

A G E N D A

Massillon Planning Commission
September 9, 1987 7:30 P.M.
Massillon City Council Chambers

1. Approval of the Minutes for the August 12, 1987, Commission Meeting.
2. Petitions and Requests

Final Plat - Millcreek Run No. 2

Location: Part of Out Lot No. 592, located on the east side of Jackson Avenue, N.E., between Elmbreeze Street, N.W., and 12th Street, N.W.

The allotment consists of a total of 24 lots on a total area of 7.687 acres. Also included in the final plat is the dedication of an extension of Mill Ridge Path, N.E., from its present terminus in Millcreek Run No. 1 to Jackson Avenue, N.E. This plat has been submitted Jack E. Lewis, President, Millcreek Run, Inc.

Request for a Special Land Use - Day Care Center

Location: 1626 Erie Street South, Lot No. 6054 and part of Lot No. 6053, located on the northeast corner of the intersection of Erie Street South and Marion Avenue, S.E. Carolyn M. Tharp, Administrator of Ohio Child Development Pre-School, Inc., is requesting the approval of the Commission to utilize this property for a state-licensed and regulated day care center. This property is presently zoned RM-1 Multiple Family Residential. Day care centers are conditionally permitted uses in multiple family residential districts, subject to the review and approval of the Planning Commission.

3. Old Business

Rezoning Request

Location: 2109-2119 Lincoln Way East and 125 22nd Street, S.E., Lots No. 4328, 4329, 4330, and 4331, to be rezoned from RM-1 Multiple Family Residential to B-1 Local Business. This request has been submitted by Carl Oser. This request has been tabled by the Commission at previous meetings.

Proposed Zoning Amendment - Home Occupations

The City of Massillon has proposed an amendment to the Zoning Code to permit home occupation businesses within residential areas, subject specified conditions. Consideration of the proposed amendment was held over from last month's meeting.

The Massillon Planning Commission met in regular session on August 12, 1987. The following were present:

Chairman Fred Wilson
Mayor Delbert Demmer
Rudy Turkal
Henry Joiner
Dr. Dale Hart
Ted Willoughby

Staff
Robert Wagoner
Aane Aaby
Marilyn Frazier

The first item of business before the Commission was the minutes of the June 10, July 1, and July 22, 1987, Commission meetings. All minutes of these meetings were approved as prepared.

The next item under Petitions and Requests was an alley vacation. A 12 foot alley lying between 23rd Street, N.W., and 24th Street, N.W., and running in a north/south then east/west direction between Duane Avenue, N.W., and Lincoln Way, N.W.; the request to vacate that portion of the alley from Duane Avenue, N.W., northerly 261.51 feet, then westerly 172 feet to 24th Street, N.W. This request has been submitted by R.C. Dominick. Mr. Wagoner presented the request. He stated that the request had been with the City for quite a while awaiting a signature from the School Board. The signature was recently obtained. There is some congestion in the area because people use the alley to drop off and pick up children. The petition has 100% signatures from the abutting property owners. Mr. Turkal moved to approve the request, seconded by Dr. Hart, motion carried.

The next item was the dedication of a parcel of land. The dedication of a parcel of land, 10.10 feet wide and 160 feet long, from the north side of Lot No. 791, located at the southeast corner of Amherst Road, N.E., and Orchard Avenue, N.E., to be used for the widening of Orchard Avenue, N.E. This request was submitted by Carl Oser. Mr. Oser is building a commercial building. This request is a result of Zoning Board of Appeals and Site in Review meetings. Mr. Oser has requested a variance to build four feet from a sideyard instead of the required ten feet. After some discussion, the Mayor moved for approval, seconded by Mr. Willoughby, motion carried.

The next item for the evening was street dedications for Nova Technology Park Street Dedications.

1. The dedication of Hospital Drive, S.E., a 72 foot right-of-way, running easterly from Erie Street South a distance of 1,350 feet.
2. The dedication of Nova Technology Drive, S.E., a 60 foot right-of-way, running in a southeasterly direction from Nave Road, S.E., a distance of 2,900 feet.

These requests have been submitted by Nova Technology Center. Mr. Wagoner presented the request to the Commission. He stated that the street dedication was necessary for the completion of the project. After some discussion, the Mayor moved for approval, seconded by Ted Willoughby, motion carried.

The next item was Wales Park Easement. The granting of an easement, approximately 550 feet long, for roadway and utility purposes, along the east side of Out Lot 554 (Wales Park), located on the northside of Hankins Road, N.E., east of Valarie Avenue, N.E. This request has been submitted by the City of Massillon. The request was before the Commission before, but action was taken on it. Tom Ross, Park Board Chairman was present and stated that he did not feel the City should grant an easement through park property. He further

stated that he could see no advantage to the City. If there was some type of trade whereby the City received something for the easement he possibly would feel differently. The Chairman, Mr. Wilson, suggested tabling the request since Mr. Sibia was not present. Mr. Willoughby so moved, seconded by Mayor Demmer, motion carried.

The next item under New Business was a proposed Zoning Amendment--Home Occupations. Mr. Aaby made the presentation. He stated that there has been several drafts over the last several years. Mr. Aaby also explained the latest draft, which had been sent to the members. Tom Seesan, Ward Councilman commented on the need for such an ordinance. There was some discussion by the Commission, which resulted in the idea to have the Law Director review the proposed amendment before any acting on taken. Mayor Demmer moved to table the proposed amendment, seconded by Rudy Turkal, motion carried.

The final item on the agenda was under Old Business. Reconsideration of Rezoning Requests - Legal Opinion. The Commission had received a Legal Opinion from the City Law Director regarding the conditions under which a rezoning request that has previously been denied may be reconsidered. After discussing the Law Director's opinion, the Mayor moved to lift the request for rezoning of Lots No. 3641, 3642, 3643, 3644, 3645 located at 2417-2439 Lincoln Way, East from the table, seconded by Dr. Hart, motion carried. The Mayor, in view of the Law Director's written opinion, moved not to reconsider the above mentioned request. The motion was properly seconded by Dr. Hart, and carried.

It was moved by the Mayor, seconded by Mr. Turkal, and carried to continue the table of the property at 2109-2119 Lincoln Way, East and 125 22nd Street, S.E.

The meeting adjourned at 9:00 p.m.

Respectfully submitted:



Marilyn Frazier, Clerk

Approved:

Fred Wilson, Chairman

Thomas V. Ferrero
Director of Law

Municipal Government Center
100 City Hall Street S.E.
Massillon, Ohio 44646
(216) 830-1718

Prosecutors:

JOHN H. SIMPSON, Chief
C. STEPHEN AYERS
LINDA A. KATE
TODD F. THORN, Intern

September 9, 1987

Aane Aaby
Assistant Plainning Director
Massillon, Ohio 44646

RE: Occupational Uses

Dear Mr. Aane:

The City Planning Commission (hereinafter Commission) has drafted a proposed amendment to the City Zoning Code which would authorized and regulate home occupations within residential districts. The Commission has requested a legal opinion from my office regarding the legality and enforceability of said amendment.

The Zoning Code may be amended or changed pursuant to Section 1137 et. seq. of the Massillon Zoning Code and Section 713.01 et. seq. of the Ohio Revised Code. It is generally valid for a Zoning Ordinance to permit a gainful occupation to be conducted in a residential district, provided it remains incidental to the main purpose of the building. Spencer v. Board of Zoning Appeals, 13 Ohio Op. 2d 467. The home occupations which are authorized should not substantially injure (or alter) the character of a residential neighborhood. Id.

The proposed amendment (Section 1187.13) appears to be facially valid for the most part and provides adequate procedural safeguards to ensure its enforceability. However, I would recommend some changes.

The amendment clearly prohibits the purchase or sale of economic goods, 1187.13(a). To clarify this prohibition it may be prudent to define what "goods" are. The following definition, provided by Section 1302.01(8) of the Ohio Revised Code, may be appropriate:

"Goods" means all things (including specially manufactured goods) which are moveable at the time of identification to [a] contract for sale other than the money in which the price is to be paid, investment securities, and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty.

The types of home occupations mentioned in the amendment are of the kind historically allowed to be conducted in an otherwise res-

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RE: Occupational Uses

identially zoned area. 8 AM JUR 2c Zoning and Planning, Section 171. I would however recommend that 1187.13(a)(8) be deleted. "Professional consultant" is a very general and vague description and may open the door for undesirable occupations. The home occupations provided therein are basically inclusive of those professions which are appropriate. Section 1187.13(a)(10) can be identified as a "shotgun" clause which allows for discretionary approval of other home occupations not specifically identified in Section 1187.13(a). Therefore 1187.13(a)(8) is redundant and not necessary.

Section 1187.13(b)(7) prohibiting advertisement should be deleted entirely. It is my opinion that this prohibition may be unenforceable as being violative of the First Amendment to the U. S. Constitution, because it unduly restricts "commercial speech". Section 1187.13(c)(2) regarding notice to homeowners of record of the public hearing on a variance, should state a specific time in which the homeowners will be notified. In other words, the appropriate homeowners should be notified twenty (20) to thirty (30) days in advance of the hearing. Also, regular U.S. mail should be a sufficient method of delivering the notice.

The renewal fee provided in Section 1187.13(c)(5) is clearly appropriate. It is my opinion that the amount is perhaps too low. The only legal requirement regarding said fee is that it be "reasonable".

The proposed amendment calls for an automatic revocation of the variance upon the sale, etc. of the home, 1187.13(c)(6). I would recommend that a section be written into the amendment notifying the applicant that his variance may be revoked involuntarily by any subsequent noncompliance with the amendment.

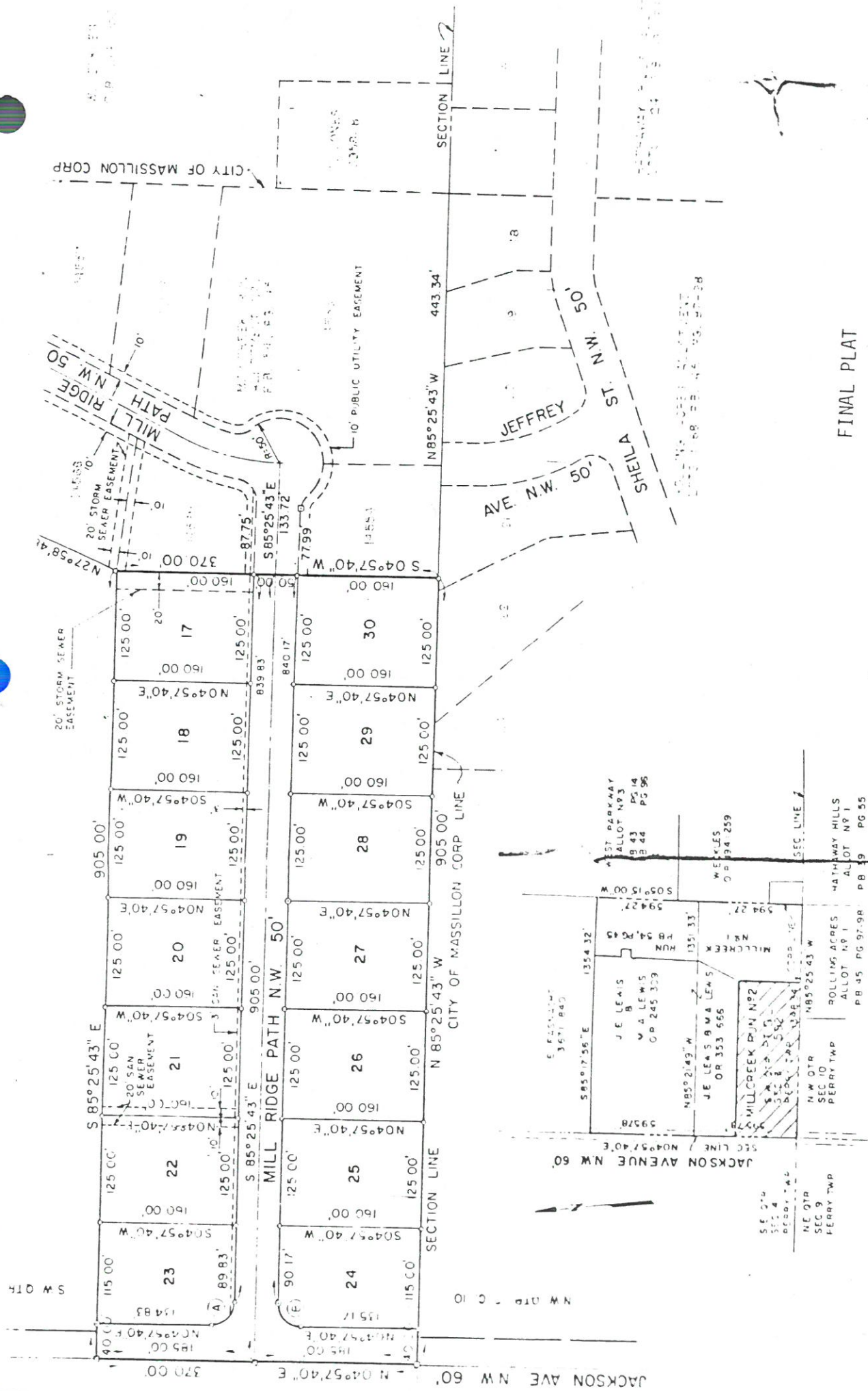
I believe that if the foregoing changes are made to the proposed amendment it would be legally valid and enforceable. If you have any questions regarding this matter please advise.

Very truly yours,

Thomas V. Ferrero

THOMAS V. FERRERO,
Director of Law

TVF/ec1



FINAL PLAT

MILLCREEK RUN NO. 2

PLAN OF LANDS OF THE DEDICATORS FROM WHICH LAND IS TAKEN
SCALE 1" = 500'

Ohio Child Development Pre-School, Inc.

Mailing Address:

300 - 18th Street N.W.
Canton, Ohio 44703
(216) 455-2903

2200 Tuscarawas East
Canton, Ohio 44707
Ph. (216) 452-5380
Mrs. C.M. Tharp, Administrator

Downtown Center
405 Second Street, N.W.
Canton, Ohio 44702

September 2, 1987

City of Massillon
City of Massillon Planning Commission
Massillon City Hall
100 City Hall Street
Massillon, Ohio 44646

Dear Sirs and Madame:

I am requesting permission to utilize the property at 1626 Erie Street South lot number 6054 and part of 6053 in the City of Massillon for a state licensed and regulated Day Care Center.

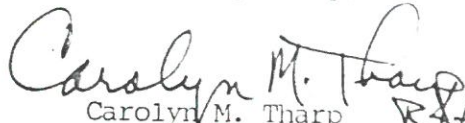
Ohio Child Development was founded 8 years ago by Gentry and Carolyn Tharp. The organization is a private non-profit organization designed to work with infants thru school age children getting them ready for kindergarten and first grade experience. We currently operate two Day Care Centers in Canton. One at 1421 North Market and one at 2200 East Tuscarawas.

Ohio Child Development aims to encourage all children to be good citizens through education and parent cooperation. We motivate and encourage the child toward good, positive self-esteem.

We respectfully request the appropriate action at the September 9, 1987 meeting of the Commission.

The Building Department and the Fire Prevention Bureau have already approved same.

Yours very truly,


Carolyn M. Tharp
Administrator

OHIO O.C. #16

REQUEST FOR SPECIAL LAND USE
PROPOSED DAY CARE CENTER
1626 ERIE STREET SOUTH

3872 F
387
388
AVE.

9974
240' ±
250' ±
9975
264' ±
273.2'
9976
270' ±
275'

9977
270'
292'
9978

9979

O.L. 372 T

0.23a
0.24a

152

9980
9981
9982
9983
9984
9985

SOUTH ERIE STREET

3853
3855
3856
6053 J
6054 K

MARION AVE. S.

6077
6076
6075
6074
6073
6072
6071
7864
7865
7866

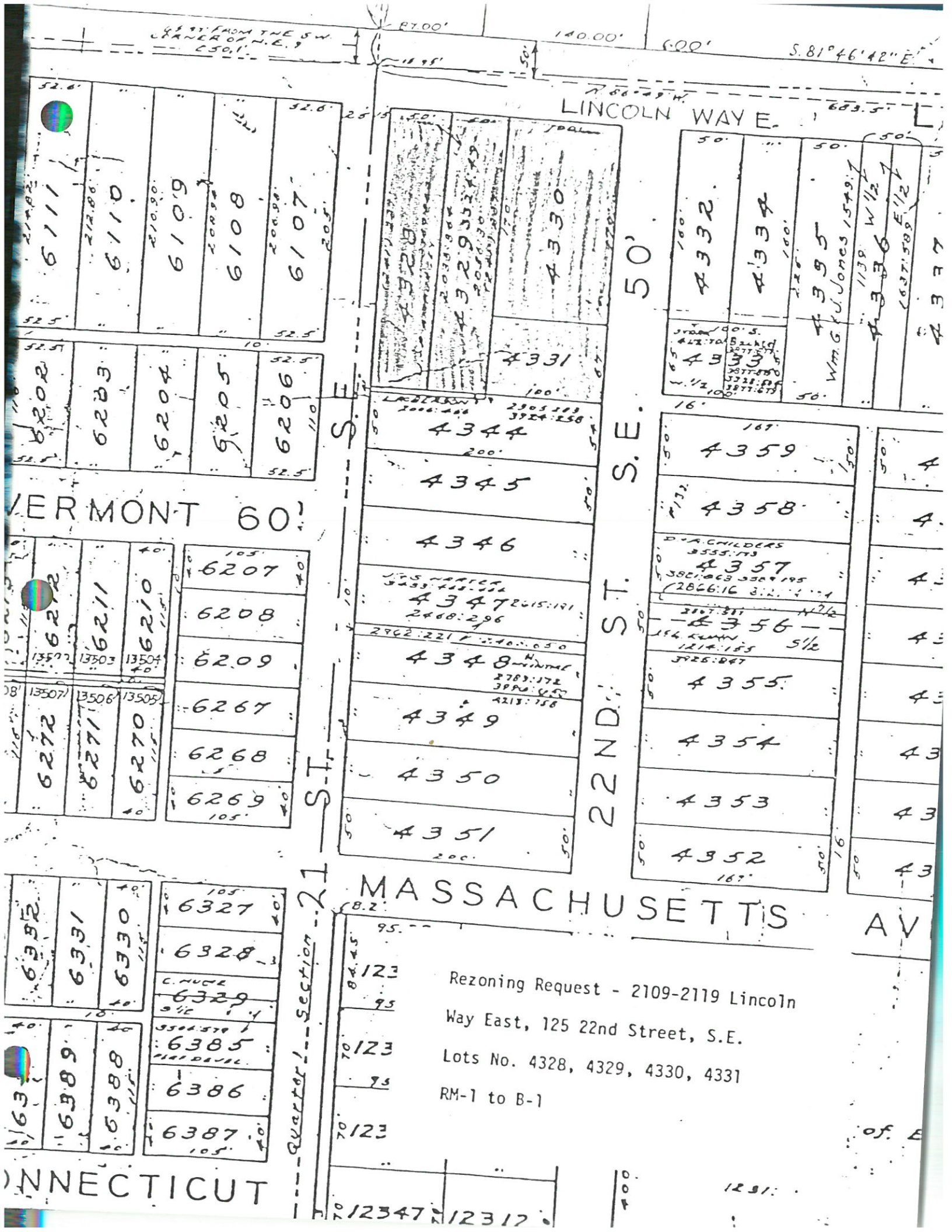
CHESTER AVE

7876
7877
7878
7879
7880
10005
10006
10007
10008
10009
10010
10011
10012

FOREST AVE

73

65



45.91' FROM THE SW
CORNER OF N.E. 1/4
250.1'

87.00'

140.00'

6.00'

S. 81° 46' 42" E.

LINCOLN WAY E.

50'

S.E.

S.T.

22ND ST.

MASSACHUSETTS

AV

Rezoning Request - 2109-2119 Lincoln
Way East, 125 22nd Street, S.E.
Lots No. 4328, 4329, 4330, 4331
RM-1 to B-1

CONNECTICUT

SECTION 21

8.2'

95.00'

84.45'

123

95.00'

70/123

95.00'

70/123

95.00'

70/123

95.00'

70/123

95.00'

12347 12312

1231

A G E N D A

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3. New Business

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4. Old Business

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Attached is a copy of a Legal Opinion from the City Law Director regarding the conditions under which a rezoning request that has previously been denied may be reconsidered.