



LANDMARK RECOVERY

September 27, 2022

Mr. Skylor Miller
Planning & Zoning Administrator
Sycamore Township
8540 Kenwood Road
Cincinnati, Ohio 45236

RE: Case# 2022-11MA - Major Adjustment to the PUD for 4650 E. Galbraith Road
Cincinnati, OH 45236 – **Request for Reasonable Accommodation**

Dear Mr. Miller,

This letter, along with the application and requested documentation which was previously submitted on July 18, 2022 and application supplement submitted on August 31, 2022, shall serve as Landmark Recovery's request for a major adjustment to the previously approved Planned Unit Development for the property located at 4650 East Galbraith Road, Cincinnati, OH 45236 ("Property") and corresponding parking variance. The plan was initially adopted by the Hamilton County Commissioners in February of 1997 (HCC Resolution No. 97-1). Landmark Recovery ("Applicant") requests that the plan be amended to permit the Proposed Use (as defined herein).

Public hearings were held before the Sycamore Township Zoning Commission ("Commission") on August 8, 2022 and September 12, 2022, to address Applicant's request for a major adjustment to the existing PUD and parking variance. Landmark Recovery is proposing to convert the Property, which most recently operated as a 119 bed assisted living/memory care community, to a 160 bed inpatient substance use disorder treatment facility. A detailed narrative describing the scope of services proposed to be provided by Landmark Recovery is attached to the previously submitted application. In order to address parking concerns expressed by the Commission during the first public hearing on September 12, 2022, Applicant changed its initial proposal to exclude its outpatient services from this facility and only provide inpatient services, which would allow for an increased bed count from the initial 136 to 160 ("Proposed Use").

The Sycamore Township Zoning Resolution ("Resolution") does not have a specific use for Applicant's Proposed Use as an inpatient substance use disorder treatment facility. Accordingly, Sycamore Township has determined the Proposed Use is most similar to a hospital, which the Resolution defines as *"an institution providing health services and medical or surgical care to persons, primarily temporary in-patients, with illness, disease, injury, deformity, or other physical or mental condition, and including as an integral part of the institution related facilities such as laboratories, out-patient facilities or training facilities."*

Applicant previously requested a variance in the number of parking spaces required for a hospital use which is one space per bed under the Resolution and has shown that the parking requirements for a hospital use should not apply to the Proposed Use for a variety of reasons, including: (i) Applicant's patients are not permitted to leave a vehicle on site during the course of treatment; (ii) the maximum number of employees that would be on site at the Property during peak hours is 56; and (iii) visitor hours are not scheduled during peak hours but only on weekends and in limited circumstances because Applicant has transitioned to telehealth for family therapy sessions, and in most instances, these sessions are scheduled and held via the Teams platform to allow for flexibility with family members' schedules and locations. Applicant has shown that in this instance, the parking requirement of one parking space per bed is unreasonable as applied to them because Applicant is very different from a conventional hospital and does not have transitory patients and visitors on its premises.

Additionally, Applicant has taken measures to attempt to alleviate the Commission's concerns regarding parking, including: (i) receipt of a letter of intent from the owners of the adjacent property to the west to lease additional parking spaces as needed (up to 9 additional spaces); and (ii) altering its business plan to eliminate the provision of its intensive outpatient program. Even though Applicant has provided a variety of reasons the existing parking requirements should not be applicable and has gone so far as to propose measures to work with the municipality and help alleviate any parking concerns, the variance request has been disregarded, as still the biggest issue with Applicant's proposal for the Sycamore Township Zoning Commission as expressed at the last hearing is the number of existing parking spaces at the Property in comparison to the amount required for a hospital use. Accordingly, Applicant submits this request for reasonable accommodation and supplemental proposal to add parking spaces at the Property.

Request for Reasonable Accommodation

In light of the information already provided and the fact that there is no use specific to the Proposed Use, Applicant is requesting a reasonable accommodation to be classified as a nursing home for purposes of parking. In evaluating applicability of a zoning regulation, local governments must be careful to fully consider applicable federal disability protections. The administration of zoning laws must comply with the Americans with Disabilities Act ("ADA"). *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 44–46 (2d Cir.1997).

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Under the ADA, a "disability" means "a physical or mental impairment that substantially limits one or more of the major life activities." *Id.* § 12102(1)(A). Further, drug addiction and alcoholism are "impairments" under the ADA. *Regional Econ. Cmty. Action Program, Inc. v. City of Middletown*, 281 F.3d 333, 344 (2d Cir. 2002).

Under the regulations interpreting Title II, “a public entity shall make reasonable modifications in policies, practices, or procedures when the modification is necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program or activity.” 28 C.F.R. § 35.130(b)(7). Therefore, an accommodation on the part of the entity only needs to be “reasonable.” *Johnson v. City of Saline*, 151 F.3d 564, 571 (6th Cir. 1998). The Sixth Circuit has decided that “an accommodation is reasonable unless it requires ‘a fundamental alteration in the nature of a program’ or imposes ‘undue financial and administrative burdens.’ ” *Smith & Lee Assocs. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir. 1996) (quoting *Southeastern Community College v. Davis*, 442 U.S. 397, 410, 412 (1979)). Here, Applicant’s requested accommodation—to be permitted to follow the parking requirements of a nursing home—is reasonable because it does not impose an undue financial or administrative burden on Sycamore Township, nor does it require a fundamental alteration to the Resolution. Courts, including the Sixth Circuit, accept that exceptions or variances to local zoning ordinances may be a reasonable accommodation. *Lake-Geauga Recovery Ctrs., Inc. v. Munson Twp.*, Case No. 1:20-cv-02405 (N.D. Ohio Mar. 19, 2021).

Because there is no use included in the Resolution specifically for applicant’s Proposed Use, Applicant has been classified under the general definition of a hospital and forced to comply with parking standards that are unnecessary and discriminatory for the purposes set forth herein, even though Applicant has sought a variance to reduce the number of required parking spaces and sought alternative solutions. This has led to Applicant now seeking reasonable accommodation to be permitted to follow the parking requirements of a nursing home, and Sycamore Township would be hard pressed to find that there is any fundamental alteration of the Resolution or undue financial or administrative burden on Sycamore Township. Therefore, Applicant’s reasonable accommodation request shall be granted.

Required Parking

Accordingly, the following parking calculation shall be used:

- Nursing Home use requires 1 parking space for every 6 beds + 1 parking space per employee
 - $160 \text{ beds} / 6 = 27 + 56 \text{ employees} = \mathbf{83 \text{ parking spaces}}$

The Property has a total of 63 existing parking spaces, per the site plan attached to the initial application submitted previously.

Additional Parking

Applicant now proposes to add 22 additional parking spaces to the site as reflected on the site plan prepared by civil engineer and architect, Randal Merrill of MSP Design, which is attached

hereto as Exhibit A. The addition of 22 parking spaces brings the total parking count to 85 and above the required 83 spaces needed for the reasonable accommodation request. Mr. Merrill is available to testify at the hearing before the Board of Trustees regarding questions related to Applicant's proposal to include additional parking spaces on site.

Conclusion

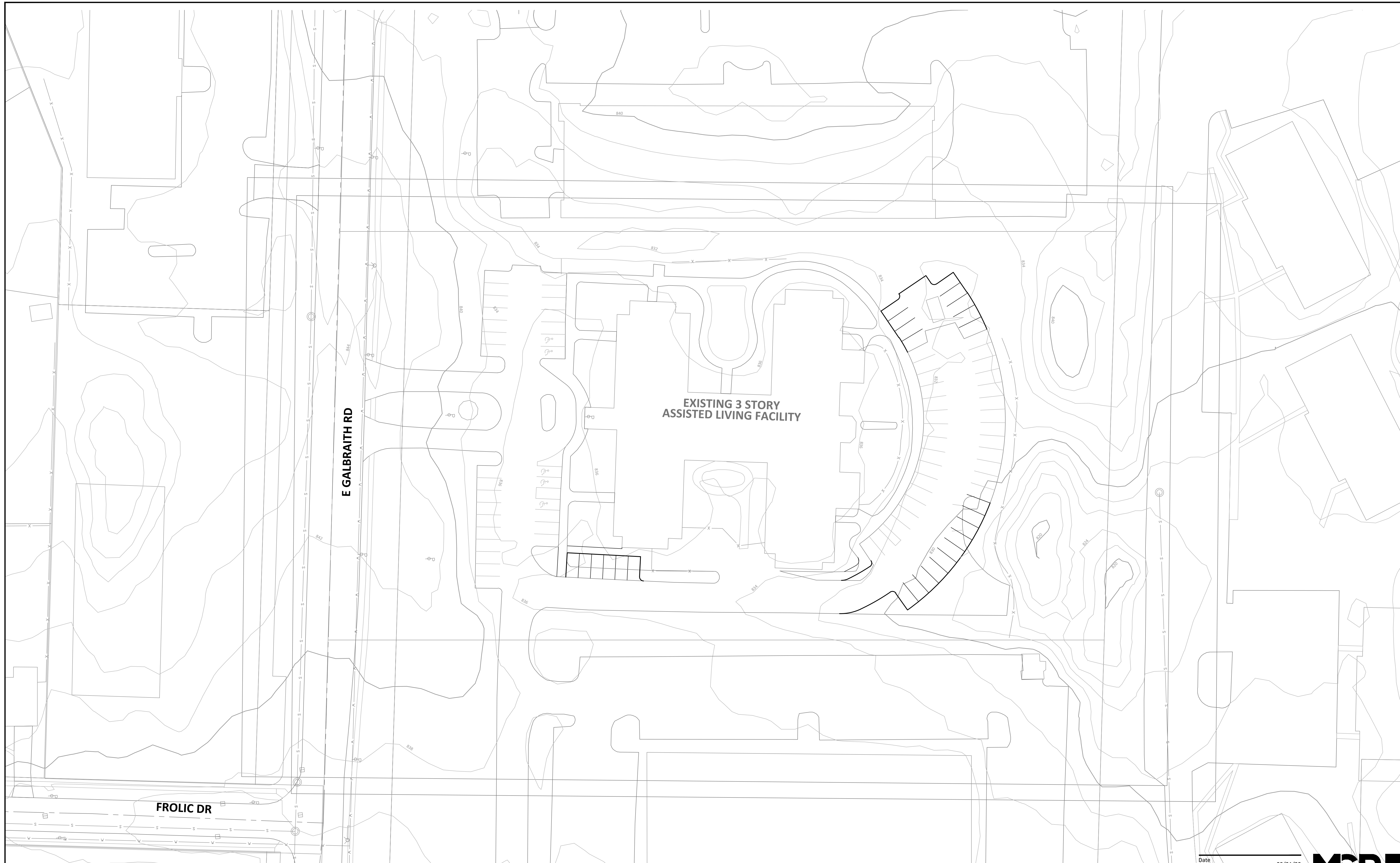
Given the fact that Applicant's Proposed Use is not specifically included in the Resolution, Applicant has been classified as a hospital by Sycamore Township (as that was deemed the most similar use under the ordinance) and Sycamore Township has disregarded Applicant's variance request and efforts to address parking concerns, Applicant has made a reasonable accommodation request pursuant to Title II of the ADA, asking to be permitted to follow the parking requirements of a nursing home. As previously stated, the Sixth Circuit has decided that "an accommodation is reasonable unless it requires 'a fundamental alteration in the nature of a program' or imposes 'undue financial and administrative burdens.'" see *Smith & Lee Assocs.* at 795. Sixth Circuit and Ohio case law is also clear that that exceptions or variances to local zoning ordinances may be a reasonable accommodation. Applicant's request neither fundamentally alters the Sycamore Township Zoning Resolution nor imposes an undue financial or administrative burden on the Township and accordingly shall be approved in conjunction with approval of the major adjustment to the existing PUD.

Sincerely,

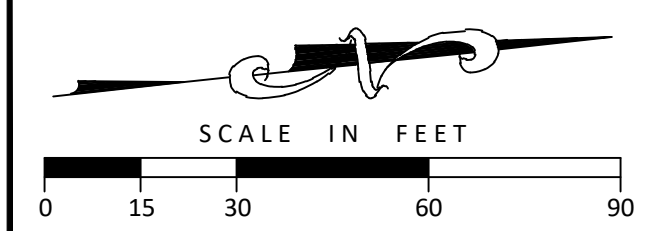
A handwritten signature in black ink that reads "Michelle Lubbert". The signature is written in a cursive, flowing style.

Michelle Lubbert for Applicant, Landmark Recovery

Exhibit "A"



PARKING IMPROVEMENTS FOR 4650 E GALBRAITH ROAD SYCAMORE TOWNSHIP HAMILTON COUNTY, OHIO



Date	09/21/22
Scale	AS NOTED
Drawn By	BC
Proj. Mgr.	CSW
Survey Database	N/A
DWG	22540004-PRE
X-Ref(s)	
Project Number	22540.00
File No.	Sheet No. 1 / 1

MSP
DESIGN
McGill Smith Punshon

- Architecture
- Engineering
- Landscaping Architecture
- Planning
- Surveying

3700 Park 42 Drive
Suite 190B
Cincinnati OH 45241
Phone 513.759.0004
www.mspsdesign.com

N:\Architectural Projects\2200122540\CAD\22540004-PRE.dwg, PARKING_30_9/23/2022 11:10:53 PM, branc, 1:1