

PLANNING & DEVELOPMENT COMMITTEE

Tuesday, November 13, 2018

6:00 pm

Council Board Room

One Batavia City Centre, Batavia NY

AGENDA

I. Roll Call

II. Call to Order

III. Approval of Minutes – 10/16/18

IV. Proposals

Address: 121 Washington Ave.

Applicant: Karin Phelps (owner)

Proposal Special Use Permit to change the existing non-conforming use (law office) to a different non-conforming use (massage therapy office)

Actions: 1. Review application
 2. Public hearing and discussion
 3. Action by the board

V. Other/ New Business/Updates

VI. Setting of Next Meeting: November 18, 2018

VII. Adjournment

PLANNING & DEVELOPMENT COMMITTEE

DRAFT MINUTES

October 16, 2018

6:00 pm

Council Board Room

One Batavia City Centre, Batavia NY

Members present: *Matt Gray, Tammy Hathaway, Robert Knipe, Duane Preston*

Members absent: Edward Flynn, Marc Staley

Others present: Meg Chilano – Recording Secretary, Doug Randall – Code Enforcement Officer

I. Roll Call

Roll call of the members was conducted. Four members were present and Chairman Duane Preston declared a quorum.

II. Call to order

Mr. Preston called the meeting to order at 6:07 pm.

III. Previous Meeting Minutes

There were no corrections to the minutes. Mr. Preston assumed the motion and the minutes were approved as written by unanimous consent.

RESULT: Approval of September 18, 2018 meeting minutes.

IV. Proposals

- A. Demolition Permit to demolish and remove a “non-conforming use” two-family dwelling from this parcel located in the Central Commercial District. The applicant proposes to redevelop the parcel for use as a permitted principal use parking area

Address: *312 Ellicott St.*

Applicant: Rick Mancuso (owner)

- Actions:
1. Review application
 2. Discussion by the board
 3. SEQR
 4. Action by the board on the Demo Permit
 5. Recommendation to the ZBA for two Area Variances

1. Review Application

Mr. Preston read the summary of the proposal. He reported that the Genesee County Planning Board recommended disapproval on the basis that the variances are substantial and may pose a significant county-wide or inter-community impact, especially considering it could set a precedent for future similar requests. Also, the project is not in accordance with BID guidelines which require that parking areas that can be seen from the street should be shielded

by low-growing bushes and a low wall or fence. The parking area should incorporate the minimum amount of 10% green space.

2. Discussion by the Board

Mr. Mancuso spoke on behalf of the project. He said that the dwelling on the property was in disrepair when he bought it, and the cost to make it habitable for tenants would be prohibitive. He said that his tenants in the plaza (318-326 Ellicott St.) need more parking. He pointed out that traffic will not be going in and out of the lot; only the tenants themselves will park there during the day while they work.

Mr. Mancuso told the board that he is seeking relief from the requirement of the buffer because it would diminish the amount of available parking area by too much. He pointed out that there is already a fence on the south side of the parking area.

Mr. Gray asked how vehicles would enter the parking lot. Mr. Mancuso answered that on Goade Pk. there is already a curb cut where the old driveway used to be.

Mr. Knipe asked about the property to the rear (107 Liberty St.), and Mr. Randall said it is a parking lot owned by the City. Mr. Knipe asked if the two lots would be connected, and Mr. Mancuso replied that they will be at the same level and abut one another though technically not be connected.

Mr. Knipe commented that he is concerned about the appearance of Ellicott St. in its capacity as one of the gateways into the City. He said there needs to be at least a little green space along the street.

Mr. Gray said that he is less concerned with a 10' buffer than he is with maintaining a consistent appearance along the street, in adherence to BID guidelines.

Mr. Mancuso said it would be easy to put some low bushes along Ellicott St. in the triangular area marked on the drawing.

3. SEQR

Mr. Preston asked if the board had reviewed part one of the SEQR application and they indicated they had. The board went through the questions for part two.

MOTION: Mr. Gray moved to approve a negative declaration of SEQR; the motion was seconded by Mr. Knipe, and on roll call, was approved 4-0.

RESULT: Negative declaration of SEQR

4. Action by the Board on the Demo Permit

Mr. Mancuso asked to be permitted to plant bushes in lieu of erecting a fence. He pointed out that a fence acts as a trap for debris.

MOTION: Mr. Gray moved to approve the Demolition Permit with the stipulation that low shrubs are planted in the triangle area along Ellicott St.; the motion was seconded by Mr. Knipe, and on roll call, was approved 4-0.

RESULT: Demolition Permit approved.

5. Recommendation to the ZBA for two Area Variances

MOTION: Mr. Knipe moved to recommend approval of the variance application regarding the buffer; the motion was seconded by Ms. Hathaway, and on roll call, was approved 4-0.

RESULT: Recommendation to the ZBA for approval of the Area Variance regarding the buffer.

MOTION: Ms. Hathaway moved to recommend approval of the area variance regarding the fence; the motion was seconded by Mr. Gray, and on roll call, was approved 4-0.

RESULT: Recommendation to the ZBA for approval of the Area Variance regarding the fence.

- B. Alter the exterior appearance to this building by removing all aspects of the existing drive-through banking teller equipment and canopy structure on the west elevation of this one-story commercial building. The existing masonry wall will be restored to match the appearance of the existing surfaces as closely as possible

Address: 219 East Main St.

Applicant: Scott Neff (owner)

- Actions:
1. Review application
 2. Discussion and action by the board

1. Review Application

Mr. Preston read the summary of the proposal. He reported that the Genesee County Planning Board recommended approval of the proposal.

2. Discussion and Action by the Board

Jason Breton, Breton Construction, spoke on behalf of the project. He explained that he intended to remove the canopy structure and piece in the brick with matching material. The blacktop and piers will be removed and replaced with new blacktop, and the driveway, which will no longer be a drive-through, will be sealed.

Mr. Knipe asked if the entire area would be used for parking, and Mr. Breton clarified that the area is still a wrap-around driveway which empties onto Main St., despite there being no drive-through.

Mr. Knipe asked if it would be possible to put some plantings in the area that is being demolished. Mr. Breton pointed out that there is only about 22' of space, which already has a green area on one side. He also noted that the driveway opening would need to be changed in order to put 6' of plantings, a task for which it is difficult to obtain permission from the DOT, which regulates aprons.

MOTION: Mr. Gray moved to approve the proposal as submitted; the motion was seconded by Ms. Hathaway, and on roll call, was approved 4-0.

RESULT: Proposal approved.

- C. Site Plan approval for expansion of an existing 49,000 sq.' manufacturing facility by placing a 19,000 sq.' one-story addition with associated site work on the west side of this parcel

Address: 4A Treadeasy Ave.

Applicant: Alex Amering, PE (Project Manager for Amada Tool)

- Actions:
1. Review application
 2. Public hearing and discussion by the board
 3. SEQR
 4. Action by the board

1. Review Application

Mr. Preston read the summary of the proposal. He reported that the Genesee County Planning Board recommended approval of the project with the following modifications:

- As the property has been identified as an archaeologically sensitive site, documentation from SHPO should be obtained; and
- As per DEC requirements, as the applicant is disturbing more than 1 square acre of land, the applicant should complete a stormwater pollution prevention plan prior to approval from the City.

2. Public Hearing and Discussion by the Board

Ken Bragg, Chrisantha Construction, Mark Costich, Costich Engineering, and Jeff and Jerome from Amada Tools were present to speak on behalf of the project. Mr. Costich said that he is proposing to demolish part of the existing parking lot, removing 45 spaces. The plan includes a 15,000 sq.' manufacturing facility and a 4,000 sq.' drive-through loading breezeway. They are proposing 65 parking spaces, 20 more than the current amount. The project includes two bioretention areas and a stormwater management facility, which will conform to all state and local regulations. Access to the facility will be via the current curb cuts. The architecture and lighting will be similar to the existing.

Mr. Preston asked if the bioretention area will be fenced. Mr. Costich detailed the dimension of the area and explained that it will be capable of being mowed like any other grass. Putting a fence around it would make it difficult to maintain, and trash would be caught by the fence.

MOTION: Mr. Gray moved to open the public hearing; the motion was seconded by Mr. Knipe, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:43 pm.

There was no one present who wished to speak, and no calls or email had been received concerning the project.

MOTION: Mr. Gray moved to close the public hearing; the motion was seconded by Mr. Knipe, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:44 pm.

3. SEQR

Mr. Preston asked if the board had reviewed part one of the SEQR application and they indicated they had. The board went through the questions for part two.

MOTION: Mr. Gray moved to approve a negative declaration of SEQR; the motion was seconded by Mr. Knipe, and on roll call, was approved 4-0.

RESULT: Negative declaration of SEQR

4. Action by the Board

MOTION: Mr. Gray moved to approve the Site Plan; the motion was seconded by Mr. Knipe, and on roll call, was approved 4-0.

RESULT: Site Plan approved.

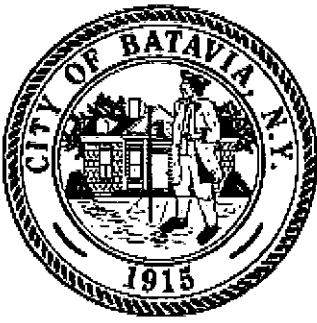
V. Other/New Business/Updates: none

VI. Setting of Next Meeting: November 13, 2018

VII. Adjournment

Mr. Knipe moved to adjourn the meeting at 6:53 p.m.; the motion was seconded by Mr. Preston. All voted in favor.

Meg Chilano
Bureau of Inspection Secretary



City of Batavia
Department of Public Works
Bureau of Inspections

One Batavia City Center, Batavia, New York 14020

(585)-345-6345

(585)-345-1385 (fax)

To: Planning and Development Committee
From: Doug Randall, Code Enforcement Officer
Date: 10/30/18
Re: **121 Washington Ave.**
Tax Parcel No. 84.041-1-21

Zoning Use District: R-3

The applicant, Karen Phelps (owner), has filed a Special Use Permit application with the Planning and Development Committee to change the existing non-conforming use (law office) to a different non-conforming use, massage therapy office.

Note: This is a type II action as defined by Environmental Conservation Law and is not subject to review under (SEQR) 6 NYCRR Part 617.5 (c) (1).

City Planning and Development Committee- Pursuant to section 190-37 of the zoning ordinance, Special Use Permits are to be authorized by the Planning and Development Committee.

BMC Sec. 190-36 G. (1) (a) Non-conforming uses; Change in use- Special Use Permits may be issued for a change in use to another non-conforming use as long as the change is in compliance with BMC Sec. 190-36 G (a-c). (see attached)

BMC Sec. 190-37 K. Standards applicable to all Special Use Permits- The PDC may issue a special use permit after determination that the standards and conditions have been satisfied (see attached code sections).



SPECIAL USE PERMIT

CITY OF BATAVIA, NEW YORK

LOCATION: 121 WASHINGTON AVE
 OWNER: KARIN PHELPS
 Address: 7096 GORTON ROAD Batavia NY 14103

Application Date: 10/29/18
 Tax Parcel No.: 84.041-1-21
 Phone No. 716 432-0032

NO COUNTY PLANNING REVIEW

NO ZONING VARIANCE REQUIRED

R-3 ZONING DISTRICT

NO HISTORIC DISTRICT

C FLOOD ZONE

NO HISTORIC LANDMARK

NO CORNER LOT

NO CITY ENGINEER REVIEW

NO SITE PLAN REVIEW

NO CITY COUNCIL REVIEW

NO BID

____ OTHER

PROJECT DESCRIPTION:

SPECIAL USE PERMIT FOR MASSAGE THERAPY OFFICE

EXISTING USE: ATTORNEY'S OFFICE

PROPOSED USE: MASSAGE THERAPY OFFICE

N.Y.S. BLDG. CODE OCC. CLASS: B

N.Y.S. BLDG. CODE OCC. CLASS: B

LOT SIZE: 50'x71'

LOT AREA: 3,550 sq. ft.

CITY PLANNING & DEVELOPMENT REVIEW:

____ APPROVAL AS PRESENTED ____ DISAPPROVAL ____ APPROVAL WITH CONDITIONS

CHAIRMAN SIGNATURE: _____ DATE: _____

<u>Karin Phelps LMT 10/29/18</u> Applicant Signature Date		_____ Issuing Officer
Permit Fee: <u>\$100.</u>	Issue Date: _____	

A structure containing a nonconforming use may not be renovated or structurally altered during its life to an extent exceeding, in aggregate cost, 50% of the market value of the building unless said building is changed to a conforming use. The market value shall be the product of the structure's current assessed value as indicated on the City's assessment records times the City's equalization rate. Nothing in this chapter shall prevent the renovation or repair of nonstructural members or the maintenance of a structure made necessary by ordinary wear and tear. Under this provision a nonconforming use within a structure shall not be substantively extended or physically expanded.

- (2) Any portion of a structure that is determined to be nonconforming in regard to any provision of this chapter shall not be renovated or structurally altered for a nonconforming use except under the regulations set forth in the preceding Subsection A, but may be renovated or structurally altered, but not expanded, if occupied by a conforming use.

D. Extensions.

- (1) A nonconforming use shall not be extended, but the extension of a lawful use to any portion of a structure which existed prior to the enactment of this chapter shall not be deemed the extension of such nonconforming use. An extension of a nonconforming use shall include any activities or actions that expand the area or volume occupied by a nonconforming use. Such activity or action shall include, but not be limited to, the physical expansion of a nonconforming use into previous underutilized, vacant or a new constructed space; the increase in size of any parking related to a nonconforming use; and the increase in any item that will result in a larger parking requirement as defined in § 190-39.
- (2) Any portion of a structure that is determined to be a nonconforming in regard to any provision of this chapter shall not be extended unless such extension is in conformance with this chapter or any necessary variances are obtained from the Zoning Board of Appeals.

E. Destruction of structure. Nothing in this chapter shall prevent the restoration, rebuilding or repairing of any structure containing a nonconforming use, which structure has been damaged by fire, acts of God or by any means not within the control of the owner, provided that such restoration or construction is commenced within one year after the destruction and is completed within one year of the date of issuance of a building permit. For any structure containing a nonconforming use which is destroyed, by any cause, not within the control of the owner, to an extent exceeding 50% of its market value, the future structure or use on the site shall conform to this chapter. The market value shall be the product of the structure's current assessed value as indicated on the City's assessment records times the City's equalization rate.

F. Definition of structure. For the purpose of this subsection, structure shall be defined as hereinafter stated to determine the percentages set forth herein. If there is only one building upon real property, structure shall be that one building. If there is more than one building upon real property, structure shall be defined as the total square footage of all buildings as compared to the portion destroyed or altered.

G. Change in use.

- (1) Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to another nonconforming use only under the following conditions:

- (a) Such change shall be permitted only upon issuance of a special use permit.

- (b) The applicant shall show that the nonconforming use cannot reasonably be changed to a use permitted in the district where such nonconforming use is located.
- (c) The applicant shall show that the proposed change will be less objectionable in external effect than the existing nonconforming use with respect to:
 - [1] Traffic generation and congestion, including truck, passenger car and pedestrian traffic.
 - [2] Noise, smoke, dust, noxious matter, heat, glare and vibration.
 - [3] Storage and waste disposal.
 - [4] Appearance.
- (2) With any change in use from a nonconforming use, any nonconforming area dimension on the premises shall cease to be a valid preexisting nonconforming use.
- H. Displacement. No nonconforming use shall be extended to displace a conforming use.
- I. District changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.
- J. Discontinuance. Whenever a nonconforming use or a nonconforming structure has been discontinued for a period of one year, such structure shall not be reused without appropriate variances or only in conformity with the provisions of this chapter or such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this chapter.
- K. Accessibility to public right-of-way. No building permit or certificate of occupancy shall be issued for any new land use activity where there is no reasonable access from the lot or area upon which such activity is located to an existing public street; provided, however, that this provision shall not prohibit the continued use of any structure or lot as such use existed at the effective date of this provision.
- L. Construction approved prior to adoption of or amendment to chapter. Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued, provided that active and substantial construction shall have been originated prior to the enactment of this chapter and further provided that the entire building shall be completed according to such plans filed within two years from the effective date of this chapter.

No changes are made to the front exterior of the single-family dwelling to maintain the appearance of a single-family home.

- (2) Accessory units will only be allowed in owner-occupied single-family residences.
- (3) Garages may not be converted to accessory dwelling units.
- (4) Entrances for the accessory unit shall not be on the front exterior to maintain the single-family appearance of the structure.
- (5) One parking space to be provided for the accessory dwelling unit.

K. **Standards applicable for all special use permits.** The Planning and Development Committee may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this chapter.

[Added 11-9-1998]

- (1) The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons therewith will not be hazardous and shall be in harmony with the orderly development of the district.
- (2) The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.
- (3) The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.
- (4) The operation of any such use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact adjacent properties.
- (5) When a commercial or industrial special use abuts a residential property the Planning and Development Committee may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.
- (6) Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.
- (7) The proposed use shall meet the off-street parking and loading requirements of similar uses.
- (8) Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water-related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.
- (9) Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards.
- (10) Such use shall be attractively landscaped.
- (11)

A special use permit shall not be issued for a use on a lot where there is an existing violation of this chapter unrelated to the use which is the subject of the requested special use permit, as determined by the Planning and Development Committee.

- (12) As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.
- (13) In addition to the general standards for special use permits as set forth herein, the Planning and Development Committee may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this chapter.
- (14) The above standards are not intended to apply to uses whose regulation has been preempted by the state or federal government.

- L. Adult uses as per Article VI.
[Added 12-13-1999]

2986

ZONING COMMISSION
City of Batavia, N. Y.

Detailed Statement of
Location for
NEW BUILDINGS

Plan No. 2986
Location 121 Washington Ave.
Owner Dr. Carl C. Kocster
Architect _____
Builder Louis Huber
Submitted May 19, 1950
Approved May 19, 1950
Norman D. Haffner
For the Zoning Commission

Before the Building is occupied a Certificate
of Occupancy must be obtained from the Zoning
Commission.

ZONING COMMISSION, CITY OF BATAVIA, N. Y.
Office Hours: 9 a. m. and 1 p. m.

Application for the Erection of Buildings

Batavia, N. Y., May 19, 1950

No. 2986

Application is hereby made for the approval of the detailed statement of the specifications and plans herewith submitted, for the erection of the building herein described. In zone Res. A.

1. How many buildings to be erected? 1 How occupied? Professional Office (Physician)
2. What is the street or avenue and number thereof? 121 Washington Ave.

3. Size of building: No. of feet front 30 No. of feet rear 30 No. of feet deep 40
No. of stories in height 1 1/2
4. What will each building cost exclusive of lot? \$9,000.00
5. What will be the thickness of the foundation walls? 8" Of what materials constructed? cement block
6. What will be the thickness of upper walls: basement 8 inches; 1st story 6 inches;
2nd story inches; of what materials constructed? wood
7. State kind of exterior finish shingle
8. State kind of interior finish: on floor wood; on walls plaster; on ceilings plaster
9. Of what materials are chimneys built? cement block
10. Will roof be flat, peaked or mansard? peaked State material of roofing asphalt shingles
11. How is building sheathed?
12. The distance of said building from the North side of the lot is 12 feet. From the South side of the lot is 20 feet. From East side of lot is 12 feet. From West side of lot is 8 feet. The distance from the nearest building to the building herein proposed to be erected is 15 feet. Size of lot 50' x 72'

Permission is asked to build said building on the basis of the facts above stated.

Owner Dr. Carl Koester Address 17 Lewis Ave.
Architect Address
Mason Address
Carpenter Louis Huber Address Alexander Rd., Batavia, N.Y.

All provisions of the Building Laws and Ordinances shall be complied with in the erection of said building whether specified herein or not.

(Sign here)

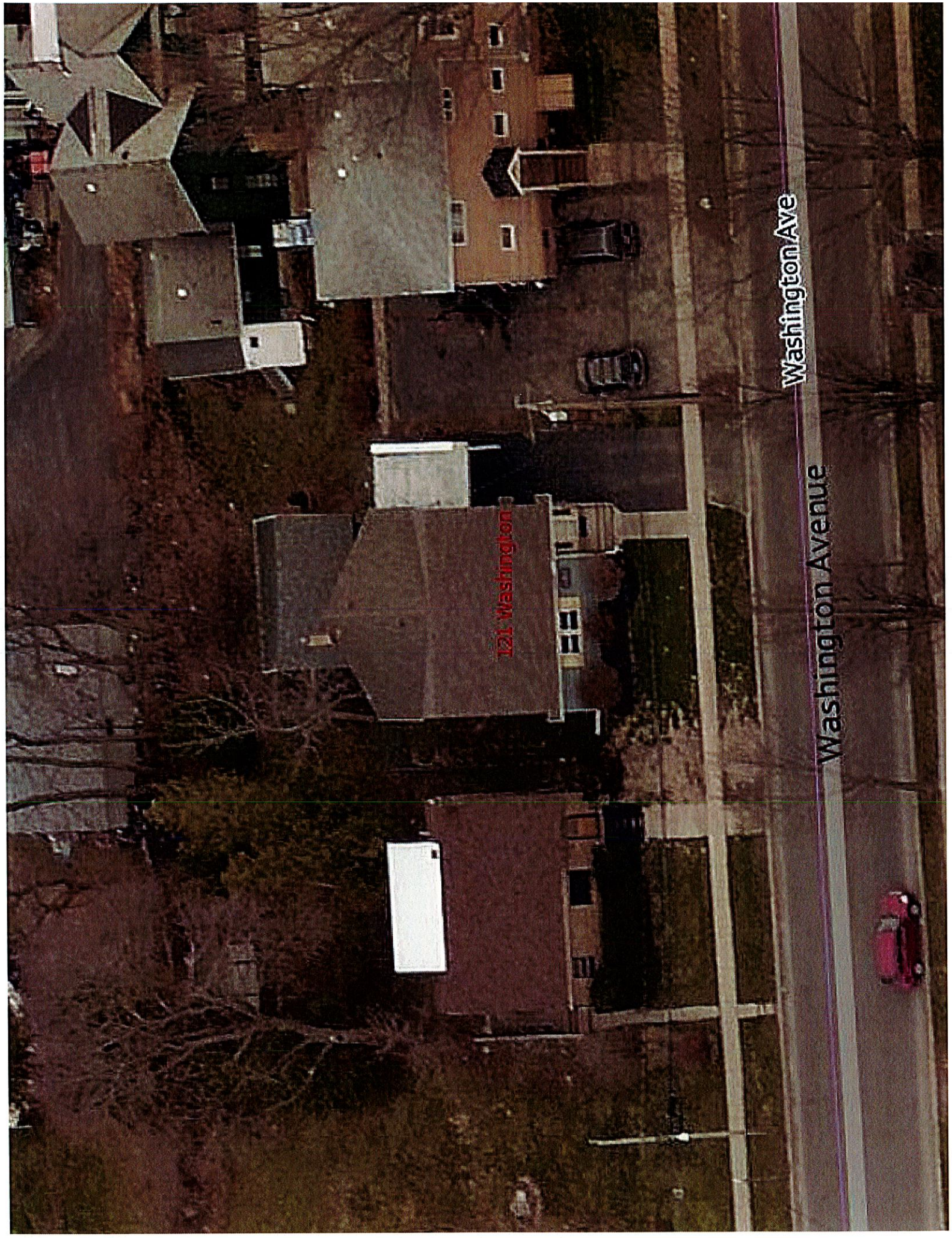
Carl Koester

NOTE: In making application for the erection of buildings, or additions or alterations to buildings, it will be necessary that duplicate tracings, drawn to scale, with India ink on Tracing Cloth, or duplicate Blue Prints, showing the Outline of the Lot with the building or buildings correctly located thereon, be furnished with this application.

Before this building may be used or occupied it will be necessary to obtain a certificate of occupancy, for which a charge of Two Dollars is made.

Zoning Commission

[349-240] M.-M.P.CO.



Washington Ave

Washington Avenue

121 Washington

