



**Department of Planning and Economic Development**  
 Staff Report to the Zoning Board of Appeals

December 6, 2016

<b>71 N. Livernois/Avon Prairie House</b>	
<b>REQUEST</b>	An Amendment to a Use Variance
<b>APPLICANT</b>	Donald Westphal 71 N. Livernois Rochester Hills, MI
<b>LOCATION</b>	71 N. Livernois, located on the west side of Livernois, north of Walton Blvd.
<b>FILE NO.</b>	00-030
<b>PARCEL NO.</b>	15-09-476-046
<b>ZONING</b>	R-2, One Family Residential
<b>STAFF</b>	Edward P. Anzek, AICP, Director of Planning

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**Requested Amendment to the Use Variance**

The applicant is requesting an amendment to Conditions #1 and #3 (Use – General, and Use – Operating Hours) to the Use Variance granted by the Zoning Board of Appeals on September 25, 2000 (minutes attached) and amended on July 11, 2005 (minutes attached). The applicant indicates the requested amendment to the use and hours of operation is to allow low intensity personal services, with Saturday afternoon/evenings and Sunday hours of operation permitted. The granted Use Variance permitted an adaptive reuse of the structures on the property as an office facility, with several findings and conditions.

As a point of history, the utilization of a Use Variance was the preferred means to enable and to control or limit the uses to be of minimum impact to the residential areas to the north and northwest. To effect this objective, the procedure of obtaining a Use Variance requires a Re-Zoning denial to occur first and that was completed prior to Mr. Westphal filing for the Use Variance. He requested a rezoning to O-1 Office. After extensive discussion by the ZBA members where the proposed list of permitted uses was discussed and eventually agreed to, the Use Variance was granted.

The “Avon Prairie House”, as 71 N. Livernois is also known, is a Historic Designated Structure. The house was in poor condition and once the Livernois road widening project was done in the 1990’s and additional right-of-way was taken directly in front of the house (requiring the boulder wall for stability) the opinion of City officials was that it was not conducive to single family residential use. To ensure this historic resource could be economically feasible it was determined that permitting office use, albeit restricted, would enable an adaptive reuse. At that time the only means to allow and control/limit uses was the Use Variance procedure. Conditional Rezoning, a different means with the same results is available today due to State Law amendments around 2008.

## Site Description

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The subject site is located on the west side of Livernois, north of Walton Blvd. Refer to the following table for the zoning and existing and future land use designations for the site and surrounding parcels.

	Zoning	Existing Land Use	Future Land Use
Subject Site	R-2 One Family Residential	Office (per Use Variance)	Residential 2.5 and Office per Use Variance
North	R-2 One Family Residential	Open Space	Private Rec/Open Space
Southwest	B-2 General Business w/FB-2 Flex Business Overlay	Strip Center	Business/Flexible Use 2
East	B-2 General Business w/FB-3 Flex Business Overlay	Strip Center	Business/Flexible Use 3
West	R-2 One Family Residential	Residential	Residential 2.5

## Analysis

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The applicant was granted a Use Variance on September 25, 2000, to permit the adaptive reuse of the structures on the property as an office facility, which was granted in accordance with the procedures set forth by the City's Code of Ordinances. The granted Use Variance contained twelve (12) findings and eleven (11) conditions. On July 11, 2005, the applicant requested an amendment to Condition #3 – Hours of Operation, to allow Monday through Friday hours from 7:00 AM to 9:00 PM, Saturday hours of 7:00 AM to 12:00 PM, with occasional late night or weekend use to be allowed. The applicant is now requesting an amendment to Condition #1, Use – General, and Condition #3, Use – Operating Hours.

The applicant stated in their letter that due to the recession and changing market conditions, changes in the nature of the occupants on the site have required some flexibility in the uses allowed and hours of operation. He is requesting a change in the conditions which would allow Low Intensity Personal Services, e.g., Licensed Clinical Psychologists, Licensed Massage Therapists, and Beauty Salons, with permitted Saturday afternoon/evening and Sunday hours of operation.

In the applicant's request letter, it is not clear if he is requesting 7:00 AM to 9:00 PM hours of operation for Sunday as is the request for Saturday hours to be expanded from 7:00 AM to 9:00 PM. This will be clarified.

In discussions with the Code Enforcement officers there has never been a complaint regarding the operational aspects of this building and grounds. No complaints on noise, late hours, traffic and the like. There was one nearby business that expressed a concern regarding a masseuse and that was what prompted a discussion with Mr. Westphal inasmuch that a massage operation is not listed as a permitted use and that he seek an amendment to the Use Variance. I informed the individual that nearby competition is not a basis for denial but rather the intensity of the use would be the basis. This individual is associated with a massage business in the center immediately to the west of the Prairie House.

Over the years, I as the Planning Director, in accordance with Condition#1, have approved different uses and some can be defined as health care related office uses. My basis for my decision was the opinion that the exclusion of health care uses was based on the high generation of patient turnover that a doctor or dentist's office would generate. These health care related uses that I have approved included a psychiatrist and a psychologist because their patient turnover is very minimal in keeping with the intent of the condition for low impact office uses. For future reference I would ask that the condition be modified to permit low impact single patient health related services.

[On a personal note: Not that it is an issue with this application I would like to make it clear in the record that such uses are acceptable provided they are low impact. I am planning on retiring soon and I would offer that the record be clear for my successor.]

Staff has spoken with a neighbor that had high praise for the manner that Mr. Westphal has operated at this

site. In fact, this neighbor appeared at the 2005 hearing and expressed strong support for Mr. Westphal's proposed changes and how well Mr. Westphal's business worked and blended with the neighborhood. This neighbor has provided a letter (included) expressing her support of the businesses but would like some corrective action taken to block headlights from cars that travel around the building. She offers this in light of the extended hours and with the early darkness of late fall, winter, and early spring. She lives directly north and there is a 6-foot wood fence but due to the natural topography of the site the fence is ineffective as a headlight screen. Staff has spoken with Mr. Westphal and he said he would gladly address this issue.

Staff does not believe the hours or operation requested by the proposed tenants would be incompatible with the permitted uses of the facility, nor generate excessive customer traffic for the site. This opinion is offered acknowledging that the nearby restaurant maintains longer hours with a much higher customer turnover rate. The question of what is being requested for hours of operation for Sunday needs to be clarified but staff is suggesting a 9:00 AM start and 6:00 PM ending time in the sample motion.

In summary, this operation has been in business for over 14 years without one complaint ever being lodged with the City, only compliments.

## Sample Motions

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### ***Motion to Approve***

*[Note: We are providing the motions in a format similar to those approved with the 2005 amendment.]*

MOTION by \_\_\_\_\_, seconded by \_\_\_\_\_, in the matter of File No. 00-030, the Zoning Board of Appeals **APPROVES AN AMENDMENT** to Condition #1 and Condition #3 of the previously approved Use Variance (granted on September 25, 2000, and amended on July 11, 2005) for 71 N. Livernois, commonly known as the Avon Prairie House, Parcel Identification Number 15-09-476-046, to read as follows:

#### **Condition #1: Use – General.**

Permitted uses in the existing structure on the subject site shall be limited to professional office uses, including by example the offices of an attorney, architect, landscape architect, engineer, or other design professional, **low intensity personal services including by example licensed clinical psychologists, licensed massage therapists and beauty salons**, but not including medical, dental, or other healthcare related office uses **that can generate excessive traffic as determined by the Planning Director**. In addition, due to the particular nature and configuration of the subject site and the existing structures, as well as the anticipated layout of required site improvements, the permitted professional office uses shall be further limited to exclude any use which would generate excessive customer traffic. Examples of such excluded uses would include, but not be limited to, real estate sales, insurance, financial planning, and interior decorating office uses. Administrative approval by the Planning Director or his or her designee of any new tenant or occupant of the existing structures shall be required to ensure conformance to this condition. Appeals from the decision made by the Planning Director or his or her designee in this regard may be made to the Zoning Board of Appeals consistent with Zoning Ordinance requirements for appeals from administrative decisions.

#### **Condition #3: Use – Operating Hours.**

Use of the subject site and the existing structures shall be generally limited to normal business hours (7:00 AM to 9:00 PM, Monday through Friday, 7:00 AM to ~~12:00 PM~~ **6:00 PM on Saturday, and 9:00 AM to 6:00 PM on Sunday**, with occasional late night or weekend use to be allowed, with the intent of this Condition being to ~~limit evening and weekend use and to prohibit 24-hour or other extensive use incompatible with adjacent residential areas.~~

**Motion to Deny**

MOTION by \_\_\_\_\_, seconded by \_\_\_\_\_, in the matter of File No. 00-030, the Zoning Board of Appeals **DENIES AN AMENDMENT** to Condition #1 and Condition #3 of the previously approved Use Variance (granted on September 25, 2000, and amended on July 11, 2005) for 71 N. Livernois, commonly known as the Avon Prairie House, Parcel Identification Number 15-09-476-046, with the following findings.

1. That the ZBA finds that they additional requested uses are not in keeping with the original intent of low impact office activities.
2. That the ZBA finds that the requested increase in operational hours are not in keeping with the original intent of low impact office activities.

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