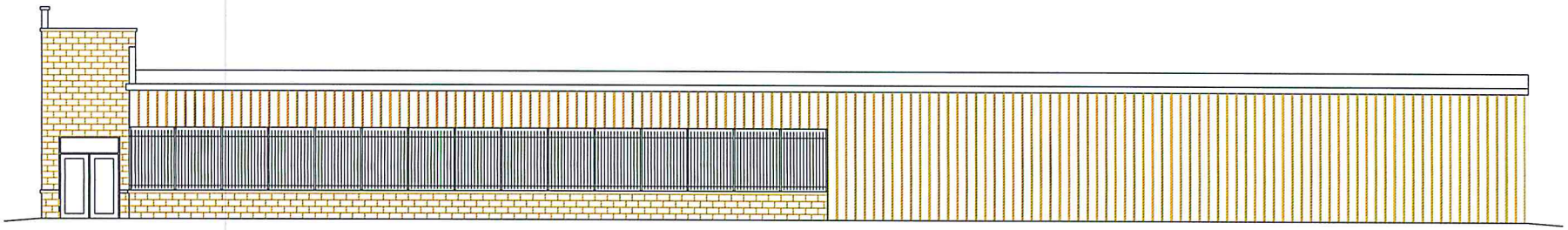
New South Elevation

Scale = 3/16"=1'-0"



Existing West Elevation

Scale = 3/16"=1'-0"



Existing South Elevation

Scale = 3/16"=1'-0"

Jeffery Groenier, Architect
W123 Amidon Road
Brooklyn, WI 53521
608-699-3196

Concepts In Architecture, LLC

Proposed for: Morning Berg LLC
Jim Gerber

Address: 102 E Main Street
Evansville WI 53536
608-516-9899

Project: Hardware Store

Address: Evansville, WI

Sheet Title: Elevations

Date: 12-26-2018

Scale: As Noted

Job #: 05-01

SHEET

A1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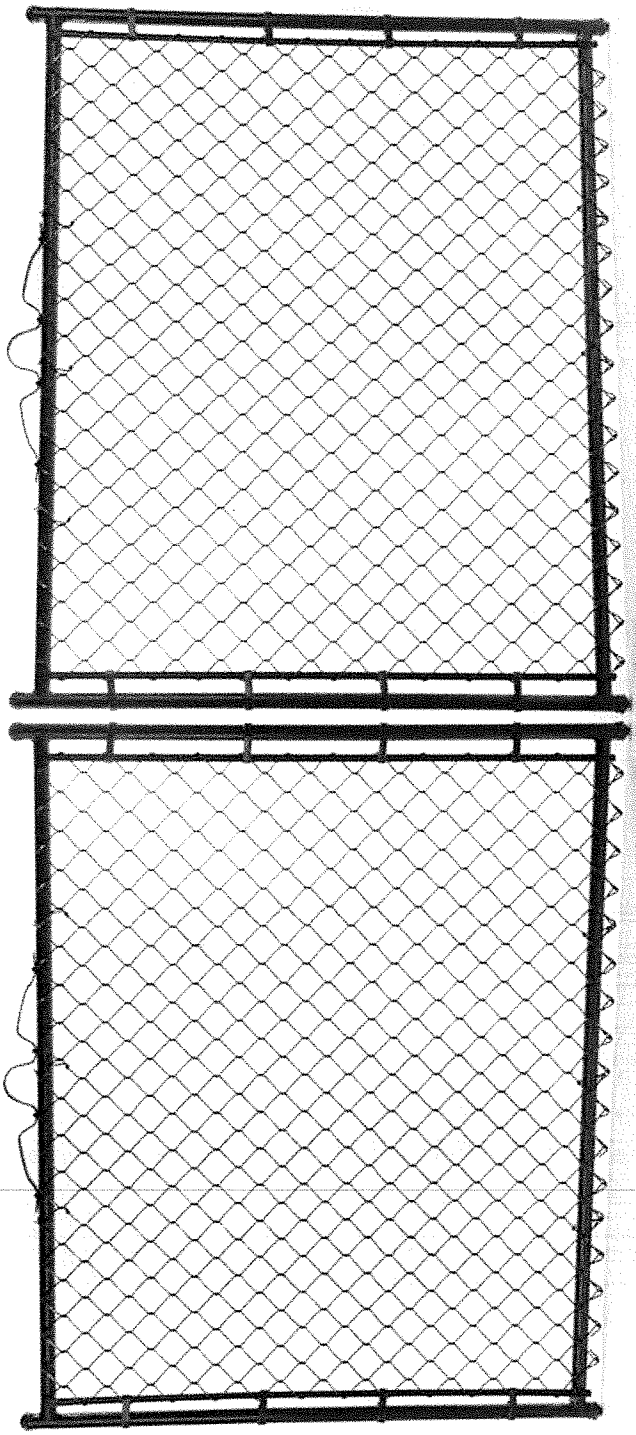
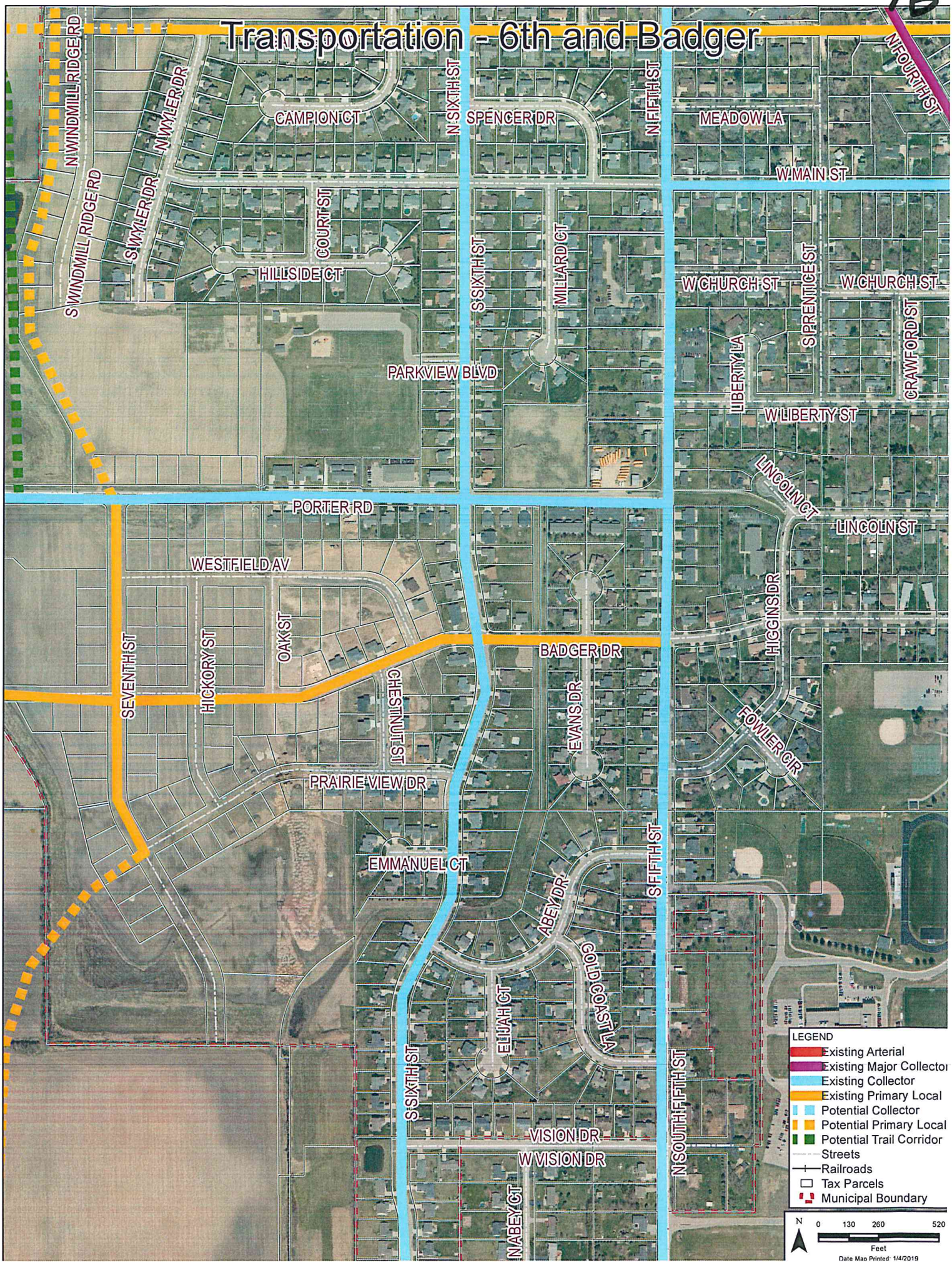


7B

Transportation - 6th and Badger



Chapter 18

BUILDINGS AND BUILDING REGULATIONS[1]

Article I. In General

Article II. Administration and Enforcement

Division 1. Generally

Division 2. Building Inspector

Article III. Electrical Code

Article IV. Plumbing Code

Article V. Fences

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[1] **Cross references:** Environment, ch. 46; fire prevention and protection, ch. 50; flood area zoning, ch. 54; health and sanitation, ch. 58; historic preservation, ch. 62; planning, ch. 94; solid waste, ch. 102; streets, sidewalks and other public places, ch. 106; numbering of buildings, § 106-341; subdivisions, ch. 110; utilities, ch. 126; zoning, ch. 130; manufactured homes and trailers, § 130-1241.

Article VI. Swimming Pools

Article VII. Garages

Article VIII. Moving Buildings

ARTICLE I. IN GENERAL

Sec. 18-??. Intent and purpose.

(a) *Description.* This Chapter is intended to regulate and assue a safe built environment for citizens.

Sec. 18-1. Violations; penalty; additional remedies.

(a) Any violation of this chapter after the issuance of a permit shall automatically revoke such permit, and any further work thereunder shall be unlawful and shall continue to be unlawful until a permit is reissued, excepting such other work especially allowed to be done pending the reissuance of the permit.

(b) Any work done in violation of this chapter or regulations adopted pursuant thereto shall be unlawful, and the building inspector or city attorney or other official designated by the council may bring action to enjoin such work, or cause building or the results of any such work removed.

(c) Any violation of this chapter shall also be subject to a forfeiture as provided in section 1-11.

(Code 1986, § 14.31)

Sec. 18-2. State dwelling and heating, ventilation and air conditioning codes adopted.

(a) The Wisconsin Administrative Code for one- and two-family dwellings, also known as the Uniform Dwelling Code, Wis. Admin. Code chs. COMM 20--25, and the Building and Heating, Ventilation and Air Conditioning Code, Wis. Admin. Code chs. COMM 50--64 and 69, are adopted by reference and made a part of this chapter as if fully set forth in this section. Any act required to be performed or prohibited by such codes incorporated by this section by reference is required or prohibited by this section. This section adopts such other Wisconsin Administrative Code provisions as may supersede, supplant or in any way modify, change or add to the Wisconsin Administrative Code as adopted and may be amended from time to time.

(b) The ~~city~~ building inspector, as certified by the state department of commerce, is hereby authorized and directed to administer and enforce all of the provisions of this section and the Wisconsin Uniform Dwelling Code incorporated in this section by reference.

(Code 1986, § 14.05(1), (2))

Sec. 18-3. Building permit required; exception.

(a) ~~(a)~~ No person shall build or cause to be built any one- or two-family dwelling without first obtaining a state uniform building permit for such dwelling from the city building inspector. A copy of any permit issued under this section shall be filed by the city building inspector with the city building department.

(b) (a) No person shall build or cause to be built any commercial building or multi-unit dwelling containing three or more units without first obtaining a City Building

Permit and completing state plan review. A copy of any permit issued under this section shall be filed by the city building inspector with the city building department.

(c) ~~(b)~~ A City building permit shall be required for interior or exterior repairs, alterations, improvements, or enlargements of any building or structure when any of the following is true:

1. ~~1.~~ The total cost of labor and materials exceeds $1,000.00,

   a. Total cost shall include fair market value of materials and labor

2. Work performed includes major electrical systems, plumbing systems, stairs, or ingress/egress routes

3. Work is being performed by anyone other than the owner-occupant of a residential structure

~~2.~~ The repairs[JS1], alterations, improvements, or enlargements are in whole or in part to the exterior of the building or structure and the property is located in a historic district or is listed as a landmark, landmark site, or specially designated landmark under Chapter 62.

3. A structure or building is to be enlarged or an outbuilding is to be constructed.

(c) If a building permit is required under paragraph (b) (2) of this section, before the building permit is issued, a completed application for a certificate of appropriateness under Chapter 62 shall be submitted to the historic preservation commission for review and approval in accordance with section 62-36(10).

(Code 1986, § 14.05(3), Ord. 2005-31, Ord. 2005-03, Ord. 2015-03)

Sec. 18-4. Permit and inspection fees.

(a) The city council shall, from time to time, determine the amount of the fee to be charged for the issuance of building permits, plan review and on-site inspections under the provisions of this chapter in conformity with the provisions of the Wisconsin Uniform One- and Two-Family Dwelling Code. When application for a permit is made, the applicant shall pay the clerk-treasurer the permit and plan review fees and an amount required to reimburse the city for processing the application. Prior to issuance of the permit, the applicant shall deposit with the clerk-treasurer a sum estimated by the clerk-treasurer from information supplied by the city building inspector to cover the cost of all required inspections. If actual costs are less than the amount deposited, any excess shall be refunded to the permittee. If costs exceed deposits, the city building inspector shall not issue a certificate of occupancy until such deficiency has been paid.

(b) Permit and inspection fees shall be as established by the council from time to time by resolution and as set forth in appendix A.

(c) The Building Inspector shall approve, deny, or request additional information to determine completeness of building permit applications within 10 days of receipt. Applicants that do not respond to requests for additional information on an incomplete application within 90 days will have their application materials discarded.

(Code 1986, § 14.05(4); Ord. No. 1998-6, § 1, 6-9-1998)

Sec. 18-5. Zoning approvals.

Every applicant for a building permit under this chapter shall submit three sets of building plans in the form required by Wis. Admin. Code § COMM 20.09(4). One set of plans shall be referred to and reviewed as to zoning compliance by the zoning administrator or a designee, and no permit shall be issued for construction or occupancy until the zoning administrator or a designee has endorsed the plans as complying with the provisions of chapter 130. No plans shall be approved or conditionally approved or building or occupancy permits issued by the building inspector until such approval has been stamped on each set of plans.

(Code 1986, § 14.05(6))

Sec. 18-6. Razing of buildings.[JS2]

Before a building can be demolished or removed, the owner or agent shall notify all utilities having service connections within the building, such as water, electric, gas, sewer, and other connections. A permit to demolish or to remove a building shall not be issued until it is ascertained that service connections and appurtenant equipment, such as meters and regulators, have been removed or sealed and plugged in a safe manner. Excavations shall be filled with solid fill to match the lot grade within 30 days of removal of the structure. Any excavation shall be protected with appropriate fences, barriers and/or lights. Nothing within this section shall alter the requirement for obtaining approval from the historic preservation commission as required by section 62-36(11).

(Code 1986, § 14.29, Ord. 2005-31)

Secs. 18-7--18-30. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT[2]

DIVISION 1. GENERALLY

Sec. 18-31. Penalty; additional remedies; citations.

(a) *General penalty.* The provisions of section 1-11 shall apply to violations of any provision of this chapter.

(b) *Injunctional remedies.* Any building or structure erected, constructed or reconstructed in violation of this chapter shall be deemed an unlawful structure and a nuisance. The city attorney, upon complaint of any person performing inspection services under this chapter, may bring an action to enjoin or abate such construction and nuisance in the municipal court or in the circuit court for the county.

(c) *Citations.* The city building inspector shall issue citations for violation of this chapter in accordance with the provisions of Wis. Stats. ch. 800, subject to endorsement by the city attorney and to the schedule of deposits from time to time established by the municipal judge and approved by the city council.

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[2] **Cross references:** Administration, ch. 2.

(d) Failure to get a permit. Double permit fees will be charged in any instance an applicant fails to get a permit.

(Code 1986, § 14.05(8))

Secs. 18-32--18-50. Reserved.

DIVISION 2. BUILDING INSPECTOR[3]

Sec. 18-51. Appointment.

The building inspector shall be appointed as provided in section 2-161.

(Code 1986, § 14.01(1))

Sec. 18-52. Powers and duties.

The building inspector shall enforce all provisions of this chapter and laws regulating building construction, and for such purpose he may request the assistance of the city attorney, the police department and other officers and departments of the city. He shall make periodic inspections of existing public buildings to determine their safety. He shall make inspections at the site of buildings damaged by any cause to determine the safety of the buildings affected. They shall enforce the environment and property maintenance code

(Code 1986, § 14.01(2), 14.30)

Sec. 18-53. Appeal of orders and decisions.[JS3]

Appeals from orders or decisions of the city building inspector relating to granting or denying a building inspection or occupancy permit, or any other application of this chapter, may be taken pursuant to Wis. Stats. ch. 68. The zoning board of appeals shall act as the impartial decision-maker on such appeals; provided, however, that a determination of the board of appeals with respect to applications or construction subject to the Wisconsin Uniform Dwelling Code shall not entitle the applicant or permittee to a variance or exception until approved by the state department of commerce in accordance with the provisions of Wis. Admin. Code §§ COMM 20.19 and 20.21. Appeals to the department shall be taken within 14 days of the date on which the board of appeals' written determination is mailed to the applicant.

(Code 1986, § 14.05(5))

Secs. 18-54--18-80. Reserved.

ARTICLE III. ELECTRICAL CODE[4]

Sec. 18-81. State electrical code adopted.

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[3] **Cross references:** Officers and employees, § 2-91 et seq.

[4] **Cross references:** Utilities, ch. 126.

The Wisconsin Electrical Code, Wis. Admin. Code chs. COMM 16 and 24, volume 1, parts 1 and 2, so far as applicable, is adopted by reference and made a part of this article as may be ammended.

(Code 1986, § 14.11)

Sec. 18-82. Compliance with article; authority to refuse utility service.

All electrical wiring done in the city shall comply with this article and the National Electric Code regardless of permit status. The electric utility shall not furnish service when any wiring is done or exists which does not comply with this article.

(Code 1986, § 14.12)

Sec. 18-83. Affidavit of compliance.

Prior to furnishing of service, the municipal services superintendent or the building inspector may require an affidavit of proof of compliance with this article. Such affidavit shall not be required for repair work. Replacement of an existing item with an item of similar nature and capacity shall constitute repair work.

(Code 1986, § 14.13, Ord. 2014-02)

Sec. 18-84. Electrician's license.[JS4]

No person shall do electrical wiring in the city for a fee or other remuneration or consideration unless he has a license from the city. No license shall be required of a trained electrician employee of any employer in the city to perform electrical wiring in or about such employer's place of business. Application for such license shall be made on the form provided by the city. All licenses shall expire on December 31. The initial license fee and the fee for the renewal of any license shall be as established from time to time by resolution and as set forth in appendix A. Any license shall be subject to revocation by the city council on proof that any wiring done by any licensee is not done in accordance with this article. Neither the initial fee nor the renewal fee shall be prorated.

(Code 1986, § 14.10)

Secs. 18-85--18-110. Reserved.

ARTICLE IV. PLUMBING CODE[5]

Sec. 18-111. State plumbing code adopted.

The State Plumbing Code, Wis. Admin. Code chs. 82--87, and all amendments thereto adopted by the state department of commerce, is incorporated into this article by reference as if set forth in full in this section.

(Code 1986, § 14.15)

[5] **Cross references:** Utilities, ch. 126.

Sec. 18-112. Compliance with article; authority to refuse utility service.

All plumbing done in the city shall comply with this article. The utility need not furnish service when any plumbing done does not comply with this article.

(Code 1986, § 14.16)

Sec. 18-113. Affidavit of compliance.

Prior to furnishing of service, the municipal services superintendent or plumbing inspector may require an affidavit or proof of compliance with this article. Such affidavit shall not be required for repair work. Replacement of an existing item with an item of similar nature and capacity shall constitute repair work.

(Code 1986, § 14.17, Ord. 2014-02)

Sec. 18-114. Residential and commercial business water softeners.

(a) All new or replacement water softeners installed in residential and commercial business served by the city sewer collection system must regenerate based upon demand-based cycles. Demand-based softeners can be either of the flow demand type or the sensor demand type. New or replacement water softeners shall meet the following minimum requirements:

(1) Flow-based water softeners:

a. Complete unit shall include pressure resin tank, brine tank, and demand-based automatic flow meter. Cabinet or free-standing units are equally acceptable.

b. Demand-based automatic flow meter shall initiate resin tank regeneration based upon a preset volume of water softened through the unit. A dial or dials, or other means, shall be provided on the face of the meter to allow selection of volume to trigger regeneration. Volume shall be selected based on the capacity of the resin tank, estimate of the grains of hardness in water, number of people in the household, and typical water use per person (70 gallons per person per day is typical).

$V = (A: B) - (C \times D)$

Where:

V	=	Preset volume to trigger regeneration, gallons
A	=	Resin tank capacity, grains
B	=	Water hardness, grains/gallon
C	=	Number of persons in household
D	=	Water use per person, gallons/person/day

Value of D shall be selected based upon best estimate of use in household.

c. Regeneration may be delayed to a preset time (such as 2:00 a.m.) provided reserve volume is allocated to allow continued softening of water from time preset volume is reached to time of regeneration. Regeneration cycle time delay start shall be triggered by preset volume as described above.

d. Demand-based meter valves may be of brass or approved plastic construction, and shall contain all required controls for setting regeneration volume.

(2) Sensor-based water softeners:

a. Complete unit shall include pressure resin tank, brine tank, and demand-based sensor installed in the resin bid. Cabinet or free-standing units are equally acceptable.

b. Sensor type softener shall be capable of sensing the degree of capacity remaining or used in the resin bed and regenerating the resin bed based upon sensed capacity used or remaining. The unit shall allow for a reserve capacity to allow regeneration during nonuse periods. This reserve shall be calculated based upon the capacity of a portion of the bed to be used for reserve.

c. A positive means shall be provided in the unit to troubleshoot problems with the sensor and allow for removal of the sensor probe as necessary.

(b) Twin resin tank type water softening systems are encouraged for residential use, but not required. Twin resin tank softeners that allow continuous water service and volume triggered regeneration without the need for setting preset regeneration time or calculating reserve volumes. New commercial and industrial establishments shall evaluate use of twin resin tank type softening systems when selecting a softening system.

(c) The city, by its building inspector, may upon review of an applicant's situation, allow an exemption to this section if treatment of iron is a consideration in the operation of the softening units. This situation will be reviewed on a case-by-case basis.

(Ord. No. 2000-10, § 1(14.18), 5-9-2000)[JS5]

Secs. 18-115--18-140. Reserved.

ARTICLE V. FENCES[JS6][6]

Sec. 18-141. Penalty; condemnation of unlawful fences.

The provisions of section 1-11 shall apply to violations of this article. The building inspector may condemn any fence erected or maintained in violation of this article.

(Code 1986, § 14.21(8))

Sec. 18-142. Exemptions.

(Code 1986, § 14.21(7), deleted by Ord. 2007-10)

Sec. 18-143. Permit.

No person shall install, erect, construct, or relocate or alter a fence within the city without first obtaining a permit from the building inspector. No permit shall be issued if the building inspector determines that the proposed fence does not meet any of the requirements of this code. A sketch or design of the proposed fence, including a description of materials to be used and specification of height, shall be submitted with the application for a permit. Any person aggrieved by a

[6] **Cross Reference:** Section 130-540 Fences

decision of the building inspector may appeal to the board of appeals. There shall be a fee for a fence permit as established by the council from time to time by resolution. No fee shall be charged for a fence permit issued for outdoor swimming pool enclosures at the time of issuance of a pool permit under article VI of this chapter.

(Code 1986, § 14.21(6), Ord. 2007-10)

Sec. 18-144. Maximum height.

(Code 1986, § 14.21(1), deleted by Ord. 2007-10)

Sec. 18-145. Electric fences.

(Code 1986, § 14.21(2), deleted by Ord. 2007-10)

Sec. 18-146. Barbed wire fences.

(Code 1986, § 14.21(3), deleted by Ord. 2007-10)

Sec. 18-147. Safety or traffic hazards.

(Code 1986, § 14.21(4), deleted by Ord. 2007-10)

Sec. 18-148. Construction on property of another.

(Code 1986, § 14.21(5), deleted by Ord. 2007-10)

Secs. 18-149--18-170. Reserved.

ARTICLE VI. SWIMMING POOLS[JS7]

Sec. 18-171. Permit.

No person shall commence the construction of any swimming pool without first obtaining a permit therefor from the building inspector. The fee for such permit shall be as established by the council from time to time by resolution and as set forth in appendix A.

(Code 1986, § 14.20(3))

Sec. 18-172. Construction, equipment and maintenance standards.

All outdoor swimming pools shall be constructed, equipped and maintained in such manner as to meet the requirements of the state department of health and family services and the state department of commerce and all applicable ordinances and codes of the city.

(Code 1986, § 14.20(1))

Sec. 18-173. Enclosure.

Every outdoor swimming pool constructed in the city shall be enclosed with a fence or wall not less than four feet high and of such design and construction that it cannot be climbed through or over or under. Entrance shall be designed such that small children cannot open it and which shall be self-closing and self-latching to prevent uncontrolled access at all times. It shall be at the

discretion of the building inspector as to whether or not a gate, ladder or door meets the requirements of this section.

(Code 1986, § 14.20(2), Ord. 2004-23)

Sec. 18-174. Definitions and exclusions.

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Swimming pool means any structure, above or below ground, which is designed to contain water in excess of twelve inches and is primarily used for recreational activities of wading and/or swimming.

~~(b) Section 18-173 does not apply to the following:~~

~~(1) An above-ground swimming pool, provided that the owner of the property on which the pool is located has written documentation to show that the owner has an insurance policy that covers claims for injuries sustained while on the property, the insurer that provided the insurance policy is aware of the presence of the pool, and the insurer has not excluded claims for injuries related to the pool from the coverage of the insurance policy.~~

~~(2) A small, portable, plastic wading or kiddie pool.~~

(Ord. 2004-23)

Secs. 18-174--18-190. Reserved.

ARTICLE VII. GARAGES[JS8]

Sec. 18-191. Definitions.[7]

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Attached private garage means a private garage so constructed as to form an integral part of the principal building or portion of the principle building designed, arranged, used or intended to be used exclusively for parking or temporary storage of passenger vehicles, trucks and trailers of the occupant.

Detached private garage means a private garage entirely separated from the principal building.

(Code 1986, § 14.25(1); Ord. No. 2002-4, § 1, 4-9-2002)

Sec. 18-192. Location of detached garages.

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[7] **Cross references:** Definitions generally, § 1-2.

Detached garages shall be governed by the following unless otherwise provided for in appropriate zoning codes: Garages shall be located not less than ten feet from any residence building.

(Code 1986, § 14.25(2))

Sec. 18-193. Maximum area of detached garages.

All detached garages shall be limited in area as follows: 850 square feet unless otherwise specified in Chapter 130.

(Code 1986, § 14.25(3))

Sec. 18-194. Foundation and footings.

Attached private garages shall be provided with the same type footings and foundations as required for the principal building. Detached private garages may be built with a continuous floating slab of reinforced concrete not less than four inches in thickness. Reinforcement shall be a minimum of six-inch by six-inch no. 10 × 10 wire mesh. The slab shall be provided with a thickened edge all around, eight inches wide and eight inches below the top of the slab. Exterior wall curbs shall be provided not less than four inches above the finished ground grade adjacent to the garage. Bolts three-eighths inch in diameter with nuts and washers attached, six inches long, shall be embedded three inches in the concrete curb of detached garages eight feet on centers.

(Code 1986, § 14.25(4))

Sec. 18-195. Floor surface.

The floor in all private garages shall be of concrete construction. No openings or pits in the floor shall be permitted, except for drainage. Any in floor drains shall have a sediment trap.[JS9]

(Code 1986, § 14.25(5))

Sec. 18-196. General construction.

Private garages shall be constructed as follows:

(1) Loadbearing foundation walls and piers, masonry walls, and partitions shall be constructed as regulated in this chapter, except as stated in this article.

(2) Detached private garages of wood frame construction shall be constructed with the following minimum requirements:

   a. Studs may have a maximum spacing of 24 inches on centers.

   b. Diagonal corner bracing may be applied on the inside surface of studs.

   c. Corner posts may consist of two two-inch by four-inch studs or a single four-inch by four-inch stud.

   d. Horizontal bracing and collar beams may be two inches by six inches with a maximum spacing of four feet on centers.

(3) Attached private garages shall be of the same type of construction as that of the principal building and as further regulated in this Code.

(Code 1986, § 14.25(6))

Sec. 18-197. Fire protection for attached garages.

Private garages may be attached to or made a part of residence buildings when in compliance with the following regulations:

(1) All walls in common with a principal building and attached private garage shall be of not less than one-hour fire-resistive construction on the garage interior.

(2) Where a private garage is part of a building having habitable rooms over such garage, there shall be provided a horizontal and vertical separation between the two occupancies of not less than two-hour fire-resistive construction, except that, in lieu thereof, the space between the joists and studs of the floor and wall shall be filled with approved noncombustible material four inches in thickness and protected with one-hour fire-resistive construction.

(Code 1986, § 14.25(7))

Secs. 18-198--18-220. Reserved.

ARTICLE VIII. MOVING BUILDINGS[8]

Sec. 18-221. Permit required.

No person shall move any building or structure upon any of the public ways of the city without first obtaining a permit therefore from the building inspector and paying the required fee. Every such permit issued by the building inspector for the moving of a building shall designate the route to be taken and the conditions to be complied with, and shall limit the time during which the moving operations shall be continued.

(Code 1986, § 14.28(1))

Sec. 18-222. Approval by building inspector.

No permit shall be issued to move a building within or into the city and to establish it upon a location within the city until the building inspector has made an investigation of such building at the location from which it is to be moved, and is satisfied from such investigation that the building is in a sound and stable condition and of such construction that it will meet the requirements of the building code in all respects. A complete plan of all repairs, improvements and remodeling with reference to such building shall be submitted to the building inspector, and he shall make a finding of fact to the effect that all such repairs, improvements and remodeling are in conformity with the requirements of the building code and that, when such repairs, improvements and remodeling are completed, the building as such will comply with the building code. If a building is to be moved from the city to some point outside the boundaries thereof, the provisions with respect to the furnishing of plans and specifications for proposed alterations to such building may be disregarded.

(Code 1986, § 14.28(4))

Sec. 18-223. Approval by plan commission.

[8] **Cross references:** Environment, ch. 46.

No permit shall be issued for moving a building or structure unless it has been found as a fact by the plan commission by at least a majority vote, after an examination of the application for the permit, which shall include exterior elevations of the building and accurate photographs of all sides and views of the building, and in case it is proposed to alter the exterior of the building, plans and specifications of such proposed alterations, and after a view of the building proposed to be moved and of the site at which it is to be located, that the exterior architectural appeal and functional plan of the building, as related to buildings already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable district established by the zoning ordinances of the city, or any ordinance amendatory thereof or supplementary thereto, will not cause a substantial depreciation in the property values of the neighborhood within the applicable district. In case the applicant proposes to alter the exterior of the building after moving the building, he shall submit with his application papers complete plans and specifications for the proposed alterations. Before a permit shall be issued for a building to be moved and altered, the applicant shall give a bond to the city plan commission, which shall not be less than $5,000.00, to be executed in the manner provided in section 18-224, to the effect that he will, within a time to be set by the plan commission, complete the proposed exterior alterations to the building in the manner set forth in his plans and specifications. This bond shall be in addition to any other bond or surety which may be required by other applicable ordinances of the city. No occupancy permit shall be issued for the building until the exterior alterations proposed to be made have been completed.

(Code 1986, § 14.28(7))

Sec. 18-224. Bond.

(a) Before a permit is issued to move any building over any public way in the city, the party applying therefor shall give a bond to the city in a sum to be fixed by the building inspector, which shall not be less than $5,000.00. The bond shall be executed by a corporate surety or two personal sureties to be approved by the council or its designated agent, conditioned upon, among other things, the indemnification of the city for any costs or expenses incurred by it in connection with any claims for damages to any persons or property, and the payment of any judgment, together with the costs and expenses incurred by the city in connection therewith, arising out of the removal of the building for which the permit is issued.

(b) Unless the building inspector, upon investigation, shall find it to be a fact that the excavation exposed by the removal of such building from its foundation shall not be so close to a public thoroughfare as to permit the accidental falling therein of travelers or the location, nature and physical characteristics of the premises and the exposed excavation, such as to make intrusion upon the premises and the falling into such excavation of children under 12 years of age unlikely, the bond required by subsection (a) of this section shall be further conditioned upon the permittee erecting adequate barriers, and, within 48 hours, filling in such excavation or adopting and employing such other means, devices or methods approved by the building inspector and reasonably adopted or calculated to prevent the occurrences set forth in this subsection.[JS10]

(Code 1986, § 14.28(5))

Sec. 18-225. Insurance.

The building inspector shall require, in addition to the bond indicated in section 18-224, public liability insurance covering injury to one person in a sum of not less than $100,000.00 and for one accident in a sum not less than $300,000.00, together with property damage insurance in a sum not less than $50,000.00, or such other coverage as deemed necessary.

(Code 1986, § 14.28(6))

Sec. 18-226. Continuous movement required; obstruction of streets; leaving building on street at night.

The movement of building shall be a continuous operation during all the hours of the day, and day by day and at night, until such movement is fully completed. All of such operations shall be performed with the least possible obstruction to thoroughfares. No building shall be allowed to remain overnight upon any street crossing or intersection, or so near thereto as to prevent easy access to any fire hydrant or any other public facility. Lights shall be kept in conspicuous places at each end of the building during the night.

(Code 1986, § 14.28(2))

Sec. 18-227. Repair of damage to streets.

Every person receiving a permit to move a building shall, within one day after the building reaches its destination, report that fact to the building inspector, who shall thereupon, in the company of the city highway commissioner, inspect the streets and highways over which the building has been moved and ascertain their condition. If the removal of the building has caused any damage to any street or highway, the person to whom the permit was issued shall forthwith place them in as good repair as they were before the permit was granted. On the failure of the permittee to do so within ten days thereafter to the satisfaction of the council, the council shall repair the damage done to such streets and hold the person obtaining such permit and the sureties on his bond responsible for the payment for such repair.

(Code 1986, § 14.28(3))

9E

Fair Housing is More Important than Ever

By Don Elliott, FAICP

Fair housing seems like a quintessentially American goal. Of course we're against housing discrimination. Who would be in favor of it? But our nation's path toward that goal has been long and slow. In April 2018, Planning magazine devoted its cover and lead article to the many unfulfilled promises of the Fair Housing Amendments Act of 1988 (the Fair Housing Act), and support for the Fair Housing Act has been less than robust in Washington. But there is more to the story than that. Fair housing remains a priority for many local governments and has become increasingly intertwined with efforts to address America's affordable housing crisis. This article will review the basics of fair housing law, two recent developments in fair housing, and best practices to help close the gap between the current reality and the ideal of fair housing.

BACKGROUND

To review, the Fair Housing Amendments Act of 1988 is a part of the Civil Rights Act. It prohibits "making unavailable" housing on the basis of race, color, national origin, religion, sex, family status, or handicap (42 U.S.C. §§3601-3619 and §3631). While we don't use the word "handicap" much anymore, it is used in the Fair Housing Act and in many court decisions interpreting it, so it will be used occasionally in this article. The Fair Housing Act advises the courts to interpret its requirements broadly in order to achieve its purposes. While originally and primarily intended to prevent redlining by real estate brokers and mortgage lenders, it also applies to local governments. In that context, some courts have held that the "making unavailable" prohibition may be violated when local government programs, policies, and rules result in protected people not being able to access housing options on the same basis as the population at large (42 U.S.C. §§3604(a)). While some commentators insist that the act protects everyone, not just those in the listed categories, this article uses the phrase "persons protected by the act" to mean persons in those categories explicitly listed in the Fair Housing Act.

A separate provision requires that if an applicant for a development approval asks the local governments to make a "reasonable accommodation" for persons protected by the act by bending its rules, or to make a "reasonable modification" to its programs and policies to carry out the intent of the act, the local government must be willing to accommodate the request if it is reasonable and does not undermine the effectiveness of the rule or policy. A surprising number of local governments seem to be unfamiliar with this part of the Fair Housing Act, and most zoning ordinances do not reflect its requirements.

TWO LEVELS OF COMPLIANCE REQUIRED

Since it is included in the very broad reach of the Civil Rights Act of 1964, the Fair Housing Act applies to everyone. There are no exemptions from its basic requirements. While there are some defenses available to communities whose rules or policies are challenged under the act, those defenses generally apply when full compliance would threaten another federal constitutional right or obligation. Federal constitutional rights have to be balanced against other federal constitutional rights, but they are not balanced against the convenience, political desires, or financial resources of the local government. Importantly, the basic requirements of the Fair Housing Act cannot be used to force state and local governments to spend money to build housing for those protected by the act. Its reach is limited to preventing discrimination in rulemaking, program management, and the impacts of spending decisions made by local governments.

There is a second tier of obligations under the Fair Housing Act, however. State and local governments that accept local government funds agree in writing to "Affirmatively Further Fair Housing," which goes by the acronym AFFH. Since the vast majority of state and local governments do accept money from the federal government (in this context, most notably through Community Development Block Grants or the HOME program), this second tier also applies to most state and local governments. This additional contractual obligation reflects the U.S. Department of Housing and Urban Development (HUD)'s attempt to put some teeth behind the act's language on AFFH. For many years, however, many local governments checked the box acknowledging their AFFH obligations but did little or nothing differently than they would have done otherwise. That changed after a Westchester County, New York, case (*U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County*, 495 F.Supp.2d 375. (S.D.N.Y. 2007)).

While the antidiscrimination center that filed the lawsuit against Westchester County did not allege a violation of the Fair Housing Act, the case raised important questions about what local governments that accept federal funds need to do to satisfy their duty to AFFH.

To make a very long and complex story short, the outcome of the case was a settlement in which Westchester County acknowledged that its practice of focusing housing resources to upgrade the poorest quality housing (which was located in predominantly minority neighborhoods) could have the unintended effect of perpetuating those concentrated pockets of minorities because it did not create housing opportunities in other (predominantly white) neighborhoods in the county.

As part of its settlement, Westchester County agreed to take numerous expensive and politically unpopular actions to increase the supply of affordable housing in areas of the county with predominantly white populations. That result made many state and local governments question whether they too might be challenged for failure to meet their AFFH obligations.

TWO RECENT DEVELOPMENTS

While the meaning of the Westchester County case and settlement was working its way into state and local government thinking, two other changes in the Fair Housing Act landscape occurred. The first was the Inclusive Communities case (*Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs*, 576 U.S. ___ (2015)), and the second was the finalization of a HUD rule as to what the AFFH duty requires.

Inclusive Communities, Inc. sued the state of Texas alleging that the way the Texas Department of Housing and Community Affairs allocated low-income tax credits for affordable housing violated the Fair Housing Act because it had a "disparate impact" on persons protected by it. That case became a legal vehicle to resolve a long-standing difference of opinion as to whether the act required a showing of "disparate treatment" (i.e., a rule, policy, or program that deliberately treats persons protected by the act differently) or just a showing of "disparate impact" (i.e., a rule, policy, or program that is neutral on its face but in fact makes it more difficult for persons protected by the act to obtain housing on an equal basis). The uncertainty arose because of the wording of the act itself and how federal courts had interpreted that wording in other decisions. Although a majority of the U.S. Court of Appeals circuits had recognized "disparate impact," many Supreme Court watchers assumed that the Court would hold that a showing of "disparate treatment" was needed. To the surprise of many, the U.S. Supreme Court held that showing of "disparate impact" could be a violation of the Fair Housing Act. It also reinforced the requirement that claims under the act must be based on a rule, policy, or program affecting multiple decisions—and that "disparate impact" claims cannot be based on a single decision or incident.

But that was not the end of the decision. The Supreme Court went on to clarify that claims of "disparate impact" had to meet a "robust causality" requirement. More specifically, plaintiffs must show that the rule, policy, or program actually caused the unfair housing outcomes that violate the Fair Housing Act. The Court added that the causality requirement could not be satisfied just by presenting evidence showing a statistical correlation between the government implementation of the rule or program and the existence or increase in the segregation or isolation of those groups protected by the Fair Housing Act. Upon remand, the U.S. District Court held that Inclusive Communities' evidence did not show the "robust" causality required by the Supreme Court (*Inclusive Communities. Project, Inc. v. Texas Department of Housing and Community Affairs*, C.A. No. 3-08-00546, 2016 WL 4494322 (N.D. Tex. Aug. 26, 2016)). In other words, it had not shown that Texas's implementation of its program to award tax credits caused the segregation of racial minorities or other groups, so there was no violation of the act. Since that decision, most of the federal courts considering "disparate impact" claims have likewise found that plaintiffs cannot show the causality required to support their challenges.

The second change after the Westchester County case was the finalization of a HUD regulation on what the duty to AFFH means in practice (24 CFR Parts 5, 91, 92, et al., July 16, 2015). This new rule had been under development during six of the eight years of the Obama administration, and reflected a dramatic strengthening of the AFFH requirement beyond what many assumed it meant. Again, to make a long and complex story short, HUD's AFFH rule provided that, in the future, HUD would provide local governments with a series of maps generated from U.S. Census data, the American Housing Survey, and other sources showing where those groups of persons protected by the act lived, plus many indicators of how those locations related to jobs, transportation, public facilities, good schools, and other proxies for quality of life and opportunity. HUD also stated that it would be paying attention to whether certain types of regulations—including zoning regulations—were inconsistent with AFFH obligations.

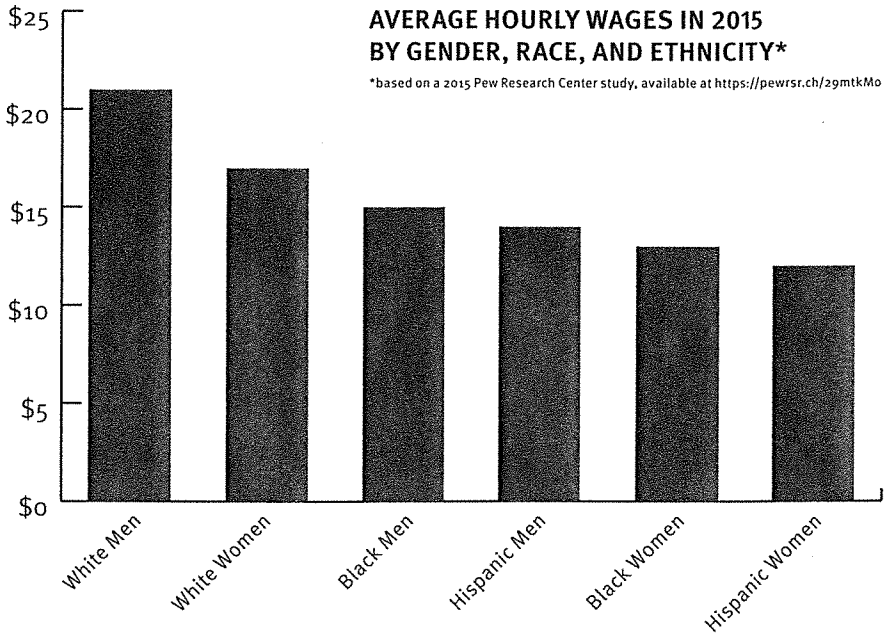
Given the current demographics and settlement patterns in the U.S., it was clear that many of the HUD maps would show that minorities, the handicapped, persons born in other countries, female-headed households, and other groups protected by the Fair Housing Act were concentrated in specific locations. Going forward, state and local governments would need to respond to those maps, or at least understand that HUD would be considering the patterns shown in those maps, as part of the evaluation of whether they were affirmatively furthering fair housing." State and local recipients of federal funds would now have to complete a more stringent Assessment of Fair Housing (AFH) instead of the more general Analysis of Impediments to Fair Housing that had previously been required.

No specific response to the maps was required. For example, one possible city response might be that the concentrations were due solely to personal preferences and that their regulations had nothing to do with the outcome. However, HUD assumed (probably correctly) that the public review of those maps and the AFH would provoke discussions among elected officials, planners, and citizens as to whether any of their regulations were in fact contributing to the concentrations of persons protected by the Fair Housing Act, and that some communities might conclude that their own rules and programs were partly responsible. The HUD AFFH rule was widely criticized as being very burdensome to state and local governments (as well as HUD), but it was finalized on July 16, 2015.

Not surprisingly, the Trump administration took a different view as to how it wanted to address the enforcement of the duties in the Fair Housing Act. Shortly after taking office, HUD Secretary Ben Carson stated that the department was not in support of the AFFH rule. More tactically, in May 2018 HUD withdrew the computer assessment tool that was used to generate and evaluate the maps showing where those groups protected by the Fair Housing Act lived and their access to opportunities from those locations. In support of its action, HUD stated that the assessment tools contained errors and that administration of the tool was overly burdensome. Without the computerized assessment tool, many observers concluded that it

would be difficult for local governments or HUD to respond to or evaluate concentrations of minorities, female-headed households, immigrants, persons with disabilities, and others. Although the HUD action was promptly challenged in federal court, by August 2018 the suit had been dismissed on the grounds that withdrawal of the assessment tool did not amount to repeal of the AFFH rule (which could only be done through a new federal rulemaking process), and that many aspects of the AFFH rule remained in place. In the meantime, HUD had issued an Advance Notice of Proposed Rulemaking for "Streamlining and Enhancements" to the AFFH rule. As a first step, public comments on how the rule should be revised are being accepted, but no draft of a proposed revised or replacement rule has been published. At present, the AFFH rule remains in place because no alternative rule has been approved, but the data needed to comply with that rule is not readily available.

The saga of the AFFH rule leaves state and local governments in an interesting (but somehow familiar) spot. In light of uncertain or conflicting federal government requirements, plus the common desire of local elected officials to continue receiving federal CDBG and HOME funds, what kind of AFFH showing is needed? The answer will probably also seem familiar. In the face of uncertainty, local government responses tend to reflect the political will of the elected officials. Some local governments that may not be fully supportive of the Fair Housing Act's constraints on their local authority may decide to make the fairly general showings of efforts toward AFFH that they made before the Obama-era rule, and expect that HUD will not be particularly strict in reviewing their applications. Other communities with strong support for fair housing may continue to prepare the stricter Assessments of Fair Housing (using their own analyses of U.S. Census and housing data, if necessary) and then try to address the patterns of concentration shown in those documents in hopes that their showings still meet the requirements of the not-yet-replaced AFFH rule.



ANNUAL EARNINGS DIFFERENCES BETWEEN THOSE WITH AND WITHOUT DISABILITIES IN 2011*

Educational Attainment	Without a Disability	With a Disability	Difference
High school or equivalent	$29,471	$22,966	($6,505)
Some college	$31,104	$26,489	($4,615)
Associate degree	$39,968	$32,768	($7,199)
Bachelor's degree	$58,822	$46,103	($12,719)
Master's degree or higher	$87,771	$66,899	($20,871)

*based on a 2014 report issued by the American Institutes for Research, available at https://bit.ly/2JJEeNG

THE FAIR HOUSING ACT/LOW-INCOME NEXUS

These housing challenges are further compounded by the nexus between the Fair Housing Act and lower income populations. To repeat—the FHA prohibits "making unavailable" housing based on race, color, national origin, religion, sex, family status, or handicap. It does not prohibit "making unavailable" housing because of low income. Under the constitution and federal laws of the United States, there is no legal duty for local governments to make housing available to everyone regardless of their ability to pay for it.

Some would consider it a moral duty, and others would consider it good planning practice to create inclusive cities. The AICP Code of Ethics and Professional Conduct recognizes "a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration"—but there is no federal legal duty to do so.

At the same time, a disproportionate number of households headed by minorities, women, the disabled, immigrants, and refugees have lower-than-average incomes. The income and wealth gaps between male- and female-headed households are well documented, and the same is true for majority- and minority-headed households in most communities. That is the Fair Housing Act/low-income nexus. One group (named in the Fair Housing Act) has federal legal protection aimed at equal treatment, while the other group (lower income households) does not, but the two

groups overlap significantly. That raises two interesting questions.

The first question is: "Do housing policies that tend to restrict the supply of affordable housing (defined broadly here as housing for those that are currently priced out of the housing market) create a 'disparate impact' on groups protected by the Fair Housing Act?" Or, to put it another way, "Do local regulations that restrict the supply of low-income housing fall more heavily on minority-, women-, disabled-, and immigrant-headed households to a point that violates the Fair Housing Act?" To date, no court has said so, and it would be difficult to prove because of the "robust causality" requirement of the *Inclusive Communities* decision. In other words, it would be difficult to prove that regulations restricting affordable housing cause concentrations of Fair Housing Act-protected persons that deny them equal access to housing opportunities, because there are so many other possible causes for those concentrations. Other possible causes include traditional ties to the neighborhood, personal preference, proximity to the resident's job or school, or the obvious one—lack of income to afford higher rents elsewhere. While that showing may someday be made, the bar to proving a violation of the Fair Housing Act based on "disparate impact" has been set very high.

The second question is: "Do state and local government actions that increase the supply of affordable housing tend to promote the goals of the Fair Housing Act?" The answer is almost certainly "yes." Because of the Fair Housing Act/low-income nexus, the benefits of increasing the supply of affordable housing almost certainly have a disproportionately positive impact on those groups protected by the act. Put simply, since some of the populations protected by the Fair Housing Act have lower-than-average incomes, the probability that a new affordable housing unit will be occupied by a household led by or including a person in a protected group is higher than average. There is no guarantee, of course. Theoretically, most of the additional affordable housing units made available through increased spending or regulatory reform could be occupied by white males without disabilities who were born in the United States, but it seems unlikely. Increasing the supply of affordable housing almost certainly provides a disproportionately positive increase in housing opportunities for at least one, and probably several, of the groups listed in the Fair Housing Act.

Joe DeAngelis

Local officials can help to increase the availability of housing for people with disabilities by treating small group homes just like any other type of single-family housing.

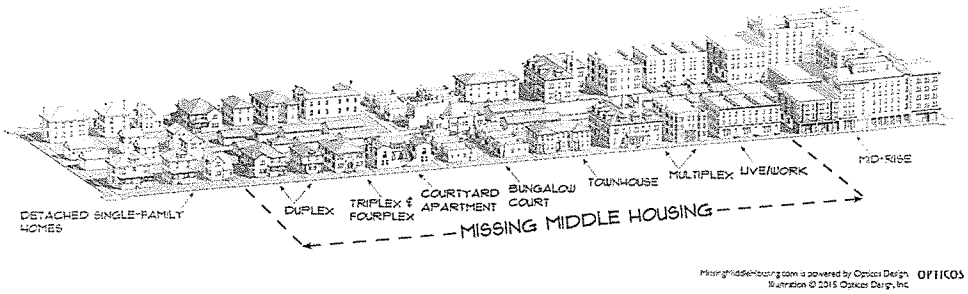
THE INITIATIVE SHIFTS TO LOCAL GOVERNMENT

As always, when the federal government reduces its regulatory involvement, the range of opportunities open to state and local government expands. As documented in *Planning* magazine's April cover story, the nation's success in implementing the Fair Housing Act has been spotty, and the challenges of implementing it remain daunting. Many of the housing challenges faced by minorities, persons with disabilities, female-headed households, and legal immigrants, refugees, and other persons born outside the United States still exist.

Fortunately, many of the barriers to fair housing are well within—and have always been within—the control of local government. Most importantly, zoning regulations have a substantial direct impact on both the availability of housing for those with physical disabilities and a substantial indirect impact on the supply of affordable housing. The paragraphs below list several steps that city and county governments can take to promote the goals of the Fair Housing Act.

Treat small group homes for persons with disabilities like single-family homes. While few Americans would object to fair housing in principle, that support sometimes turns to opposition when a small group home for the disabled is proposed close to that person's home. Since up to half of the land area in many U.S. cities is occupied by single-family homes, regulations that make it harder for small group homes to locate in those neighborhoods can substantially limit the availability of housing for persons with disabilities. Because of localized opposition to group homes, many cities and counties

impose additional barriers to their entry into single-family neighborhoods. The two most common barriers are special permit requirements and minimum required distances between group homes. Less common barriers include requirements to provide more off-street parking, more vegetated buffering, additional fences, or that the facility enter into an operating agreement or "good neighbor" agreement.



Opticos Design, Inc.

Allowing a wider variety of housing types, typified by the spectrum of "missing middle housing," can help to increase access to affordable housing for those protected by the Fair Housing Act.

Those and other regulatory hurdles are frequently challenged in federal court as violations of the Fair Housing Act, because they do not make a single-family dwelling available for persons with disabilities on the same basis the dwelling unit is available to persons without disabilities. The results of those lawsuits have been uneven. Sometimes the local regulation is upheld; sometimes it is overturned. (See, for example, *Bangerter v. Orem City Corp.*, 46 F.3d 1491 (10th Cir., 1995) and *Familystyle of St. Paul, Inc. v. City of St. Paul, Minn.*, 923 F.2d 91 (8th Cir. 1991).)

In general, federal courts considering these challenges have suggested that group home providing housing for six to eight residents should be able to locate in existing single-family dwellings without facing significant regulatory barriers (e.g., *Bryant Woods Inn. v. Howard County*, 911 F,Supp. 918 (D.Md. 1996)), but they disagree as to what types of additional regulations are so significant that they constitute a violation of the Fair Housing Act.

The better practice is to treat occupancy of single-family detached homes by group homes containing no more than six or eight persons with physical or mental disabilities the same as occupancy of that structure by other persons, and without applying limits on the number of unrelated persons that can occupy that dwelling unit. Oregon has required this result by state law, saying:

> (1) Residential homes [defined as housing for up to five persons receiving care plus their caregivers] shall be a permitted use in (a) any residential zone, including a residential zone which allows a single-family dwelling, and (b) any commercial zone that allows a single-family dwelling, and a city or county may not impose any zoning requirement on the establishment and maintenance of a residential home in a zone described in subsection (1) of this section that is more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone.
>
> (2) A city or county may not impose any zoning requirement on the establishment and maintenance of a residential home in a zone described in section (1) of this section that is more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone. (ORS §197.665)

The same type of equal treatment ordinance could be adopted at the local level, and many cities and counties follow this approach.

Treat larger group homes for persons with disabilities like other multifamily housing. The same logic outlined above applies to multifamily housing. If the intent of the Fair Housing Act is that protected persons not face barriers to housing choice that are not faced by persons without disabilities, then larger group homes (i.e., those with more than six or eight residents) should be treated the same as apartment or condominium buildings with the same number of residents. Again, Oregon law requires that result (ORS §197.667), and some governments have embodied the same result in ordinances.

Create an administrative process to address requests for "reasonable accommodation." Almost all local zoning ordinances have a formal process to grant variances if applicants show (generally at a public hearing) that a legal hardship will occur without the variance. In contrast, relatively few ordinances have a written procedure for responding to requests for "reasonable accommodation" or "reasonable modification" under the Fair Housing Act. As a practical matter, when those requests are received, most local governments find a way to respond—sometimes through a decision by the zoning administrator or the city manager, and sometimes by sending the request through a formal variance process. However, using a formal variance process is generally inconsistent with the goals of the Fair Housing Act, since it creates a public event, in a public forum, that draws attention to the special needs of the person with disabilities who is requesting the reasonable accommodation. Worse, a public hearing opens an opportunity for neighbors or other citizens to request that the city deny or condition the application in ways that a reviewing court will later find to be unreasonable under the Fair Housing Act.

The better practice is to create an administrative process for the city or county to respond to requests for reasonable accommodation or reasonable accommodation without the need for a public hearing. The Fair Housing Act does not require that there be a written procedure, or specify what that procedure needs to be, just that the local government act reasonably in responding

to the request. However, it is almost always preferable to have a written procedure in place so the public understands how those requests will be reviewed, and so succeeding zoning administrators and city managers do not need to reinvent a (potentially inconsistent) way to respond each time such a request is made. A written procedure, and criteria to guide the decision, also reduces the chance of a legal challenge claiming that the local government's charter and ordinances did not authorize it to respond to the request the way it did. Failure to respond reasonably creates liability under the Fair Housing Act; responding to the request in a way that is not authorized by law could create liability under state or local law, so the answer is to create a written procedure and use it.

Review the zoning regulations for actual barriers to fair housing. Regardless of how the HUD AFFH rule is modified in the future, zoning regulations can create significant barriers to fair housing. In addition to the barriers to location of small and large group homes discussed above, the regulations sometimes categorize group homes as commercial uses, which can subject them to higher utility rates. They can also establish very large minimum residential lot sizes that make it difficult for operators of congregate care facilities to locate in those areas. Zoning ordinances can make it difficult or impossible to create accessory dwelling units, which reduces that ability of persons with disabilities to live close to, or within the same dwelling unit as, persons who could provide prompt assistance in case of a health emergency. Many zoning ordinances limit the number of unrelated persons who can live together, which limits the ability of persons with disabilities who can live independently from living with others who could provide mutual support for daily living activities and help in an emergency. Finally, zoning regulations that establish narrow definitions for each type of group-living facility can make it hard for facilities with mixed populations, or those providing an innovative mix of services, from being approved. Zoning rules have often been used to protect residential neighborhoods from different and unexpected uses. It is worth reviewing those rules to see which barriers to fair housing have been created by zoning rules—because those same barriers can be removed by amending the rules.

Promote affordable housing—because it has fair housing impacts. While rights to fair housing are legally protected, and rights to affordable housing are not, the two topics are intricately linked. Zoning regulations, policies, and programs that tend to increase the supply of affordable housing are likely to have a disproportionately positive impact on those protected by the Fair Housing Act. While many communities across the United States are facing an affordable housing crisis, and most are working to address that crisis, the fact that those protected by the Fair Housing Act are disproportionately impacted by the shortage of affordable housing provides another reason for bold action. There are a variety of ways for zoning changes to promote affordable housing, including:

- reducing minimum residential lot sizes
- allowing a wider variety of housing—including "missing middle" housing
- reducing the barriers to creating accessory dwelling units
- providing height or residential density incentives for affordable housing
- allowing increased occupancy of existing housing stock by unrelated individuals

CONCLUSION

Implementation and enforcement of the federal Fair Housing Act has always been imperfect, but the current uncertainty about how the HUD AFFH rule may be modified should not lead to a wait-and-see attitude. Instead, it puts much of the challenge of implementation back at the local level, and many cities and counties have accepted that challenge. When it comes to zoning, many of the barriers to fair housing were created at the local level, and they can be removed at the local level. Because of the Fair Housing Act/low-income nexus, planners should also realize that reducing barriers to affordable housing tends to open up housing choices for those protected by Fair Housing Act. Much of the unfulfilled promise of the Fair Housing Act is—and has always been—in the hands of local government planners.

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