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MEMORANDUM

TO: Community and Economic Development Committee
FROM: Matt Rehbein, Economic Development Specialist
DATE: December 6, 2016
RE: Variance to the Declaration of Covenants and Restrictions for Parcel 31-1-5362-00 on Goodland Dr., Onstage Audio, LLC (D/B/A EPS)

The City has received a request from Onstage Audio, LLC for a variance to the Declaration of Covenants and Restrictions regarding the minimum building size as outlined in the attached letter of November 29, 2016. The subject parcel is located in the Northeast Industrial Park on Goodland Dr.

Regarding building size, the Deed Restrictions and Covenants state:

"Any building erected shall be at least 5,000 square feet in area and occupy at least 10 percent of the land area"

The subject parcel was purchased on October 14, 2016. The land area of this site is 1.44 acres or 62,726 square feet. 10% of the land area would require a minimum building size of 6,273 square feet. As outlined in the attached letter, limitations due to a retention pond, easements, parking and budget were identified as challenges in completing the site design.

Also attached to this memo is a copy of the Declaration of Covenants and Restrictions as applicable to this parcel, a map identifying the parcel location and easements, and a rendering of the proposed building.

Staff Recommendation:

A variance to the Declaration of Covenants and Restrictions, Item 3.A for Parcel 31-1-5362-00 Plat 4 in the Northeast Industrial Park, allowing for a minimum building size of 5,000 square feet. **BE APPROVED.**



1430 N. Ballard Road
Appleton, WI 54911

November 29, 2016

City of Appleton
Community & Economic Development
Attn: Matt Rehbein
100 N. Appleton St.
Appleton, WI 54911

RE: Parcel 1-5362 Goodland Drive
Appleton, WI 54911

Please accept our request for the City of Appleton to consider allowing us to construct a 5,000 square foot building on our 1.44 acre plot of land noted above. Due to a possible retention pond required on the property, the easement, and our budget, we are looking to decrease the original size of the building. Unfortunately, this lot is smaller than we had anticipated and feel is not adequate space for a 6,300-6,400 square foot building, adequate customer and truck parking, and the retention pond with easement.

We are keeping the same modern look of the building with a glass atrium front with stone, and beautiful landscaping and up-lighting. Our plans are to begin construction first thing in the Spring.

Thank you for your consideration. We look forward to hearing from you.

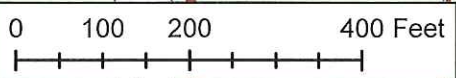
Kindest regards,


Two handwritten signatures in black ink. The first signature is for Melvin Kohl and the second is for Lisa Kohl. Both are written in a cursive, flowing style.

Melvin and Lisa Kohl
4702 N. Lighting Drive
Appleton, WI 54913

Available Sites Northeast Business Park Appleton, Wisconsin

Legend
 Available Site
 \$40,000/ac.




 N
 Comm. & Econ.
 Dev. Dept. 06/16



DECLARATION OF COVENANTS AND RESTRICTIONS

APPLICABLE TO ALL PROPERTIES SOLD IN NORTHEAST INDUSTRIAL PARK PLAT # 4

This conveyance is made subject to the following conditions, covenants, and understandings, which shall be binding upon the vendee and his/her heirs, successors, and assigns:

1. ***Setbacks:***

- A. *Front Yard:* No building shall be constructed on the site nearer than forty (40) feet of the right-of-way of any public street or highway. In the case of corner lots, both forty (40) foot setbacks will apply.
- B. *Side and Rear Yards:* Minimum side and rear yards shall be twenty-five (25) feet.
- C. *State Highways:* A fifty (50) foot building setback shall be observed along U.S.H. 41 and U.S.H 441.

2. ***Land Use:***

- A. Permitted Uses
 - 1. Manufacturing except for Block 14;
 - 2. Research, development and testing laboratories except for Block 14;
 - 3. Wholesaling, warehousing and distribution;
 - 4. Office operations only if they are an integral part of and a necessary adjunct to a permitted use;

5. Retail sales of products manufactured on site and clearly an accessory use to the primary use of the site except for Block 14;
6. Other land uses may be considered for approval by the Community Development Committee if a determination is made that the project fits the development objectives of the City.

3. ***Building Standards***

- A. Any building erected shall be at least 5,000 square feet in area and occupy at least 10 percent of the land area.
- B. Buildings shall be designed by an Architect or Engineer. No side, elevation or facade of a building or structure shall be unexposed to public view; consequently, all sides, elevations, or facades of all buildings and structures shall be visually pleasing and architecturally and aesthetically comparable with the surrounding environment.
- C. The majority of exterior and externally visible opaque surfaces shall be constructed of not more than three of the following types of materials (provided, however, that such list shall not be deemed to exclude the use of other accent or exterior trim materials, glass and glazing, and earth berms):
 1. Brick;
 2. Architectural precast concrete panels (surface finish to be painted, stained or exposed aggregate);
 3. Decorative concrete block (for no more than 50% of the exterior building wall area);
 4. Cut stone;
 5. Exterior insulation and finish systems such as Drivit or Sunlar;
 6. Metal panels (permitted only for building expansion walls);
 7. Other building materials being developed and to be developed by the construction industry. The use of such materials will be reviewed by the Community Development Committee on a case-by-case basis. The Community Development Committee may assign this review of plans to the Economic Development Department.

- D. Building materials will be selected for their ability to present a visual statement of a building or structure's strength, attractiveness, and permanence. The building materials used shall be harmonious with the natural environment and with the general character of other buildings and structures in the Park.
- E. Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or structure.
- F. No loading dock shall face the street unless the site configuration is such that it is unavoidable. In that event, the Community Development Committee shall review and approve the location of the loading dock.
- G. Ancillary structures will be approved by the Community Development Committee. Approval may be granted only if such structures are necessary to the principal use of the building site, are in architectural and aesthetic conformance with other buildings or structures on the site, are properly screened, meet all requirements of these covenants and are otherwise satisfactory to the Community Development Committee at its sole discretion.

4. ***Landscaping:***

- A. ***Landscape Plan:*** The landscaping upon any building site or lot shall be carried out in accordance with a detailed landscaping plan, which has been reviewed and approved in writing by the City's site plan review committee. The landscape plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size, root condition, and quantity of all plant material. The plan shall show all ground cover and mulch areas, landscape and construction materials, and construction details.
- B. ***Landscaping Methods:*** Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover and other landscape materials including permanent sprinkler systems, fountains, storm run-off retention ponds, reflective ponds, and landscape lighting.
- C. ***Plant Material:*** Selected plant material should provide for a variety of shade trees, evergreen trees, and shrubs, ornamental trees and shrubs and ground covers. Plant material selection shall take into consideration the following:
 - 1. Disease and insect resistance;
 - 2. Hardiness to the area;
 - 3. The ability to provide seasonal interest;
 - 4. Future maintenance considerations;

5. Ability of plant material to accomplish its intended purpose in each placement.
- D. *Time for Completion:* All landscaping shall be completed within ninety (90) days following occupancy, or as soon thereafter as weather will allow if such period occurs within winter months.
- E. *Maintenance:* The owner shall be responsible for maintaining all landscaping as approved on the original plan for his site and adjacent unpaved street rights-of-way. Any variation or changes to the landscape plan must be reviewed and approved in writing by the Department of Planning. Landscaped areas, materials, fixtures, and improvements shall be maintained by the owner of the building site, or by such owner's long-term lessee(s) in good condition at all times. Such maintenance shall include watering, mowing, trimming, pruning, spraying, fertilizing, repairing, replacement of dead plantings, planting, transplanting, dusting, treating, and other common landscape maintenance activities necessary to keep the building site landscaping in a healthy state of growth and visually attractive in appearance.

If the owner or the owner's assigns fail to maintain the landscaping and site per the approved landscaping plan in this section, the City of Appleton or its Agent has the right to enter the site and conduct such maintenance and to seek full reimbursement.

5. ***Parking, Loading***

Off-street parking and loading areas shall be provided on each building site and shall be of sufficient size to accommodate all planned or anticipated parking and loading needs of all site occupants and visitors and comply with the City's Zoning Ordinance regarding parking standards. All parking and loading areas shall be paved. Parking shall be permitted within the minimum front yard setback area, however, it shall be located no closer than fifteen (15) feet to the public right-of-way line. An 80 percent screen with a minimum height of 2-½' shall be provided for all parking areas adjacent to the street right-of-way.

6. ***Outdoor Storage:***

No outside storage of any kind shall be permitted unless such stored materials are visually screened from all streets with a suitable fence, vegetation, berm, or combination thereof. Screening shall be attractive in appearance and in keeping with the architectural quality of the main structure. Said storage shall be limited to behind the front line of the building on the property, and within the building setback lines. No waste material or refuse may be dumped or permitted to remain on any part of the property outside of the buildings. Storage of fuel oil or other bulk fluids must be underground. All storage areas shall be paved.

7. ***Signs:***

Identification signs shall be permitted to promote only the name and/or trademark of the owner or tenant of the parcel on which the sign is placed. Signs, lighting, etc., are to be indicated on the final site plan submitted to the Community Development Committee for review. Ground signs must be set back 10 feet from the right-of-way line and must be of a low profile design subject to approval by the Committee. Building signs must comply with the City Sign Code.

8. ***Maintenance Responsibilities:***

A. Each owner shall keep its property, all contiguous street right-of-way to the edge of the pavement, and all drainage and easement areas in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to the following:

1. Removal of all litter, trash, refuse, and wastes;
2. Compliance with the City's noxious weed control ordinance, including the mowing of all grass areas;
3. Maintenance of exterior lighting, signs, and mechanical facilities;
4. Keeping of all exterior building surfaces in a cleaned, well-maintained condition;
5. Maintenance of all drainage ways including the removal of all debris, weeds, and silt.

B. The owner of any undeveloped lands shall maintain said lands free of rubbish, noxious weeds, and mosquito breeding pond conditions.

9. ***Site Plan Review:***

Prior to the construction or alteration of any buildings, additions, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to the real estate conveyed hereby, the plans for such building or improvements shall be submitted to the Site Plan Review Committee in accordance with Section 23-171 of the City Zoning Code. The plans shall be reviewed within thirty days (30) days after they have been submitted and approval or disapproval given in writing.

10. ***Approval of Plans:***

Before commencing the construction or alterations of any buildings, additions, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to the real estate conveyed hereby, the owner shall first submit its building plans, specifications, site and landscape plans, and an elevation sketch of all improvements to be placed thereon to the Community Development Committee for its written approval. In the event the Committee or its designee shall fail to approve or disapprove in writing such building plans, specifications, site and landscape plans, and elevation sketch within thirty (30) days after they have been submitted to them, such approval will not be required and these covenants and restrictions will be deemed to have been complied with. The Community Development Committee may delegate this review of plans to the Economic Development Department.

11. ***Repurchase Rights:***

Failure to Build: In the event the owner of land purchased from the City of Appleton does not commence construction of a building within one (1) year after the date of purchase, ownership shall revert to the City. The City shall pay the following repurchase price: the sum of the original purchase price and all special assessments which may have been paid by the buyer or levied against the property after the date of purchase minus the sum of any unpaid property taxes, pro-ratio of the current years property taxes to date of closing, title insurance policy premium or cost of warranty abstract, and any liens and encumbrances on the property of a definite or ascertainable amount. Further, repurchase price shall be adjusted by the amount equal to the amount of an option fee for that year had the property been under option between the City and the Buyer. Conveyance shall be by warranty deed.

Resale of Vacant Land: In the event the owner of land purchased from the City of Appleton elects to sell any portion thereof which is vacant, the property shall first be offered, in writing, to the City of Appleton. The City of Appleton shall have sixty (60) days from date of receipt of such offer to accept or reject repurchase of the property unless an extension of time may be mutually agreed upon and set forth in writing. In the event the City does not elect to repurchase the property, the owner may sell the land, but these Declarations of Covenants and Restrictions shall run with the land and be binding on the subsequent owner. The purchase price shall be computed as in Article 11 above. Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense.

12. ***Subdivision of Lots:***

After a lot has been purchased, such lot shall not be further subdivided without the written consent of the Community Development Committee. No owner may sell, lease or rent less than all of the lot without the written consent of the Community Development Committee. The Community Development Committee may, in granting its consent, attach any conditions it deems appropriate. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

13. ***Waiver of Notice:***

All land sold before major assessable improvements are completed in the business park site shall be subject to the purchaser's waiving notice of assessments and hearings, and such waiver shall be part of the negotiations.

14. ***Variances:***

Notwithstanding anything contained herein to the contrary, the City of Appleton expressly reserves the right at any time to authorize in writing variances from the strict applications of these covenants and restrictions, or any one or more of them, where the circumstances, in its sole and exclusive judgement, justifies the granting of same.

15. ***Right to Enter***

The Community Development Committee shall have the right to enter upon any building site or other lot within the park for the purpose of ascertaining whether the owner of said site or lot is complying with these covenants and restrictions.

16. ***Enforcement:***

In the event that the owner fails to perform in accordance with these covenants and restrictions, the Common Council, upon recommendation of the Community Development Committee, may take whatever corrective measures it deems appropriate and assess the cost thereof against the property in the same manner as a special assessment or special charge. The Common Council shall give at least thirty (30) days notice to the vendee of any violation and the steps required to correct it prior to taking any action to cure such violation.

17. ***Invalidation:***

The invalidation of any one of the covenants or restrictions herein set forth or the failure to enforce any of said covenants and restrictions at the time of its violation shall in no way affect any of the other covenants or restrictions nor be deemed a waiver of the right to enforce the same thereafter.

18. ***Term:***

Each lot shall be conveyed subject to the covenants and restrictions set forth herein, all of which are to run with the land and shall be binding on all parties and all persons claiming them for a period of thirty (30) years from the date of this Declaration of Covenants and Restrictions is recorded, after which time said covenants and restrictions as are then in force and effect shall be automatically renewed for successive periods of ten (10) years each, unless an instrument terminating such covenants and restrictions is recorded with the Outagamie County Register of Deeds by the Common Council as evidenced by a resolution duly adopted by a majority of all members of the Common Council.

