



City Council
Special Meeting Minutes
August 30, 2021
7:00 PM

1. ROLL CALL WAS TAKEN AND THE FOLLOWING MEMBERS WERE PRESENT:

• **Members Present**

Councilmember Danczak
Councilmember Everett
Council President Gallo
Councilmember Haase
Councilmember Rounds
Councilmember Stavole
Councilmember Walsh

• **Members Absent**

None

• **Also Present**

Mayor Byrne
Chrissy Reason, Clerk of Council
Mark Schneider, Assistant Director of Law

2. PLEDGE OF ALLEGIANCE

3. EXECUTIVE SESSION

- Adjourn to executive session to discuss pending and imminent litigation

Councilmember Stavole made a motion adjourn to executive session to discuss pending and imminent litigation. Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

- Executive Session Began: 7:01 PM
- Executive Session Ended: 8:04 PM

LEGISLATION

4. CONSIDERATION OF A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO THE FIRST AMENDED TO A SETTLEMENT AGREEMENT WITH ATC SIXTEEN REALTY, INC. AND DECLARING AN EMERGENCY. ONE READING ONLY.

Councilmember Rounds made a motion to read the following Resolution by title only. Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RESOLUTION TO BE READ BY TITLE ONLY

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO THE FIRST AMENDED TO A SETTLEMENT AGREEMENT WITH ATC SIXTEEN REALTY, INC. AND DECLARING AN EMERGENCY

Councilmember Rounds made a motion to suspend the rules. Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RULES SUSPENDED

Councilmember Rounds made a motion to adopt this Resolution. Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RESOLUTION IS ADOPTED. RESOLUTION NO. 2021-16

5. CONSIDERATION OF A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH DEALPOINT MERRILL LLC [DEVELOPER] AND DECLARING AN EMERGENCY. ONE READING ONLY.

Councilmember Stavole made a motion to read the following Resolution by title only.

Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RESOLUTION TO BE READ BY TITLE ONLY

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH DEALPOINT MERRILL LLC [DEVELOPER] AND DECLARING AN EMERGENCY.

Councilmember Stavole made a motion to suspend the rules. Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RULES SUSPENDED

Councilmember Stavole made a motion to adopt this Resolution. Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RESOLUTION IS ADOPTED. RESOLUTION NO. 2021-17

6. CONSIDERATION OF A RESOLUTION AUTHORIZING THE SETTLEMENT OF THE LITIGATION CAPTIONED BAYMARK HEALTH SERVICES OF OHIO, INC. ETAL. V. CITY OF PARMA HEIGHTS ETAL., CASE NO. 1:20-CV-02754 AND DECLARING AN EMERGENCY. ONE READING ONLY.

Councilmember Stavole made a motion to suspend the rules and modify by adding the phrase "\$200,000 as" in Section 2 between "provide" and "contribution" as to read:

Section 2. The city has agreed to provide \$200,000 as contribution toward the settlement and the funds to pay for this expenditure are authorized to be derived from the General Fund.

Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

Councilmember Danczak made a motion to read the following Resolution by title only.

Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RESOLUTION TO BE READ BY TITLE ONLY

A RESOLUTION AUTHORIZING THE SETTLEMENT OF THE LITIGATION CAPTIONED BAYMARK HEALTH SERVICES OF OHIO, INC. ETAL. V. CITY OF PARMA HEIGHTS ETAL., CASE NO. 1:20-CV-02754 AND DECLARING AN EMERGENCY

Councilmember Danczak made a motion to suspend the rules. Councilmember Stavole Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RULES SUSPENDED

Councilmember Danczak made a motion to adopt this Resolution. Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None

RESOLUTION IS ADOPTED. RESOLUTION NO. 2021-18

7. ADJOURNMENT

Councilmember Stavole made a motion to adjourn the meeting. Councilmember Everett Seconded.

Aye: Danczak, Everett, Gallo, Haase, Rounds, Stavole and Walsh

Nay: None.

MEETING ADJOURNED AT 8:09 PM



Chrissy Reason, CMC
Clerk of Council



Marie Gallo
Council President





Parma Heights, Ohio

6281 Pearl Road

Parma Heights, Ohio 44130

440-884-9602

IN THE MATTER OF:

APPLICATION OF DEALPOINT MERRILL LLC FOR A CONDITIONAL USE PERMIT TO OPERATE ITS BUSINESS TO INCLUDE INDOOR CLIMATE CONTROLLED SELF STORAGE AND OUTDOOR STORAGE AT 7011 WEST 130TH STREET, PARMA HEIGHTS, OHIO IN THE WEST 130TH STREET MIXED USE DISTRICT.

ACKNOWLEDGEMENT AND UNCONDITIONAL ACCEPTANCE AND AGREEMENT TO CONDITIONS AS SET FORTH IN EXHIBIT A

On September 15, 2021 the Council of the City of Parma Heights approved the recommendation of the Planning Commission to grant the Conditional Use Permit of Dealpoint Merrill LLC. [EX. A].

Pursuant to Section 1135.07 of the Codified Ordinances of the City of Parma Heights when a permit for a conditional use is granted by the Council subject to conditions, the grantee shall, in writing within ten days following such Council action, acknowledge such approval and unconditionally accept and agree to such conditions.

I understand that pursuant to Section 1135.08 of the Codified Ordinances of the City of Parma Heights that;

(a) Conditional use approval shall authorize a particular conditional use on the specific parcel for which it was approved. Approval of a conditional use, pursuant to this chapter, shall be valid only for the use and the operation of such use as specified when granted by the Planning Commission. The breach of any condition, safeguard, or requirement shall constitute a violation of this Planning and Zoning Code.

(b) A conditional use permit issued pursuant to this chapter shall be valid only to the applicant to whom the permit is issued, unless the new owner agrees to all conditions, safeguards and requirements in the conditional use permit and a transfer of such permit is approved by the Chief Building Official.

(c) The conditional use approval shall expire six months from the date of enactment, unless:

(1) In the case of new construction, work upon the structure shall have begun above the foundation walls;

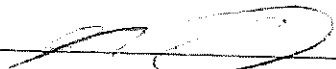
(2) In the case of occupancy of land, the use has commenced;

- (3) As otherwise specifically approved by the Planning Commission at the time the conditional use approval is granted; or
- (4) The Chief Building Official grants an extension for good cause shown, upon the request of the applicant.

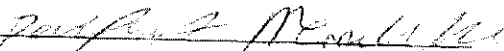
(d) A conditional use permit may be considered abandoned and void if, for any reason, the conditional use is not conducted for more than six months.

Further, I understand that pursuant to Section 1135.09 of the Codified Ordinances of the City of Parma Heights that a conditional use permit may be revoked if the established conditions for approval are violated. The Chief Building Official is responsible for advising the Planning Commission of any violations, and the Planning Commission may then recommend to City Council that it revoke the conditional use permit.

Based on the foregoing we acknowledge the approval of the conditional use permit and unconditionally accept and agree to such conditions.



Date: 9-17-21



Date: CPD



**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BAYMARK HEALTH SERVICES OF OHIO, INC., et al.,)	Civil Action 1:20CV2754
)	
)	
Plaintiffs,)	JUDGE PATRICIA A. GAUGHAN
)	
v.)	MAGISTRATE JUDGE WILLIAM H.
)	BAUGHMAN, JR.
CITY OF PARMA HEIGHTS, OHIO, et al.,)	
)	
Defendants.)	

CONSENT DECREE

This matter is before the Court on the application of the parties, Plaintiffs, BayMark Health Services of Ohio, Inc. (“BayMark”) and MKB Holdings, LLC (“MKB”) (collectively, “Plaintiffs”), and Defendants, City of Parma Heights, Ohio, City of Parma Heights Planning Commission, and Dennis Patten (collectively, the “City” or “Defendants”) (collectively, the “Parties”), each of which advises through counsel that they have reached an agreement to resolve all pending claims in this action (the “Litigation”), by and through this Consent Decree. It is therefore **ORDERED, ADJUDGED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Parties and subject matter of this Litigation. Venue is proper in this Court.

II. BINDING EFFECT

2. The provisions of this Consent Decree shall apply and be binding upon the Parties, their agents, officers, employees, assigns, successors in interest, and any person acting in concert or in participation with them.

III. BACKGROUND

3. MKB owns the property located at 6700 Pearl Road in the City of Parma Heights, Ohio (the “Property”) and BayMark leases a portion of the Property.

4. In 2017, following its initial lease term, BayMark submitted Change of Use and Site Plan Applications (the “Applications”) to the City to operate its opioid treatment office at the Property under the City’s Planning and Zoning Code of the Codified Ordinances of Parma Heights (the “Zoning Code”), in effect at the time. True and accurate copies of the Applications are attached hereto as Exhibit I and incorporated herein by this reference.

5. On December 11, 2020, Plaintiffs filed suit in this Court. Plaintiffs allege that Defendants arbitrarily delayed consideration of the Applications on a discriminatory basis. The defendants denied the allegations.

6. Plaintiffs’ Complaint asserts six causes of action against the Defendants: (1) violation of the Americans with Disabilities Act; (2) violation of the Rehabilitation Act; (3) deprivation of property interest without due process of law pursuant to 42 U.S.C. § 1983 (procedural due process); (4) deprivation of property interest without due process of law pursuant to 42 U.S.C. § 1983 (substantive due process); (5) denial of equal protection pursuant to 42 U.S.C. § 1983; and (6) declaratory judgment. Plaintiffs’ Complaint seeks a permanent injunction, declaratory judgment, compensatory and punitive damages, and attorneys’ fees and costs.

7. Defendants filed their Answer on March 2, 2021 and dispute the claims and allegations contained in the Complaint.

8. The Parties have engaged in settlement discussions. Following the discussions between the Parties’ counsel and a public hearing by the City of Parma Heights Planning Commission, the settlement embodied in this Consent Decree was reached.

9. The Parties’ settlement includes the following stipulations and terms described

below.

IV. STIPULATIONS AND SETTLEMENT OF THE PARTIES

10. Plaintiffs and Defendants stipulate that, and by this Consent Decree, it is ordered that BayMark's Applications regarding the operation of its opioid treatment office on the Property are hereby approved. Within twenty one (21) days of receipt of BayMark's demolition, parking lot, and construction plans (the "Construction Plans"), the City will convene a meeting of the Planning Commission, and shall review in good faith, and shall not unreasonably delay or withhold approval of the permits necessary to renovate the existing premises.

11. Payment will be made on behalf of the City to BayMark in the amount of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00) ("Payment") as full and final settlement of all claims, for which BayMark agrees and understands that it is its responsibility to pay all federal, state, and local taxes to be owed in connection with this payment, if any. The City's contribution to the total Payment shall be made within thirty (30) days of City Council's approval of the expenditure of funds from the City general fund, but in no event, longer than ninety (90) days from entry of this Consent Decree. The remaining payments shall be made from the City's insurance carrier within thirty (30) days from the entry of the Consent Decree.

12. The pending lawsuit will hereby be dismissed with prejudice subject to this Court maintaining jurisdiction for purposes of enforcement and interpretation of this Consent Decree.

13. As part of the Parties' settlement and as of the date of this Consent Decree, Plaintiffs, their affiliates, subsidiaries, officers, directors, partners, members, owners, shareholders, employees, agents, representatives, parents, predecessors or successors, assigns, heirs, executors, and administrators, and any other party who they control or may claim under or through them, release, remise, and forever discharge Defendants, their Council members, Planning Commission members, commissioners, officers, officials, directors, members, employees, agents,

representatives, predecessors or successors, assigns, heirs, executors, administrators, and insurers, employees, principals, and agents, in their individual and official capacities, from any and all promises, claims, demands, controversies, liens, liabilities, trespasses, judgments, executions, guarantees, warranties, covenants, rents, debts, suits, causes of action, costs, damages, claims for pre or post-settlement interest, losses, sums of money, offsets, or any other potential remedy, in any action whatsoever, in law or equity, whether known or unknown, past and current, that in any way arise out of or relate to the allegations in this Litigation and/or claims which could have been raised in this Litigation. This release does not limit the Parties' ability to enforce this Consent Decree.

14. As part of the Parties' settlement and as of the date of this Consent Decree, Defendants, their Council members, commissioners, officers, officials, directors, members, employees, agents, representatives, predecessors or successors, assigns, heirs, executors, administrators, and insurers, employees, principals, and agents, in their individual and official capacities, and any other party who they control or may claim under or through them, release, remise, and forever discharge Plaintiffs, and all affiliates, subsidiaries, officers, directors, partners, members, owners, shareholders, employees, agents, representatives, parents, predecessors or successors, assigns, heirs, executors, and administrators, from any and all promises, claims, demands, controversies, liens, liabilities, trespasses, judgments, executions, guarantees, warranties, covenants, rents, debts, suits, causes of action, costs, damages, claims for pre or post-settlement interest, losses, sums of money, offsets, or any other potential remedy, in any action whatsoever, in law or equity, whether known or unknown, past and current, that in any way arise out of or relate to the allegations in this Litigation and/or claims which could have been raised in this Litigation. This release does not limit the Parties' ability to enforce this Consent Decree, or

the Defendants right to regulate and enforce its laws, codes or ordinances which may apply to the Plaintiff and the conduct of their business and/or property going forward.

15. The Parties acknowledge that this Consent Decree represents the compromise of disputed contentions and claims between them concerning this Litigation, and this Consent Decree shall not be construed as: (a) an admission of the truth or falsity of any contentions or claims heretofore asserted in the Litigation; or (b) an acknowledgment or an admission by Defendants of liability for the contentions or causes of actions alleged in the Litigation, which are expressly denied. All Parties explicitly deny any and all liability to each other.

V. FINDINGS OF THE COURT

16. The Court has reviewed the Parties' stipulations and settlement as set forth above, the pleadings and proceedings in this matter to date and finds that this Consent Decree and the Parties' settlement is fair and reasonable.

17. The Court hereby Orders that, Plaintiffs' use of the property located at 6700 Pearl Road, Parma Heights, Ohio as an opioid treatment center is a permitted use under the Zoning Code and their Applications are approved. The Parties shall work in good faith to review and approve the Construction Plans within twenty-one (21) days of this entry.

VI. COSTS

18. Each Party will bear its own attorneys' fees and costs.

VII. RETENTION OF JURISDICTION

19. This case is hereby dismissed with prejudice, subject, however, to this Court retaining jurisdiction of this action for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.

IT IS SO ORDERED.

9/7/21
Date


/s/ Patricia A. Gaughan
Judge Patricia A. Gaughan

AGREED:

s/

Joseph R. Miller (0068463) (Trial Attorney)
Christopher L. Ingram (0086325)
Arryn K. Miner (0093909)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Phone: (614) 464-6400
Fax: (614) 719-4630
jrmiller@vorys.com
clingram@vorys.com
akminer@vorys.com

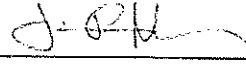
*Counsel for Plaintiffs BayMark Health
Services of Ohio, Inc. and MKB Holdings,
LLC*

s/ 

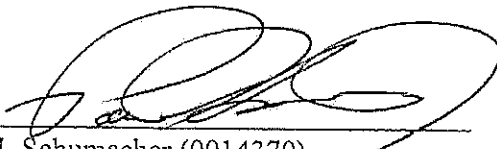
Paul J. Schumacher (0014370)
DICKIE, MCCAMEY, & CHILCOTE, P.C.
600 Superior Avenue East
Suite 2330
Cleveland, Ohio 44114
Phone: (216) 685-1827
Fax: (888) 811-7144
pschumacher@dmclaw.com

*Counsel for Defendants City of Parma
Heights, Ohio, City of Parma Heights
Planning Commission, and Dennis Patten*

AGREED:

s/ 
Joseph R. Miller (0068463) (Trial Attorney)
Christopher L. Ingram (0086325)
Arryn K. Miner (0093909)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Phone: (614) 464-6400
Fax: (614) 719-4630
jrmiller@vorys.com
clingram@vorys.com
akminer@vorys.com

*Counsel for Plaintiffs BayMark Health
Services of Ohio, Inc. and MKB Holdings,
LLC*

s/ 
Paul J. Schumacher (0014370)
DICKIE, MCCAMEY, & CHILCOTE, P.C.
600 Superior Avenue East
Suite 2330
Cleveland, Ohio 44114
Phone: (216) 685-1827
Fax: (888) 811-7144
pschumacher@dmclaw.com

*Counsel for Defendants City of Parma
Heights, Ohio, City of Parma Heights
Planning Commission, and Dennis Patten*

CONSENT DECREE

EXHIBIT 1

SITE PLAN APPLICATION

6700 Pearl Road, Parma Heights,

LOCATION OF PROPERTY (address) OH 44130

PROJECT NAME (building name/business name) Baymark Health Services of Ohio, Inc.

PERMANENT PARCEL NOS. 473 14 035

NAME OF APPLICANT MKB Holdings, LLC; Baymark Health Services of Ohio, Inc. FIRM MKB Holdings, LLC; Baymark Health Services of Ohio, Inc.

STREET ADDRESS 3659 Green Road, Ste. 214

CITY Beachwood STATE OH ZIP 44122

PHONE NO. (216-374-7000) EMAIL j.warsaw@sure-site.com;

PROPERTY OWNER MKB Holdings, LLC FIRM tschwallie@baymark.com

OWNER'S STREET ADDRESS 3659 Green Road, Ste. 214

CITY Beachwood STATE OH ZIP 44122

OWNER'S PHONE NO 216-374-7000 EMAIL j.warsaw@sure-site.com

DESCRIBE, BRIEFLY, YOUR REQUEST Site plan / parking lot

NEW CONSTRUCTION - SIZE OF BUILDING _____ SQ. FT.

BUILDING ADDITION - SIZE OF ADDITION _____ SQ. FT.

In the case the property owner is not the applicant and will not be present at the meeting, the applicant shall submit in writing, a statement from the property owner acknowledging this request and authorizing the applicant to make such request before the Planning Commission.

In the case a building exists on the lot that is owned by someone other than the property owner, and such building is related to this case, and such building owner will not be present at the meeting, the applicant shall submit in writing, a statement from the building owner acknowledging this request and authorizing the applicant to make such request before the Planning Commission.

PLEASE NOTE: it is the applicant's responsibility to review and comply with all mandates of the Parma Heights Codified Ordinances relative to this application request. Required fees must accompany application.

Signature of Applicant [Signature], on behalf of MKB Holdings, LLC
BayMark Health Services of Ohio, Inc.

FEE RECEIVED:

DEPOSIT RECEIVED:

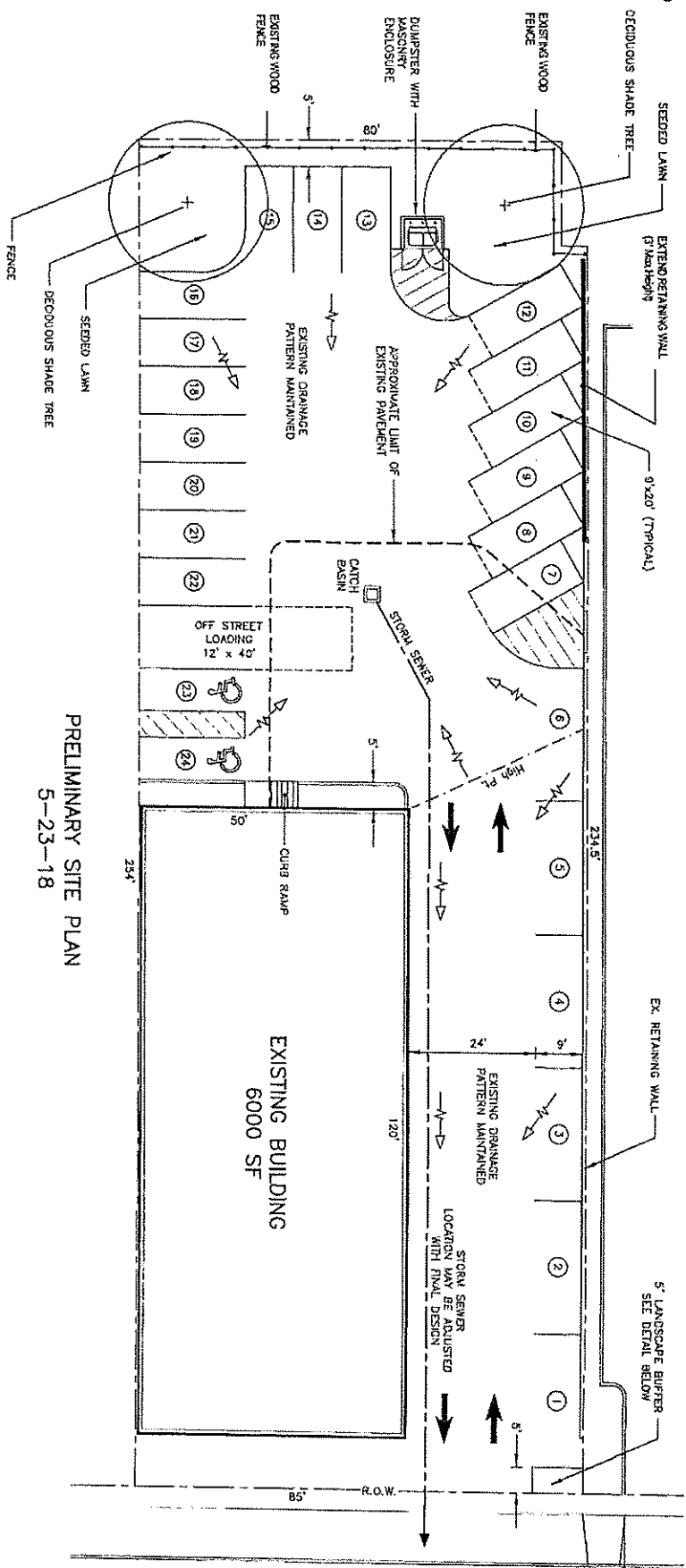
CASE NUMBER:



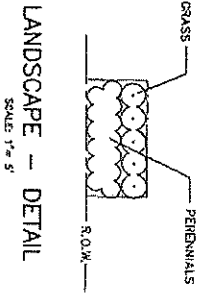
THE C.W. COURTNEY COMPANY
 Civil & Consulting Engineers
 Land Surveyors
 700 Beta Drive, Suite 200
 Cleveland, Ohio 44113-2354
 (phone) 440.449.4005 (fax) 440.449.0883
 www.cw-engineers.com



SCALE: 1" = 10'



PRELIMINARY SITE PLAN
 5-23-18



NOTE: FINAL GRADING AND DRAINAGE WILL BE DETERMINED AFTER SITE LAYOUT IS APPROVED.
 LOW WALL REQUIRED ON EAST AND NORTH EDGES OF PARKING EXPANSION DUE TO GRADE CHANGE.
 DETAILED LANDSCAPE PLAN WILL BE PREPARED AFTER SITE LAYOUT IS APPROVED.

OWNER:
 MKB HOLDINGS, LLC
 6700 PEARL ROAD
 PARMA HEIGHTS, OHIO 44130

TENANT:
 BAYMARK HEALTH SERVICES
 OF OHIO, INC.

APPLICATION FOR CHANGE OF USE

LOCATION OF PROPERTY (address/street) 6700 Pearl Road, Parma

PROPERTY OWNER MKB Holdings,

CURRENT ZONING C

PROPERTY OWNER MKB Holdings, LLC 1420 Cardinal Lane, Gates Mills, OH

NAME OF APPLICANT Chris Repp on behalf of FIRM SureSite

ADDRESS 3659 Green Road, Suite 214, Beachwood, OH

APPLICANT'S PHONE NO. 216-738-633 EMAIL c.repp@sure-

Signature of Applicant

DATE RECEIVED FEES RECEIVED

CASE NUMBER