

**CHARTER TOWNSHIP OF COMSTOCK
KALAMAZOO COUNTY, MICHIGAN**

**AMENDMENT TO COMSTOCK TOWNSHIP ZONING MAP AND ORDINANCE
TO REFLECT A CONDITIONAL REZONING**

ORDINANCE NO. 523

Adopted: January 3, 2022

Effective: Eight days after publication after adoption

An ordinance amending the Comstock Charter Township Zoning Ordinance, by amending the Zoning Map incorporated therein, to reflect a conditional rezoning agreement respecting certain properties in Land Section 5, from a "B-3, General Business" zoning classification to a "RM, Multiple Family Residential" zoning classification; and to repeal all ordinances or parts of ordinances in conflict herewith, and to provide an effective date.

**CHARTER TOWNSHIP OF COMSTOCK
KALAMAZOO COUNTY, MICHIGAN**

ORDAINS:

SECTION I
CONDITIONAL REZONING OF PROPERTIES IN LAND SECTION 5

The Zoning Map as incorporated by reference in the Comstock Charter Township Zoning Ordinance is hereby amended as to conditionally rezone properties comprising 31-acres on the south side of East G Avenue and southeast side of Gull Road, in Land Section 5, from "B-3, General Business" zoning classification to "RM, Multiple Family Residential" zoning classification, which properties are further described as:

SEC 5-2-10 COM AT N1/4 POST SEC 5 TH S 0DEG 26MIN E ALG N&S1/4 LI
SD SEC 408.05 FT FOR BEG TH S 88DEG 02MIN 55SEC W 386.24 FT TH N
37DEG 30MIN 20SEC W 310 FT TO CTR LI HWY M-43 TH SWLY ALG CTR LI
SD HWY 150 FT TH S 37DEG 30MIN 20SEC E 460 FT TH S 52DEG 29MIN
40SEC W 231.4 FT TH S 0DEG 26MIN E 836.4 FT TO S LI NFR1/2 NWFR1/4
SD SEC TH N 89DEG 55MIN 37SEC E THEREON 600 FT TO SD N&S1/4 LI
TH N 0DEG 26MIN W THEREON 1200 FT TO BEG EXC NWLY 60 FT FOR
HWY.

AND

SEC 5-2-10 BEGINNING AT THE NORTH QUARTER POST OF SECTION 5, TOWN 2 SOUTH, RANGE 10 WEST; THENCE SOUTH 89°-56'-07" EAST ALONG THE NORTH LINE OF SAID SECTION 235.57 FEET; THENCE SOUTH 00°-21'-51" EAST PARALLEL WITH THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION 668.00 FEET; THENCE SOUTH 89°-56'-07" EAST 167.00 FEET; THENCE SOUTH 00°-21'-51" EAST PARALLEL TO THE NORTH AND SOUTH QUARTER LINE, 940.04 FEET TO THE SOUTH LINE OF THE NORTHWEST FRACTIONAL QUARTER SECTION 5; THENCE NORTH 89°-59'-06" WEST ALONG SAID LINE 402.57 FEET; THENCE NORTH 00°-21'-51" WEST ALONG THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION 1608.39 FEET TO THE POINT OF BEGINNING.

AND

SEC 5-2-10 COMMENCING AT THE NORTH QUARTER POST OF SECTION 5, TOWN 2 SOUTH, RANGE 10 WEST; THENCE SOUTH 89°-56'-07" EAST ALONG THE NORTH LINE OF SAID SECTION 235.57 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°-56'-07" EAST ALONG THE NORTH LINE OF SAID SECTION 167.00 FEET; THENCE SOUTH 00°-21'-51" EAST PARALLEL WITH THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION 668.00 FEET; THENCE NORTH 89°-56'-07" WEST 167.00 FEET; THENCE NORTH 00°-21'-51" WEST PARALLEL TO THE NORTH AND WEST QUARTER LINE OF SAID SECTION 668.00 FEET TO THE POINT OF BEGINNING.

Tax parcels #3907-05-135-030, 3907-05-205-021 and 3907-05-205-050

Said rezoning is further conditioned on the mutual signing and recording of a certain document, entitled "Conditional Rezoning Agreement" for the above-described property and is subject to those conditions which are established within the document, an unofficial and unexecuted copy of which is attached hereto as Exhibit "A", said conditions to be fully incorporated as if restated herein.

SECTION II **SEVERABILITY**

Should any section, clause or provision of this Ordinance be declared unconstitutional, illegal or of no force and effect by a court of competent jurisdiction, then and in that event, such portion thereof shall not be deemed to affect the validity of any other part or portion of this Ordinance.

SECTION III
REPEAL OF CONFLICTING ORDINANCES

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION IV
EFFECTIVE DATE

This Ordinance shall take effect eight days after publication after adoption.

Nicole Beauchamp, Clerk
Charter Township of Comstock

Exhibit A
Conditional Rezoning Agreement

CONDITIONAL REZONING AGREEMENT

THIS CONDITIONAL REZONING AGREEMENT, dated _____, 2022, (“Agreement”), is between REDWOOD USA LLC, an Ohio limited liability company, or its nominee, whose address is 7007 East Pleasant Valley Road, Independence, Ohio 44131 (“Redwood”) and THE CHARTER TOWNSHIP OF COMSTOCK, a Michigan Municipal Corporation whose address is 6138 King Highway, P.O. Box 449, Comstock, Michigan 49041 (“Township”) and is as follows:

RECITALS

- A. Redwood is the contract purchaser of certain real property located at the Southeast Corner of Gull Road and East G Avenue, within the Charter Township of Comstock, Kalamazoo County, Michigan (Parcel Nos. 3907-05-135-030, 3907-05-205-021 and 3907-05-205-050) and more fully described in the attached **Exhibit A** (the “Property”). Redwood intends to assign its agreement to purchase the property to a nominee at the closing.
- B. Redwood intends to develop the Property as a "Multiple Dwelling Unit" development (the "Project") and requested rezoning of the Property from the B-3, General Business District classification to the RM, Multiple Family Zoning District classification as permitted generally by the Michigan Zoning Enabling Act, 2008 PA 110, Public Act No. 110 of 2006, as amended (the "Act") and as permitted under the Comstock Township Zoning Ordinance (the "Zoning Ordinance").
- C. On October 5, 2021, Redwood submitted a written application for a conditional rezoning, pursuant to Section 405 of the Act and Article 27.50 of the Zoning Ordinance, voluntarily offering certain conditions to rezone the Property from the B-3, General Business District classification to the RM, Multiple Family Zoning District, including, among other conditions, this Agreement.
- D. The Township Planning Commission on October 28, 2021 held a Public Hearing reviewing the application and voted to recommend approval of the request for conditional rezoning based upon this Agreement.
- E. The Township Board, on January 3, 2022 voted to approve the request for conditional rezoning to amend the Township's Zoning Map based upon the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants set forth in this Agreement, the Township and Redwood agree that the Property is rezoned to the RM, Multiple Family Zoning District Classification, in compliance with the Zoning Ordinance and Michigan law, and is subject to the following numbered conditions and this Agreement:

1. Limited Permitted Uses - The future use of the Property shall be limited to only residential “Multiple Dwelling Units” under the RM Zoning District, along with the typical ancillary, accessory and related uses and buildings such as leasing offices, maintenance garages, mail kiosks, and models. All other permitted uses and special uses in the RM Zoning District will be prohibited. The prohibited uses include the following: Two family dwellings, Tourist Homes, Lodging Houses, Boarding Homes; Places of Worship; Private Schools; Colleges and Universities; Convalescent and Nursing Homes or Hospices; Daycare and Nursery Schools; Detached One Family Planned Project; General Hospital; Group Daycare; Housing for the elderly or senior citizen housing; Commercial Recreation; Planned Unit Development; Private Clubs, Fraternal Organizations, Lodge Halls, Cultural Centers, Union Halls; Public Utility Buildings.
2. Building height limitation - No building shall be allowed which is taller than 16 feet or larger than one story. This condition is a limitation on development because the Zoning Ordinance allows buildings to be 25 feet high and up to two stories in the RM Zoning District.
3. Density limitation – Density shall not exceed 6.2 apartment units (each, a "Unit") per acre, which is a lower density than allowed. This condition is a limitation on development because the Zoning Ordinance allows 11.3 Units per acre in the RM Zoning District for two-bedroom dwelling Units.
4. Building Length limitation - No building shall exceed 196 feet in length. This condition is a limitation on development because the Zoning Ordinance allows a building length of 225 feet.
5. Floor area per unit minimum - Each Unit will have at least 1,200 square feet of floor area. This condition is a limitation on development because the Zoning Ordinance allows 720 square feet of floor area per two-bedroom dwelling Unit.
6. Ownership - The Property may be built (and thus divided) in up to two phases, however, each phase will not be subdivided, and each phase will be owned by a single entity; provided, however, each phase may be owned by a different entity. This condition is a limitation on development because the Zoning Ordinance allows multiple owners.
7. Private Roads – All roads on the Property shall be private roads. This condition alleviates the potential for any additional taxpayer burden to maintain and repair the roads in the Project.
8. The conditional rezoning is conditioned on Redwood commencing construction of its proposed Project within eighteen (18) months after the effective date of the ordinance rezoning the Property. Commencement of construction means the date a Soil Erosion Sedimentation Control Permit is obtained from Kalamazoo County and on-site work begins.

9. If Redwood does not commence construction of the Project within eighteen (18) months after the effective date of the ordinance rezoning the Property, or if this Agreement is terminated by written notice to the Township from Redwood or the current owner of the Property, the reversion of zoning under Section 300.2758 of the Township Ordinance will be mandatory, as required by MCL 125.3405(2), and not in any way discretionary.
10. The Property will be developed, if at all, consistent with the Conditional Rezoning Plan presented by Redwood, a copy of which is attached as **Exhibit B**, subject to all other required state and local permits and approvals.

This Agreement shall be governed by the following miscellaneous provisions:

- A. A copy of this Agreement shall be recorded with the Kalamazoo County Register of Deeds, but only on or after the date Redwood acquires the Property.
- B. This Agreement may be terminated by written notice to the Township by Redwood or the current owner of the Property at any time prior to the commencement of construction of the Project. This Agreement shall run with the land and be binding on any successor owners of the Property. The conditions in this Agreement are authorized by applicable State and federal law and constitution. This Agreement is valid and was entered into on a voluntary basis and represents a permissible exercise of authority by the Township. This Agreement shall not replace the requirement for land division, site plan, subdivision, condominium, or special land use review and approval, as applicable, such approvals to not be unreasonably withheld, delayed, or conditioned by the Township. The Township understands that Redwood will be required to obtain approvals from other governmental entities which may impose additional conditions. The Township understands that the final site plan presented to and approved by the Township may vary from the Conditional Rezoning Plan because of such other approvals and conditions, as well as because of conditions identified by Redwood on the Property during physical and environmental review of the Property. In the event that modifications to the Conditional Rezoning Plan, or subsequent site plans, are: (a) required or requested by other reviewing governmental entities having jurisdiction over the Property or any portion thereof; and/or (b) reasonably required as a result of physical and environmental review, final engineering, or design considerations as confirmed by the Township's professional engineers or other appropriate Township consultants, such modifications shall be reviewed administratively by the Township, but shall not require an amendment to this Agreement
- C. Any failure to comply with this Agreement shall constitute a violation of the Zoning Ordinance and be punishable accordingly. This Agreement does not ratify any current Township Ordinance violations on the Property or estop enforcement.
- D. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.
- E. This Agreement does not authorize any violation of Township Ordinances and any current

violations on the Property may be enforced.

- F. This is the entire agreement between the parties with respect to its subject matter. It supersedes and replaces all other agreements, whether express or implied, written or verbal. There are no other agreements. Each party had the advice of legal counsel and was able to participate in its creation, so it shall be construed as mutually drafted. The captions are for convenience only. However, the recitals are deemed an integral part of this Agreement. More than one copy may be signed, but it shall constitute only one agreement. It was drafted in Michigan and is to be interpreted in accordance with Michigan law. The interpretation of this Agreement shall not be affected by any course of dealing between the parties. To the extent any provision of this Agreement conflicts with any existing or future zoning provision or other ordinance of the Township, the provisions of this Agreement shall control, and Redwood shall be deemed to have been granted all approvals necessary to conform the terms hereof to the Township's ordinances. If the Zoning Ordinance is amended such that the uses provided for in this Agreement for the Property are no longer permitted uses of right, the uses provided for in this Agreement shall be considered legally non-conforming and continuation of those uses shall be permitted in accordance with Michigan law.
- G. All notices shall be complete when delivered to Redwood and Township at the addresses given above or such other address as a party shall be provided to the parties hereto or at which said person shall request by notice. It may be made by personal delivery or express courier such as FedEx. Delivery shall be deemed complete when actually received.
- H. The parties agree to execute such other documents that any one of them may reasonably request to fully implement this Agreement.
- I. This Agreement may only be amended in writing, signed by all parties, and must be recorded with the Kalamazoo County Register of Deeds in order to become effective. The parties agree to reasonably cooperate to amend this Agreement as needed to accomplish the underlying purposes of this Agreement.

[Signatures appear on the following pages]

[Signature Page to Conditional Rezoning Agreement]

REDWOOD USA LLC,
an Ohio limited liability company

By: _____

David Conwill

Its: Authorized Manager

STATE OF OHIO)

COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared David Conwill, an Authorized Manager of REDWOOD USA LLC, an Ohio limited liability company, who acknowledged the execution of the foregoing Conditional Rezoning Agreement.

, Notary Public

_____ County, Ohio

Acting in Cuyahoga County, Ohio

My Commission Expires: _____

[Signature Page to Conditional Rezoning Agreement]

CHARTER TOWNSHIP OF COMSTOCK

By: _____ Its:
Supervisor

By: _____ Its:
Clerk

STATE OF MICHIGAN)

COUNTY OF KALAMAZOO)

Before me, a Notary Public in and for said County and State, personally appeared Randy Thompson and Nicole Beauchamp, the Supervisor and Clerk of Comstock Charter Township respectively, who acknowledged the execution of the foregoing Conditional Rezoning Agreement.

_____, Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

Drafted by and when recorded return to:
Jodi Stefforia
Comstock Township
PO Box 449
Comstock, MI 49041
Phone: (269) 381-2360

Exhibit A
Legal Description of Property

The land described as follows: Township of Comstock, County of Kalamazoo, State of Michigan

Parcel 1:

Beginning at the North 1/4 post of Section 5, Town 2 South, Range 10 West, Comstock Township, Kalamazoo County, Michigan; thence South 89 degrees 56 minutes 07 seconds East along the North line of said Section 235.57 feet; thence South 00 degrees 21 minutes 51 seconds East parallel with the North and South 1/4 line of said Section 668.00 feet; thence South 89 degrees 56 minutes 07 seconds East 167.00 feet; thence South 00 degrees 21 minutes 51 seconds East parallel to the North and South 1/4 line 940.04 feet to the South line of the Northwest fractional 1/4 of Section 5; thence North 89 degrees 59 minutes 06 seconds West along said line 402.57 feet; thence North 00 degrees 21 minutes 51 seconds West along the North and South 1/4 line of said Section 1608.39 feet to the point of beginning.

Parcel 2:

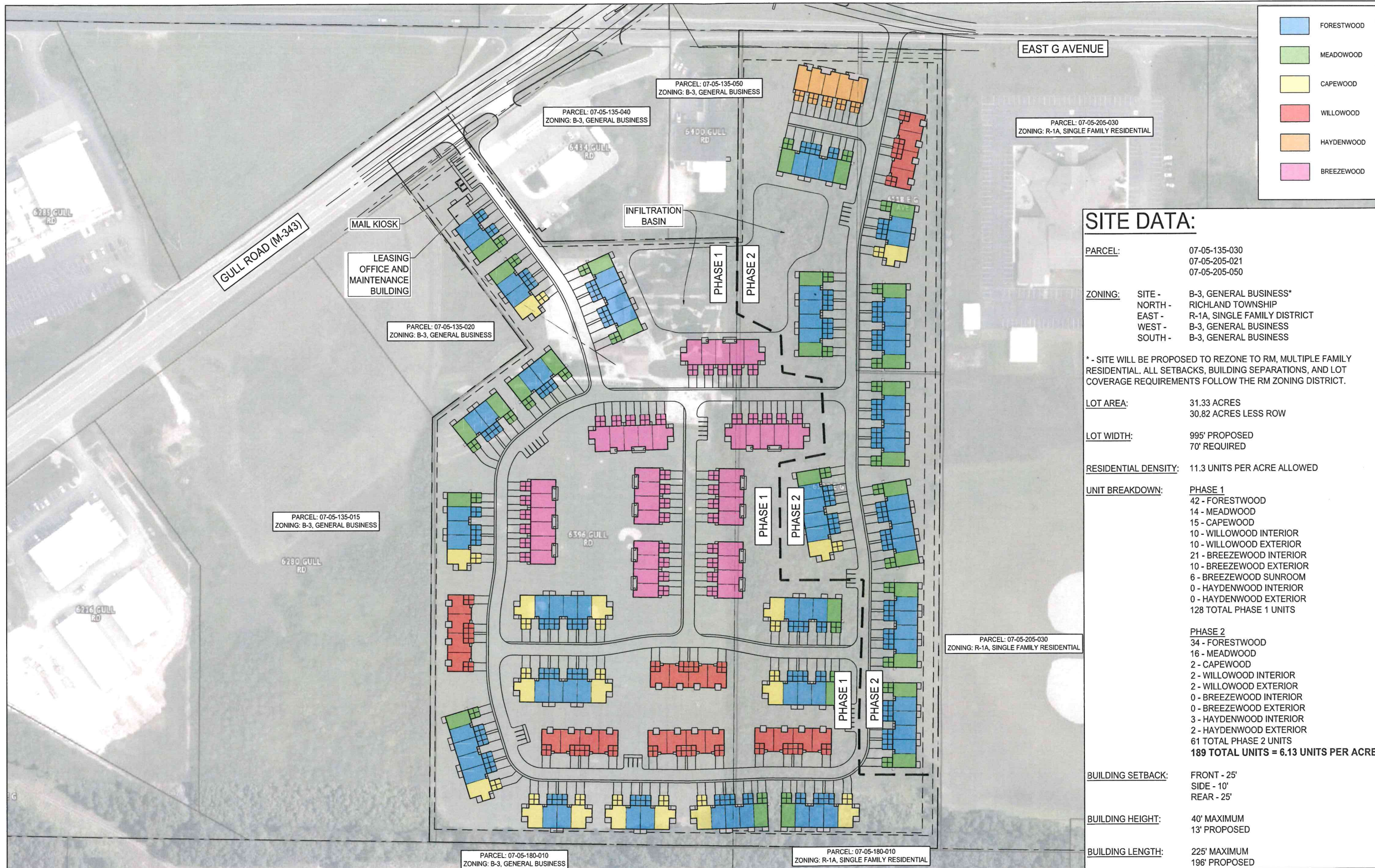
Land located in the Northwest fractional 1/4 of Section 5, Town 2 South, Range 10 West, Comstock Township, Kalamazoo County, Michigan, and is more particularly described as follows: Commencing at the North 1/4 post of Section 5, Town 2 South, Range 10 West; thence South 00 degrees 26 minutes East along the North and South 1/4 line of said Section 408.05 feet for the place of beginning; thence South 88 degrees 02 minutes 55 seconds West 386.24 feet; thence North 37 degrees 30 minutes 20 seconds West 310.00 feet to the centerline of Highway M-43; thence South 52 degrees 29 minutes 40 seconds West along said centerline 150.0 feet; thence South 37 degrees 30 minutes 20 seconds East 460.0 feet; thence South 52 degrees 29 minutes 40 seconds West parallel to the centerline of Highway M-43, 231.40 feet; thence South 00 degrees 26 minutes East 836.40 feet to the South line of the North fractional 1/2 of the Northwest fractional 1/4 of Section 5, Town 2 South, Range 10 West; thence North 89 degrees 55 minutes 37 seconds East thereon 600.00 feet to the Southeast corner of the North fractional 1/2 of the Northwest fractional 1/4 of said Section; thence North 00 degrees 26 minutes West along North and South 1/4 line of said Section 1200.00 feet to the place of beginning. Subject to the rights of the public in the Northwesterly 60 feet for highway.

Parcel 3:

Commencing at the North 1/4 post of Section 5, Town 2 South, Range 10 West, Comstock Township, Kalamazoo County, Michigan; thence South 89 degrees 56 minutes 07 seconds East along the North line of said Section 235.57 feet to the point of beginning; thence continuing South 89 degrees 56 minutes 07 seconds East along the North line of said Section 167.00 feet; thence South 00 degrees 21 minutes 51 seconds East parallel with the North and South 1/4 line of said Section 668.00 feet; thence North 89 degrees 56 minutes 07 seconds West 167.00 feet; thence North 00 degrees 21 minutes 51 seconds West parallel to the North and South 1/4 line 668.00 feet to the point of beginning.

Exhibit B

Conditional Rezoning Plan



■	FORESTWOOD
■	MEADOWOOD
■	CAPEWOOD
■	WILLOWOOD
■	HAYDENWOOD
■	BREEZEWOOD

SITE DATA:

PARCEL:	07-05-135-030 07-05-205-021 07-05-205-050
ZONING:	SITE - B-3, GENERAL BUSINESS* NORTH - RICHLAND TOWNSHIP EAST - R-1A, SINGLE FAMILY DISTRICT WEST - B-3, GENERAL BUSINESS SOUTH - B-3, GENERAL BUSINESS
* - SITE WILL BE PROPOSED TO REZONE TO RM, MULTIPLE FAMILY RESIDENTIAL. ALL SETBACKS, BUILDING SEPARATIONS, AND LOT COVERAGE REQUIREMENTS FOLLOW THE RM ZONING DISTRICT.	
LOT AREA:	31.33 ACRES 30.82 ACRES LESS ROW
LOT WIDTH:	995' PROPOSED 70' REQUIRED
RESIDENTIAL DENSITY:	11.3 UNITS PER ACRE ALLOWED
UNIT BREAKDOWN:	PHASE 1 42 - FORESTWOOD 14 - MEADOWOOD 15 - CAPEWOOD 10 - WILLOWOOD INTERIOR 10 - WILLOWOOD EXTERIOR 21 - BREEZEWOOD INTERIOR 10 - BREEZEWOOD EXTERIOR 6 - BREEZEWOOD SUNROOM 0 - HAYDENWOOD INTERIOR 0 - HAYDENWOOD EXTERIOR 128 TOTAL PHASE 1 UNITS PHASE 2 34 - FORESTWOOD 16 - MEADOWOOD 2 - CAPEWOOD 2 - WILLOWOOD INTERIOR 2 - WILLOWOOD EXTERIOR 0 - BREEZEWOOD INTERIOR 0 - BREEZEWOOD EXTERIOR 3 - HAYDENWOOD INTERIOR 2 - HAYDENWOOD EXTERIOR 61 TOTAL PHASE 2 UNITS 189 TOTAL UNITS = 6.13 UNITS PER ACRE
BUILDING SETBACK:	FRONT - 25' SIDE - 10' REAR - 25'
BUILDING HEIGHT:	40' MAXIMUM 13' PROPOSED
BUILDING LENGTH:	225' MAXIMUM 196' PROPOSED

