



CITY COUNCIL ACTION REPORT

DATE: November 19, 2008

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services
Mark F. Miller, Planning Director

SUBJECT: Amended Consent Order and Judgment – Proposed Parking Lot Expansion and Building Addition, Existing Heartland of Oakland Skilled Nursing Facility, Southeast corner of South Boulevard and Livernois, Section 3 – O-1 and R-1B (File Number SP-883 C)

Background:

- The applicant ManorCare Health Services Inc. intends to amend the consent judgment for the above referenced property to permit the expansion of the existing 120-bed nursing home and rehabilitation facility. The applicant intends to add a 40-bed addition and a 1,593 square foot physical therapy/occupational therapy addition, plus add additional parking spaces. This includes an additional 1.7 acre expansion of the existing property, thus including the entire 5.48 acre “Hyduk” parcel.
- The applicant prepared a Preliminary Site Plan application for the proposed project.
- The existing facility is deficient in the number of parking spaces provided on site, based on parking space demand. Visitors and employees park off site on adjacent properties including across South Boulevard to the north. The applicant prepared a parking study to determine future parking demands and proposes additional parking spaces on site to address this issue.
- The Planning Commission recommended approval of the Preliminary Site Plan at the November 11, 2008 Regular meeting.
- The application is consistent with the general character of the area and compatible with adjacent zoning districts and land uses.

Financial Considerations:

- There are no financial considerations for this item.

Legal Considerations:

- City Council has the authority to act on this application.

Policy Considerations:

- The application is consistent with the following “Outcome Statements” as established at the July 1 Special Council meeting:
 - II. Troy adds value to properties through maintenance or upgrades of infrastructure and quality of life venues.
 - III. Troy is rebuilding for a healthy economy reflecting the values of a unique community in a changing and interconnected world.

Options:

- City Council can approve the amended consent judgment and site plan.
- City Council can approve the amended consent judgment and site plan, with conditions.
- City Council can deny the amended consent judgment and site plan.

Approved as to form and legality:

Lori Grigg Bluhm, City Attorney

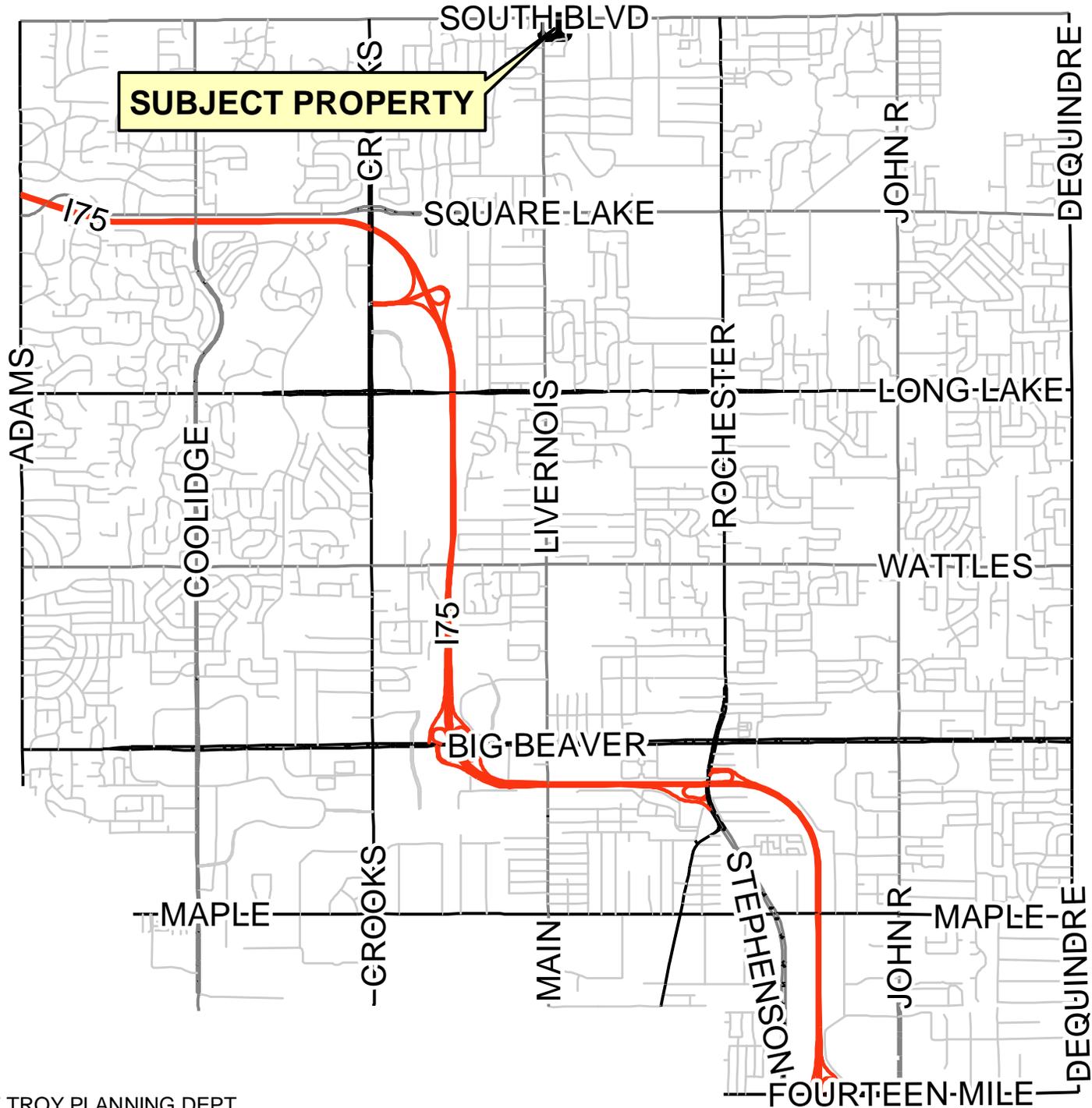
Attachments:

1. Maps.
2. Planning Commission report, dated November 5, 2008.
3. Minutes from the November 11, 2008 Planning Commission Regular meeting.
4. Letter of support from Meadowland Estates Subdivision Homeowners Association.
5. Third Amendment to the Consent Order and Judgment.

Prepared by RBS/MFM

cc: Applicant
File /SP 883-C

CITY OF TROY



SITE PLAN REVIEW & CONSENT JUDGMENT AMENDMENT
ADDITION & PARKING LOT EXPANSION
EX. HEARTLAND OF OAKLAND SKILLED NURSING FACILITY
SE CORNER SOUTH BLVD. & LIVERNOIS
SEC. 3 (SP-883 C)

SUBJECT SITE



W SOUTH BLVD

OMAR CT

NUTHATCH

LIVERNOIS

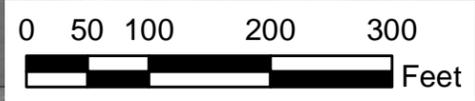
FIELDSTONE

DONALDSON

WHITE TAIL

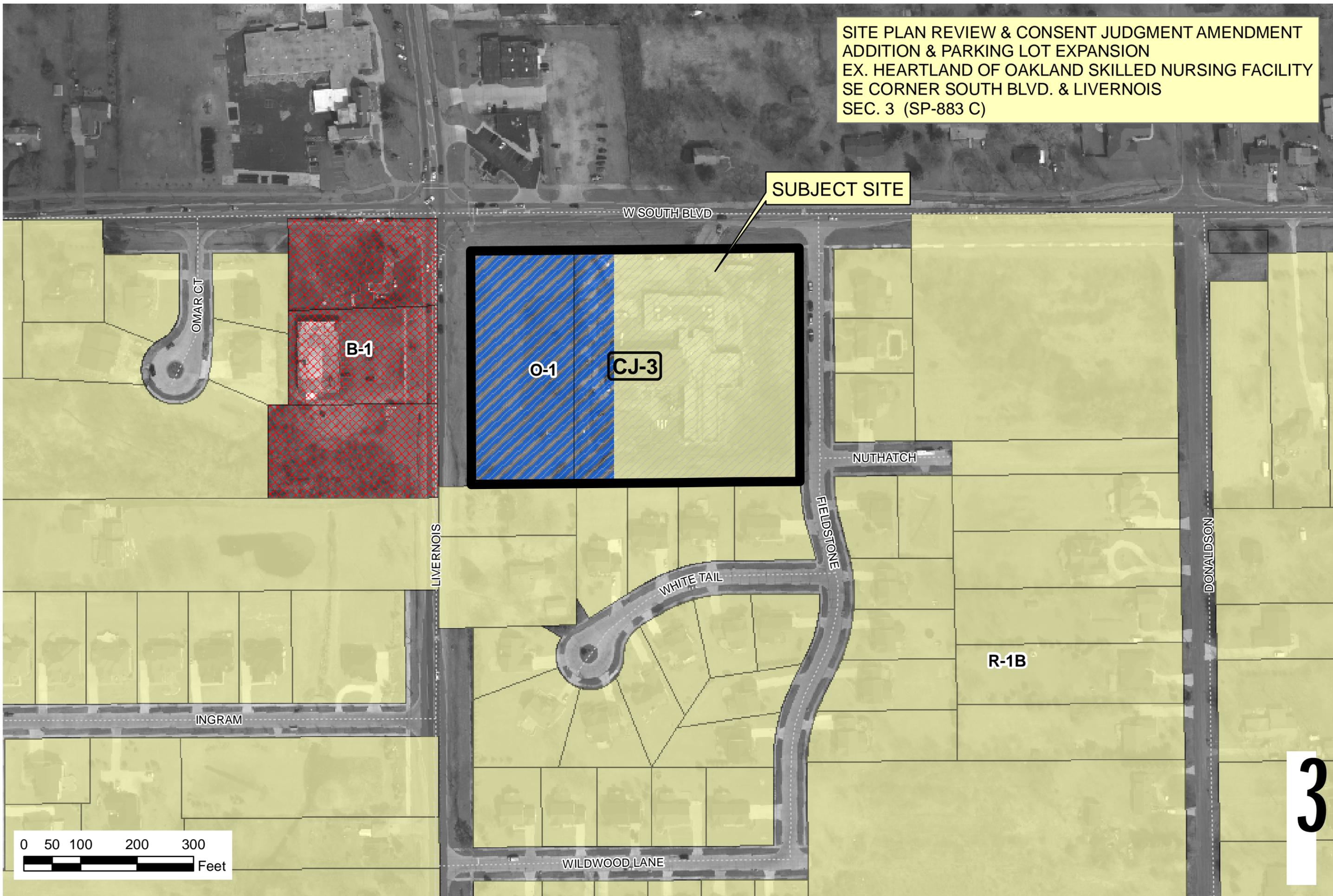
INGRAM

WILDWOOD LANE



SITE PLAN REVIEW & CONSENT JUDGMENT AMENDMENT
ADDITION & PARKING LOT EXPANSION
EX. HEARTLAND OF OAKLAND SKILLED NURSING FACILITY
SE CORNER SOUTH BLVD. & LIVERNOIS
SEC. 3 (SP-883 C)

SUBJECT SITE



DATE: November 5, 2008

TO: The Planning Commission

FROM: Mark F. Miller, Planning Director
R. Brent Savidant, Principal Planner
Ronald Figlan, Planner
Paula Preston Bratto, Planner

SUBJECT: PRELIMINARY SITE PLAN REVIEW (SP 883 C) – Proposed Parking Lot Expansion and Building Addition, Existing Heartland of Oakland Skilled Nursing Facility, Southeast corner of South Blvd. and Livernois, Section 3 – O-1 and R-1B (controlled by Consent Judgment).

GENERAL INFORMATION

Name of Owner / Applicant:

The owner and applicant is ManorCare Health Services Inc.

Location of Subject Property:

The property is located on the southeast corner of South Blvd. and Livernois, in Section 3.

Size of Subject Parcel:

The parcel is approximately 5.48 acres in area.

Proposed Use of Subject Parcel:

The applicant is proposing to expand the existing 120-bed (31,360 square feet) nursing home and rehabilitation facility by adding a 40-bed (16,285 square feet) addition and a 1,593 square foot PT/OT addition.

Parcel History:

The use of the parcel is controlled by a consent judgment, which will need to be amended to accommodate the revisions to the site plan. City Council is responsible for approving the amended consent judgment, which includes Final Site Plan Approval authority. The Planning Commission has been asked to review and make a recommendation on the revised site plan.

This item was on the July 8, 2008 Planning Commission Regular meeting and was postponed to a future meeting at the applicant's request. The applicant subsequently obtained an option to purchase the 1.7-acre parcel to the west, thereby expanding the parcel from 3.8 acres to 5.48 acres. They propose to add an additional 40 beds onto the expanded parcel and add additional parking to accommodate the parking demands for the entire facility.

Current Zoning Classification:

The west approximately 70 feet of the parcel is zoned O-1 Office Building. The balance of the parcel is zoned R-1B One Family Residential. The entire nursing home parcel is to be treated as RM-1 Multiple Family Low Rise Residential under the consent judgment.

Current Use of Subject Property:

A 120-bed nursing home is located on the property.

Current Use of Adjacent Parcels:

North: Animal Medical Center (City of Rochester Hills).
South: Single family residential (Meadowland Estates Subdivision).
East: Single family residential (Meadowland Estates Subdivision).
West: Day care and pet supply store.

Zoning Classification of Adjacent Parcels:

North: B-2 General Business and R-2 One Family Residential (City of Rochester Hills).
South: R-1B One Family Residential.
East: R-1B One Family Residential.
West: B-1 Local Business.

Future Land Use Designation:

The property is designated on the Future Land Use Plan as Low Rise Office.

ANALYSIS

Compliance with the Consent Judgment

The consent order and judgment will need to be amended to include the proposed improvements on the additional 1.7-acre parcel to the west. The development on the original 3.8-acre parcel is required to comply with the provisions of the consent judgment and the provisions of the RM-1 Multiple Family Low Rise Residential Zoning District and the provisions of the approved site plan. The RM-1 provisions have been applied to the entire parcel, including the proposed addition.

Area and bulk requirements of the RM-1 district:

Lot Area: Not applicable in the RM-1 district.
Lot Width: Not applicable in the RM-1 district.
Height: Maximum permitted height is 2 stories.
Setbacks: Front: 50 foot minimum setback required. The building is set back 75 feet however the fixed entrance canopy is set back only 38.33 feet.
Side: 50 foot minimum setback required. 98.08 feet (east) and 71.18 feet (west) provided.
Rear: 50 foot minimum setback required. 70.44 feet provided.
Landscaping: The applicant meets the requirement of at least 800 square feet of lot area and 300 square feet of open space per bed.

Off-Street Parking and Loading Requirements:

The off-street parking requirement for the 160-bed facility is 80 spaces. The applicant proposes 212 spaces. Note that the existing facility was deficient in the number of parking spaces provided on site, and the applicant has addressed this issue by constructing additional parking spaces. A parking study was completed for the applicant by Midwestern Consulting, LLC. The study indicated there were sufficient spaces to accommodate the facility's parking demands. The firm of OHM Engineering Advisors, the City's Traffic Consultant, reviewed the report and agreed that the 212 spaces would accommodate the development.

Vehicular and Non-motorized Access:

Vehicular access is provided by an existing entry drive on South and a proposed drive on Livernois.

There is an 8-foot wide sidewalk along Livernois and South. In addition, 5-foot wide connecting sidewalks have been provided.

Storm Water Detention:

The site plan indicates that underground detention will be provided.

Environmental Provisions:

A screened dumpster is provided on the west side of the existing building.

The application exceeds the minimum 10% landscaping requirement and greenbelt tree requirement.

The applicant indicated that buffering along the southern and eastern property lines was designed with input from abutting property owners, including representatives of the Meadowland Estates Subdivision and the owners of 6908 Livernois.

Natural Features and Floodplains:

There are no significant natural features located on the property.

CITY MANAGEMENT RECOMMENDATION

The proposed development is generally consistent with the Consent Judgment, as amended. City Management recommends approval of the site plan, as submitted.

cc: Applicant
File/ SP-883 C



"Quality Since 1967"

MIDWESTERN CONSULTING

Civil, Environmental and Transportation
Engineers, Planners, Surveyors,
Landscape Architects

August 3, 2008

HCR ManorCare
7361 Calhoun Place, Suite 300
Rockville, MD 20855

Attn: Mr. Brion Harrigan
Manager of Development

Re: Heartland Health Care Skilled Nursing Facility Parking Occupancy and Duration
Study, Troy, Michigan

Dear Mr. Harrigan:

At your request, Midwestern Consulting, LLC, has examined the operation of the parking lot at the Heartland Health Care Center in the City of Troy. Please recall that you asked us to determine whether the current parking facility is sufficiently sized to accommodate existing parking demands during the peak period of use. You also requested that we provide an opinion regarding the total number of parking spaces that would be needed to accommodate employees and visitors associated with the 40-bed addition currently being proposed.

In July of 2008, we observed parking patterns for the 100 marked parking spaces adjacent to the facility between the hours of 2:00 p.m. and 5:00 p.m. We also observed parking patterns across South Blvd in the paved parking lot of the Elk's Lodge and adjacent gravel parking lot, which we understand is used by your employees for long-term parking needs. We recorded the last three digits of each vehicle parked in a space every hour during the study period. From this data, we are able to obtain statistics regarding parking space turnover rates, parking duration and parking demand, and determine how these statistics vary over the study period. Please note that the time period of the study is the peak traffic period for the facility - and not necessarily the peak traffic period for the adjacent street traffic.

Parking occupancy in the 100-space main parking lot ranged from 58 percent to 95 percent during the study period. The 19 spaces used in the Elk's paved parking lot were occupied between 86 percent and 100 percent. The gravel parking lot did not have designated parking spaces; however, we were able to identify as many as 21 available parking spaces with occupancies ranging between 52 percent and 100 percent during the study. When all parking areas are considered together, there are a total of 140 parking spaces available at all locations.

The total occupancy of all spaces ranged from 59 percent (75 occupied spaces) to 96 percent (123 spaces). The average occupancy was 101 spaces during the study period. It is a common practice to provide a parking facility with sufficient spaces to accommodate the peak demand and allow for a parking reserve of between 5 and 10 percent. The reserve is used to handle peak parking demands and avoid having vehicles waiting in aisles for a vehicle to exit the parking lot.



Mr. Brion Harrigan
August 3, 2008
Page 2

The occupancy study indicates that a total of 140 parking spaces should be provided to accommodate the existing parking demand with no reserve. If a 5 percent parking space reserve is to be provided, then the total number of on-site parking spaces that will be needed is 147.

The proposed addition will increase the number of beds by 40 units. There will also be an increase in employees to care for the additional patients. HCR ManorCare has indicated that the addition will be staffed by a total of 35 new staff. Twenty (20) of these will work during the peak shift corresponding to the peak hours included in the parking study. The additional staff will require one parking space each during the peak shift and each two additional beds will require one additional parking space. When these new parking spaces are added to the number needed to accommodate current staffing and resident parking needs, a total parking supply of 180 spaces will be needed. A recommended parking supply (including a 5 percent parking space surplus) will generate a total of 190 parking spaces. It is my understanding that the site plan provides a total of 216 parking spaces. Thus, it is my opinion that the proposed parking lot will contain sufficient parking spaces to accommodate future parking needs and provide a sufficient reserve.

I hope that this information is helpful as you continue your dialogue with the City of Troy. Please contact me should you have any questions or concerns regarding this finding.

Very Truly Yours,

Midwestern Consulting, LLC.



James J. Valenta, P.E.
Senior Project Manager

xc : Mr. Peter Deloof



October 10, 2008



Mr. William Huotari, PE
Deputy City Engineer
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

Subject: Review of Heartland Healthcare Parking Analysis
OHM JN: 0128-08-0060

Dear Mr. Huotari:

As requested, we have reviewed the Heartland Healthcare Parking Analysis prepared by Midwestern Consulting, Inc (MCI). We agree with the findings that the new parking lot will provide enough parking spaces to adequately serve the parking demand.

The MCI parking analysis first determined the existing parking demand by documenting parking patterns between 2:00 and 5:00 p.m. It was determined that the maximum occupancy was 123 spaces distributed between the existing parking lot, the Elk's Lodge paved parking lot on the north side of South Street and the adjacent gravel parking lot. The future parking demand is based on the existing maximum occupancy plus the added parking demand for the 40-bed addition. Parking for the addition was based on number of added beds and number of employees per shift. The calculated demand was found to be 180 spaces. Adding a surplus factor of 5%, MCI indicated the site would need 190 spaces.

The revised parking lot layout provides for 212 parking spaces including 8 barrier free spaces. The new parking lot should provide enough spaces to serve the demands of the existing site and addition.

To further check the parking demand, OHM referred to *ITE's Parking Generation 3rd Edition*. From our understanding the existing and proposed facility acts as more than just the typical nursing home. The site is also used as an outpatient rehabilitation facility. To account for both a nursing home and rehab facility, we looked at land use codes for each. Under the assumption that the site would be used for 60% nursing home and 40% rehab facility, we found the parking demand to be approximately 192 spaces. The rehab facility generates about two-thirds of the required parking.

Therefore, we believe that the proposed number of parking spaces for the existing and proposed addition is adequate to serve the parking demand. Please contact me if you have any questions regarding our findings.

Sincerely,
Orchard Hiltz & McCliment, Inc.

A handwritten signature in black ink, appearing to read "S. Loveland", is written over the typed name.

Steven M. Loveland, PE, PTOE

SITE PLAN REVIEW

10. SITE PLAN REVIEW (SP 883-C) – Proposed Addition and Parking Lot Expansion and Consent Judgment Amendment, Heartland Health Care Skilled Nursing Facility (925 South Blvd.), South side of South Blvd., East of Livernois, Section 3, Zoned R-1B (One Family Residential) and O-1 (Low Rise Office) Districts (controlled by Consent Judgment)

Mr. Savidant presented a summary of the Planning Department report on the proposed site plan, and reported it is the recommendation of City Management to approve the site plan as submitted. Mr. Savidant addressed the placement of speed humps along the south parking thoroughfare lanes of the Heartland Health property as a deterrent to cut-through traffic.

Peter DeLoof, attorney, 301 N. Main Street, Ann Arbor, was present to represent the petitioner. Also present were Brion Harrigan of HCR ManorCare and George Ostrowski of Nowak & Fraus. A colored rendering was displayed. Mr. DeLoof addressed conversations with the neighboring property owners and homeowners association. He indicated groundbreaking is projected for early spring.

Chair Schultz opened the floor for public comment.

Jill Duggan of 4702 Rivers Edge, Troy, was present. Ms. Duggan spoke unfavorably of the existing parking situation.

David Merrill of 6908 Livernois, Troy, was present. Mr. Merrill expressed his concern with cut-through traffic, and spoke favorably of the petitioner working with this concern.

Chair Schultz closed the floor for public comment.

Resolution # PC-2008-11-134

Moved by: Tagle
Seconded by: Strat

RESOLVED, That the Planning Commission recommends to City Council that Preliminary Site Plan Approval, pursuant to a proposed Amendment to Consent Judgment, for a revised site plan, located at the southeast corner of South Boulevard and Livernois Road, being 5.48 acres in size, within Section 3, within the R-1B and O-1 zoning districts, be approved.

Yes: All present (6)
Absent: Maxwell, Vleck, Wright

MOTION CARRIED

Agenda item #10
P.C. 2008.11.11

LETO & ASSOCIATES, P.C.

Attorneys & Counselors

2833 Crooks Rd.

Suite # 104

Troy, MI 48084

e-mail - p.letto@lettoassociates.com

Website: lettoassociates.com

TELEPHONE

248-614-9600

FACSIMILE

866-791-5087

REC'D

NOV - 7 2008

PLANNING DEPT.

November 6, 2008

City of Troy Planning Commission
500 W. Big Beaver Rd.
Troy, MI 48084-5285

In Reference to: **Heartland Health Project; Owner HCR Manor Care
Proposed Additions to its project: near the SE Corner of
Livernois & South Blvd. - Plans dated June 11, 2008
Our File # 75-02-0011**

To the Commission:

Please be advised that the undersigned is retained legal counsel for the **Meadowland Estates Homeowners Association** (the "Association").

On or about July 15, 2008, Mr. DeLoof forwarded to this office and to the Meadowland Board copy of the final, proposed revised site plan for the proposed additions, prepared by Novak & Fraus, Consulting Engineers, which is a one (1) page blueprint depicting the proposed changes. The Blueprint is identified as "The Preliminary Grading Plan" and dated June 11, 2008.

Please be further advised the Association's Board's representative has met with the Heartland Health's owner's representatives to review the proposed updated, amended site plan for the existing project's intended additions and to offer their requested changes.

Please be further advised the Association's Board has met to review the proposed updated site plan for the proposed addition to the project.

Subsequent to that Board meeting, the Association Board has authorized me to convey to the Commission that the Association has endorsed the "The Preliminary Grading Plan," dated June 11, 2008, with the following requested modification.

City of Troy Planning Commission
November 6, 2008
Pg. 2

In view of the obvious potential for Northbound Livernois Avenue drivers seeking to turn Eastbound on South Boulevard to utilize the south and east parking thoroughfare lanes of the Heartland Health property to avoid Northbound back up Livernois traffic, the Board has requested that Heartland Health place at least three "Speed Bumps" spaced along the south parking thoroughfare lanes of the Heartland Health property as a deterrent to such "shortcutting."

Heartland Health has endorsed and has agreed to install the requested "Speed Bump" solution.

Therefore, based upon that requested modification endorsement by Heartland Health, please be advised the Association gives its unqualified endorsement to ***the June 11, 2008 Site Plan Addition*** for the project. Should any additional information be required from the Association, please do not hesitate to contact me.

Sincerely,



Peter Leto, Attorney for the
Meadowland Estates Homeowners Association

cc. Michael Toger
Peter H. DeLoof, Esq.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RODNEY D. HYDUK, DDS, MSD,
Trustee of the Rodney D. Hyduk
Trust Agreement, dated 2/19/82,
as amended and successors in trust,
successor to Rodney D. Hyduk,

Case No. 83-265736-CZ
HON. JOHN J. MACDONALD

Plaintiff,

v.

CITY OF TROY, a Michigan
Municipal corporation,

Defendant,

and

HEARTLAND-OAKLAND MI, LLC,
a Delaware limited liability company,
and successor in interest to
HEALTHCARE AND RETIREMENT
CORPORATION OF AMERICA,
an Ohio corporation,

Intervening Plaintiff.

KALAS KADIAN, P.L.C.
By: THOMAS KALAS (P41805)
Attorney for Plaintiff
40900 Woodward Ave., Ste. 315
Bloomfield Hills, MI 48304
(248) 203-7174

LORI GRIGG BLUHM (P46908)
CHRISTOPHER J. FORSYTH (P63025)
Attorneys for Defendant
500 W. Big Beaver Road
Troy, Michigan 48084
(248) 524-3320

DeLOOF, HOPPER, DEVER & WRIGHT, PLLC
By: PETER H. DeLOOF (P12654)
Attorney for Intervening Party
301 N. Main Street, Suite 250
Ann Arbor, Michigan 48104
(734) 994-1295

THIRD AMENDMENT TO THE CONSENT ORDER AND JUDGMENT

At a session of said Court held
in the City of Pontiac,
County of Oakland, State of Michigan

on _____, 2008

Present: Hon. John J. MacDonald, Circuit Court Judge

Whereas, Plaintiff RODNEY D. HYDUK, DDS, MSD, Trustee of the Rodney D. Hyduk Trust Agreement, dated February 19, 1982, as amended, and successors in trust, successor to Rodney D. Hyduk (hereinafter referred to as "Hyduk") was the previous owner of 5.48 acres of real property, which is legally described in the attached Exhibit A, Parcel I.D. No. 20-03-102-001 (hereinafter referred to as the "Parcel"), located in Troy, Oakland County, Michigan, which was the subject of the December 26, 1983 Consent Order and Judgment; and

Whereas, Intervening Plaintiff HEALTHCARE AND RETIREMENT CORPORATION OF AMERICA, an Ohio corporation (hereinafter referred to as HRCA) purchased the east 3.78 acres of the Parcel previously owned by Hyduk which is legally described in the attached Exhibit B (hereinafter referred to as the "Property"); and

Whereas, Plaintiff Hyduk retained the westernmost 1.70 acres of the Parcel (hereinafter referred to as the Remainder Property), which 1.70 acres are legally described in the attached Exhibit C; and

Whereas, Heartland-Oakland MI, LLC, a Delaware limited liability company, (hereinafter referred to as "Heartland") is the successor in ownership interest of HRCA for the Property and has entered into a Purchase Agreement with Hyduk to acquire the Remainder Property. The Property and the Remainder Property when combined (hereinafter referred to as the "Combined Property") is legally described on the attached Exhibit D; and

Whereas, the First and Second Amendments to the Consent Order and Judgment were entered by this Court which allowed the Intervening Plaintiff to develop the Property in accordance with proposed site plans submitted to the Defendant City of Troy which were attached to the respective First and Second Amendments to the Consent Order and Judgment. Development of those respective site plans required amendments to the Consent Order and Judgment of December 26, 1986, which is controlling for the Property; and

Whereas, the parties have agreed to further amend certain provisions of the Consent Order and Judgment as amended by the First and Second Amendments thereto, to allow for the revision of the previous site plans for Intervening Plaintiff to expand the existing one hundred twenty (120) bed skilled nursing home and rehabilitation facility by adding a forty (40) bed, 16,285 square foot addition, a 1,593 square foot physical and occupational therapy addition, and additional parking spaces for a total of 212 parking spaces on the Combined Property.

Now Therefore, pursuant to stipulation of the parties, by and through their respective counsel, and this Court being otherwise duly advised in the premises,

IT IS HEREBY ORDERED that all terms and conditions set out in the December 26, 1986 Consent Order and Judgment, the September 27, 2005 First Amendment to Consent Order and Judgment, and the November 27, 2006 Second Amendment to the Consent Order and Judgment, between the parties, which are incorporated herein by reference, shall remain in effect, unless expressly modified by this Third Amendment to the Consent Order and Judgment (Third Amendment); and

IT IS FURTHER ORDERED that the Intervening Plaintiff be allowed to revise the previous site plans to expand the existing skilled 120 bed nursing home and rehabilitation facility. The additions and the parking spaces shall be developed on the Combined Property so as to comply with the provisions of the revised final site plan for the Combined Property, which is attached as

Exhibit E and incorporated herein by reference ("Site Plan"), and which Site Plan was duly approved by the Troy City Council at its City Council meeting of November 24, 2008.

IT IS FURTHER ORDERED that Heartland shall install a sewage grinder on the Combined Property as depicted on the Site Plan to minimize the discharge of garbage and other waste into the sanitary sewer system on or before the first to occur of (a) the grant to Intervening Plaintiff of a Temporary Certificate of Occupancy for the approved additions, or (b) twelve (12) months from the date this Third Amendment to the Consent Order and Judgment is entered with this Court.

IT IS FURTHER ORDERED that a certified copy of this Third Amendment to the Consent Order and Judgment, including Exhibits, shall be recorded in the Oakland County Register of Deeds against the Combined Property.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action.

John J. MacDonald
Circuit Court Judge

Approved as to form, substance and entry:

CITY OF TROY, Defendant

Thomas Kalas (P41805)
Attorney for Plaintiff, Rodney D. Hyduk
Trust u/a/d 2/19/82

By: _____
Christopher J. Forsyth
Its: Assistant City Attorney

Peter H. DeLoof (P12654)
Attorney for Heartland-Oakland MI, LLC

Rodney D. Hyduk Trust u/a/d/ 2/19/82

By: Rodney D. Hyduk, Trustee

After recording return to:

Peter H. DeLoof, Esq. (P12654)
DeLoof, Hopper, Dever & Wright, PLLC
301 N. Main Street, Suite 250
Ann Arbor, Michigan 48104
Phone: (734) 994-1295

Plans are included with
Council agenda packets
and available for viewing at the
City Clerk's Office and the Troy Public Library