Minute No. 17
Report – Executive Policy Committee – November 17, 2021

Item No. 2 Zoning Agreement Amendment – 820 Kimberly Avenue (Elmwood-East Kildonan Ward) File ZAA 5/2021

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That Zoning Agreement under File DASZ 50/1976 registered at the Winnipeg Land Title Office as Caveat No. 248142/1 dated October 24, 1977, be discharged in its entirety, and that amendments to this Zoning Agreement under file ZAA 4/1996 and ZAA 12/1996 be no longer in effect once a new Zoning Agreement has been entered.

2. That the Director of Legal Services and City Solicitor be requested to discharge the subject Zoning Agreement to DASZ 50/1976, dated October 24, 1977 as approved in aforesaid Recommendation 1.

3. That the applicant enter into a Zoning Agreement with the City pursuant to Section 240 (1) of The City of Winnipeg Charter in accordance with the following:

   A. The Owner must submit plans showing the location and design of any and all proposed:
      i. buildings
      ii. accessory parking areas
      iii. private approaches
      iv. garbage enclosures
      v. fencing
      vi. landscaping
      vii. free-standing signage

      on the Owner's Land ("Works") to the City's Director of Planning, Property and Development ("Director") and the East Kildonan- Transcona Community Committee for approval prior to the issuance of any building or development permit, and thereafter must construct the Works in substantial conformance with the approved plans and maintain the Works to the satisfaction of the Director.

   B. That the following uses shall not be permitted on the land:

Report – Executive Policy Committee – November 17, 2021

COUNCIL DECISION (continued):

i. Landscape or Garden Supplies
ii. Supermarket
iii. Auction Room
iv. Pawnshop
v. X-rated store
vi. Drive-through restaurant
vii. Auto/light truck/motorcycle, repair and service
viii. Auto/light truck/motorcycle, sales and rental
ix. Auto parts and supplies, sales
x. Car wash
xi. Fuel sales
xii. Parking, surface
xiii. Contractor's establishment
xiv. Billboard signs
xv. Outside display and sales

C. That digital, mobile, flashing, scintillating, rotating and inflatable signs shall not be permitted on the entire site.

4. That the City enter into, execute and deliver with the applicant a Zoning Agreement in accordance with recommendation 3., and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

5. That the authority be delegated to the City's Director of Planning, Property and Development to negotiate and approve the terms and conditions of the Zoning Agreement, and any Ancillary Agreements, in accordance with this report and such other terms and conditions determined necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

6. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

7. That the Director of Legal Services and City Solicitor be requested to do all things necessary for implementation in accordance with the aforesaid recommendation 1, 2, 3.

Report – Executive Policy Committee – November 17, 2021

DECISION MAKING HISTORY:

Moved by His Worship Mayor Bowman,

That the recommendation of the Executive Policy Committee be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 17, 2021, the Executive Policy Committee concurred in the recommendation of the East Kildonan-Transcona Community Committee and submitted the matter to Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On October 25, 2021, the East Kildonan-Transcona Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, submitted its recommendation to the Executive Policy Committee.

PUBLIC HEARING SUMMARY

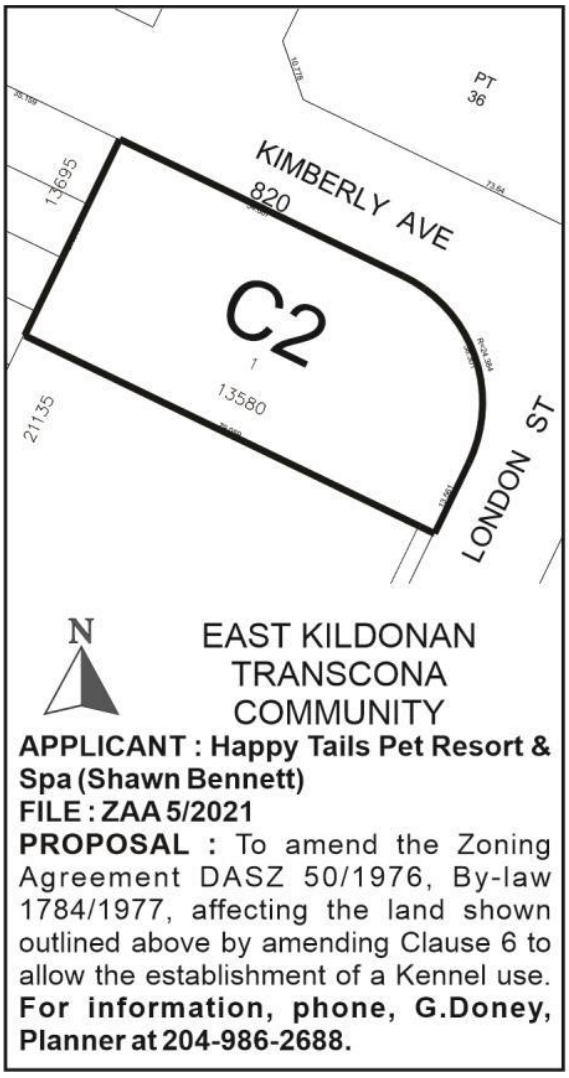
File: ZAA 5/2021

Before: East Kildonan-Transcona Community Committee
Councillor Nason, Chairperson
Councillor Browaty
Councillor Schreyer

Public Hearing: October 25, 2021
Council Building, 510 Main Street

Applicant: Happy Tails Pet Resort and Spa (Shawn Bennett)

Subject:



Premises Affected: 820 Kimberly Avenue

For submission to: Executive Policy Committee

Prepared by: Tamara Pomanski, Committee Clerk
East Kildonan-Transcona Community Committee

Report date: October 25, 2021

Community Committee Recommendation:

On October 25, 2021, the East Kildonan-Transcona Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, recommended to the Executive Policy Committee:

1. That Zoning Agreement under File DASZ 50/1976 registered at the Winnipeg Land Title Office as Caveat No. 248142/1 dated October 24, 1977, be discharged in its entirety, and that amendments to this Zoning Agreement under file ZAA 4/1996 and ZAA 12/1996 be no longer in effect once a new Zoning Agreement has been entered.

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        i. Landscape or Garden Supplies
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6. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

7. That the Director of Legal Services and City Solicitor be requested to do all things necessary for implementation in accordance with the aforesaid recommendation 1, 2, 3.

The East Kildonan-Transcona Community Committee provided the following supporting reasons for its recommendation:

1. This is a very reasonable application and change. I believe there was adequate notice given to the neighbourhood. Councillors have challenged this as well with their questioning. I think this is an appropriate change of zoning for an appropriate commercial service to be provided for the community, as expressed by Mr. Bennett. I wish all good success in this endeavour providing this service for our community.

Exhibits Filed:

1. Application dated September 1, 2021
2. Notification of Public Hearing dated September 15, 2021
3. Manitoba Status of Title 2224165/1
4. Letter of authorization dated July 21, 2021 from Katherine Donnelly, President, 4215451 Manitoba Ltd. to Happy Tails Pet Resort and Spa Ltd.
5. Caveat 248142/1
6. Zoning Agreement Amendment No. DASZ 50/76 made in duplicate dated 27th day of February, 1997 between The City of Winnipeg and E. H. Price Limited
7. Plans (3 pages)
8. Report from the Urban Planning Division dated October 12, 2021
9. Inspection Report
10. Recording of Representations

REPRESENTATIONS:

In Support:

Shawn Bennett

In Opposition:

Nil

For Information:

Nil

For the City:

F. Ojo, Planner, Planning, Property and Development Department

Exhibit "8" referred to in File ZAA 5/2021

ADMINISTRATIVE REPORT

Title: ZAA 5/2021 – 820 Kimberly Avenue

Issue: For consideration at the public hearing to amend an existing zoning agreement DASZ 50/1976 to permit a kennel use on site.

Critical Path: East Kildonan – Transcona Community Committee – Standing Policy Committee on Property and Development – Executive Policy Committee – Council as per the *Development Procedures By-law* and *The City of Winnipeg Charter*.

AUTHORIZATION

Author	Department Head	CFO	CAO
Femi Ojo, MCIP, RPP	N/A	N/A	

RECOMMENDATIONS

1. That Zoning Agreement under File DASZ 50/1976 registered at the Winnipeg Land Title Office as Caveat No. 248142/1 dated October 24, 1977, be discharged in its entirety, and that amendments to this Zoning Agreement under file ZAA 4/1996 and ZAA 12/1996 be no longer in effect once a new Zoning Agreement has been entered.

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      ii. accessory parking areas;
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      v. fencing;
      vi. landscaping; and

vii. free-standing signage

on the Owner's Land ("Works") to the City's Director of Planning, Property and Development ("Director") and the East Kildonan- Transcona Community Committee for approval prior to the issuance of any building or development permit, and thereafter must construct the Works in substantial conformance with the approved plans and maintain the Works to the satisfaction of the Director.

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6. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

7. That the Director of Legal Services and City Solicitor be requested to do all things necessary for implementation in accordance with the aforesaid recommendation 1, 2, 3.

REASON FOR THE REPORT

- The applicant is proposing the establishment of a Kennel use on site. The existing Zoning Agreement on the land prevents the aforementioned use. As such, an amendment to the Zoning Agreement is required to proceed.
- A zoning agreement amendment requires a public hearing as per the *Development Procedures By-law* and *The City of Winnipeg Charter.*
- The Report is being submitted for the Committee's consideration of the development application at the Public Hearing.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of the Urban Planning Division are concurred in, Zoning Agreement Caveat #248142 will be discharged in its entirety and be replaced with a new one.

HISTORY

DASZ 50/1976:

- DASZ 50/1976 rezoned the property for a commercial use.
- The related Zoning Agreement (B/L 696/1974) used Caveat # 248142 to implement conditions related to the subdivision/rezoning. Specifically, clause #6 restricted the site to a poster station letter carrier depot and accessory uses.

  "The land and any building or structure thereon shall not be used for and no building or structure shall be erected, altered or enlarged on the land for any use except a postal station letter carrier depot and accessory uses thereto.

ZAA 4/1996 and ZAA 12/1996:

- Zoning Agreement Amendments under file ZAA 4/1996 and ZAA 12/1996 were placed on the subject property as an amendment to the original zoning agreement placed under file DASZ 50/1996. These two amendments were not registered at the Winnipeg Land Title Office.

  Amended clause #6 listed additional permitted uses on site, uses that require conditional uses application and uses that are accessory.
  A kennel use was not listed in all categories of uses that are either expressly permitted on site, permitted as a conditional use or accessory use.

CONSULTATION

In preparing this report, there was consultation with:
- Legal Services

SUBMITTED BY

Department	Planning, Property and Development
Division	Urban Planning
Prepared by:	Femi Ojo, MCIP, RPP
Date:	October 12, 2021
File No.	ZAA 5/2021

List of Schedules and Attachments

1. Appendix A – Planning Discussion

APPENDIX 'A'

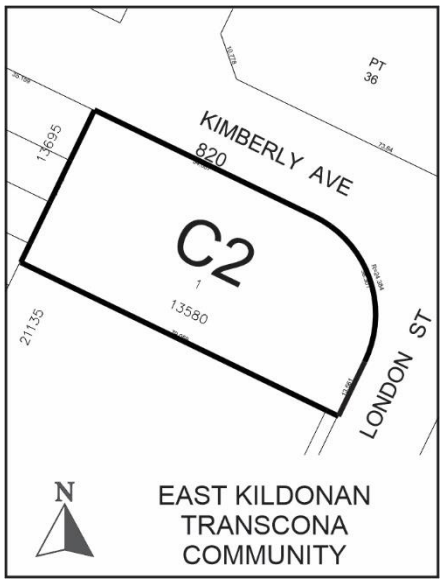
DATE: October 12, 2021

FILE: **ZAA 5/2021**
RELATED FILES: **DASZ 50/1976; (BL 24/2016); ZAA 4/1996; ZAA 12/1996 and DCU 258/1996**

COMMUNITY: **East Kildonan - Transcona**
NEIGHBOURHOOD #: 4.422 (Valley Garden)

SUBJECT: For consideration at the public hearing to amend an existing zoning agreement DASZ 50/1976 to permit a Kennel use on site.

LOCATION: 820 Kimberly Avenue.
LEGAL DESCRIPTION: LOT 1 PLAN 13580



APPLICANT: Happy Trails Pet Resort (Shawn Bennet)
560 St. Anne's Road,
WINNIPEG, MB.
R2M 3G7

OWNER: 4215451 Manitoba Ltd. (Katherine Donnelly)
3607 Rebeck Road
East St. Paul, Manitoba R2E 1C5

RECOMMENDATION: Approval

SITE DESCRIPTION

- The subject property is located south of Kimberly Avenue and London Street in the Valley Gardens neighbourhood of the Elmwood-East Transcona ward.
- Existing on the subject property is a one storey commercial structure. The property is +/- 30,899 sq. ft.
- The subject site is within the Areas of Stability – Recent Communities Policy Area under the *Complete Communities Direction Strategy*. The property is zoned "C2" Commercial Community.



Figure 1: Air photo of the subject property and surrounding area (2018)

SURROUNDING LAND USE AND ZONING (See Figure 2)

North: Kimberly Avenue, then land zoned "PR3" Park & Recreation Regional.

South: Single-family residences zoned "R1-L" Residential Single-Family Large.

East: London Street, then Parks & Recreation Land zoned "PR3".

West: Residential uses zoned "R1-M" Residential Single-Family Medium.

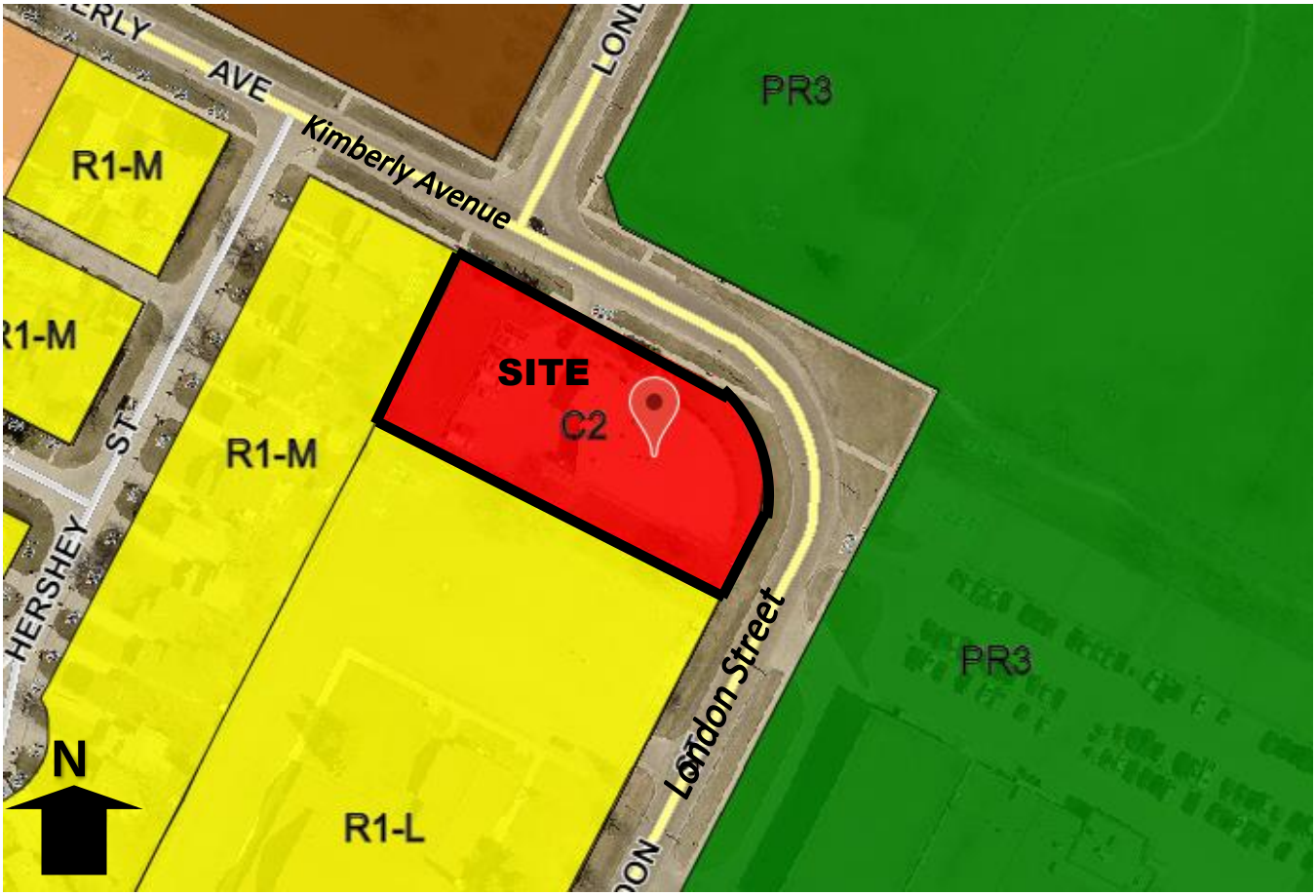


Figure 2: Zoning of the subject property and surrounding area

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The applicant intends to establish a kennel use within an existing commercial structure currently zoned “C2” Commercial Community.
- The existing zoning agreement does not permit a kennel use on site. As such a Zoning Agreement Amendment is required.
- **The applicant has submitted detailed floor plans showing different sections of the kennel space.**
- **There are no associated variances with the subject proposal.**

ANALYSIS AND ISSUES

COMPLETE COMMUNITIES

- Under the *Complete Communities Direction Strategy,* the proposed development is within the Areas of Stability – Recent Communities policy area. Key relevant policies guiding development within Areas of Stability include:

- *Support a mix of commercial services and employment uses that serve the local community.*
- *Promote the form of buildings and spaces that are sensitive to the community context and address the transition between new and existing developments.*
- *Promote a quality public realm with a high level of accessibility to community services and amenities and opportunities for gathering and social interaction.*

Given that the subject proposal will serve the local community, it is consistent with the aforementioned policies of Complete Communities.

ZONING (BY-LAW 200/2006)

"C2" Commercial Community District

- The Commercial Community (C2) district is intended to accommodate more intensive commercial sites that do not have a local or neighbourhood orientation. The district is intended to include attractive commercial, institutional, recreational, limited residential and service facilities needed to support the surrounding neighbourhoods and the broader community. "C2" districts are generally located in Community and Regional Mixed Use centres or along Community and Regional Mixed-Use Corridors.

Deleting Clause # 6 of Existing Zoning Agreement Caveat 248142 under DASZ 50/1976

- The existing Zoning Agreement contains nine (9) clauses, all of which are no longer relevant to the subject site.
- Specifically, Clause # 4 (which is the subject of this application) only permit a postal station letter carrier depot and accessory uses on site.
- Given that the existing Zoning Agreement is no longer relevant to the subject site, the Urban Planning Division recommends discharging the said Zoning Agreement in its entirety and replacing it as per recommendation 1 above.

COMPATIBILITY WITH THE SURROUNDING NEIGHBOURHOOD

- The subject property falls within the *Areas of Stability* in the *Complete Communities Direction Strategy*. *Areas of Stability* are planned to support a mix of commercial services and employment uses that serve the local community.
- The subject proposal is consistent with the aforementioned policy given that the proposed use (a kennel) will serve the local neighbourhood.
- Aside from the above, it is important to note that the 1976 rezoning and the restriction on the permitted use on site was done under an old Zoning By-law, which has since been replaced with a new one. Under the new Zoning By-law 200/2006, a kennel is permitted use in the "C2" zoning district with a use specific standard.

- There will be no external physical alteration/changes to the existing commercial structure as the applicant is repurposing the existing structure. Submitted plans shows internal alteration of the existing commercial structure to accommodate the proposed kennel.
- The subject proposal (a kennel), will serve the local neighbourhood in this part of the City.
- The Urban Planning Division is supportive of the Zoning Agreement Amendment as it will not cause any adverse effect on adjoining properties.

CONDITIONS OF APPROVAL

- The Urban Planning Division recommends registering a new Zoning Agreement on the title restricting a number of car-oriented commercial uses that are not compatible with the surrounding residential Neighbourhood. The Urban Planning Division also recommends inclusion of a Plan Approval clause allowing the Urban Planning Division and the East Kildonan - Transcona Community Committee to review final plans and design details before development takes place on the property.

REASONS FOR RECOMMENDATION

The Urban Planning Division recommends **approval** for the following reasons:

- The proposed amendment to allow a kennel use on site is consistent with the *Complete Communities Direction Strategy* for Areas of Stability-Recent Community, which supports a mix of commercial and employment uses that serve the local community.
- The subject proposal (a kennel) will provide a necessary service in this area of the City.
- Discharging the existing caveat, which is no longer relevant to the subject commercial site and the placement of new ones that restrict car-oriented/incompatible uses on site will ensure that future uses are compatible with the surrounding context.
- There is nothing to suggest that the subject proposal (a kennel) will have an adverse effect on the surrounding uses.

RECOMMENDATION

1. That Zoning Agreement under File DASZ 50/1976 registered at the Winnipeg Land Title Office as Caveat No. 248142/1 dated October 24, 1977, be discharged in its entirety, and that amendments to this Zoning Agreement under file numbers ZAA 4/1996 and ZAA 12/1996 be no longer in effect once a new Zoning Agreement has been entered into.

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7. That the Director of Legal Services and City Solicitor be requested to do all things necessary for implementation in accordance with the aforesaid recommendation 1, 2, 3.

This Report Submitted by:
Planning, Property and Development Department
Urban Planning Division
Report Prepared By: Femi Ojo, MCIP, RPP
PPD File # ZAA 5/2021

Exhibit "7" referred to in File ZAA 5/2021

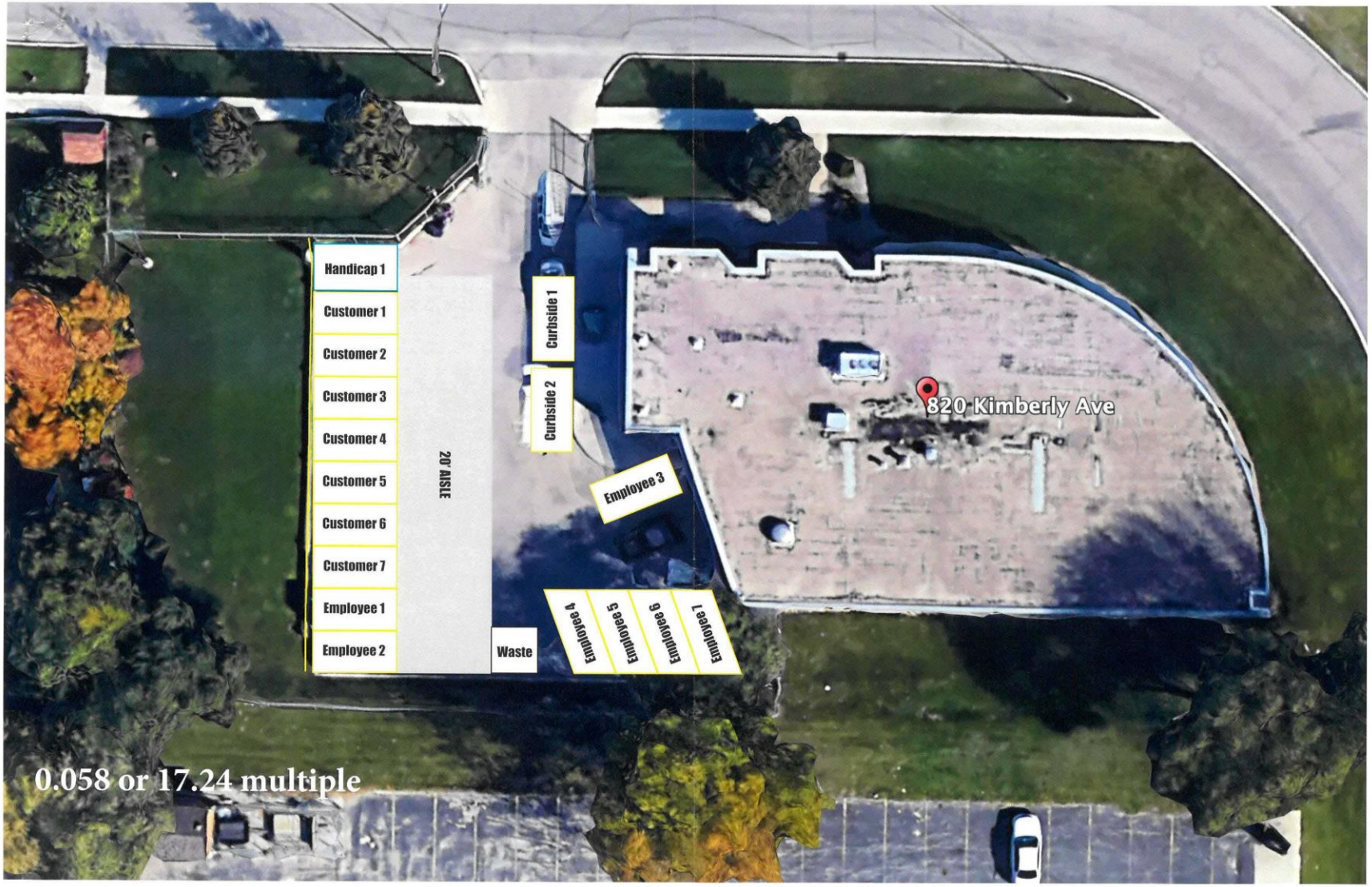


PROPOSED Floorplan



Existing Floorplan

= EXISTING WALL REMOVAL


Handicap 1
Customer 1
Customer 2
Customer 3
Customer 4
Customer 5
Customer 6
Customer 7
Employee 1
Employee 2
20' AISLE
Waste
Curbside 1
Curbside 2
Employee 3
Employee 4
Employee 5
Employee 6
Employee 7
820 Kimberly Ave
0.058 or 17.24 multiple