



CITY OF BURTON

ZONING BOARD OF APPEALS

JULY 18, 2019

Council Chambers

Regular Meeting

5:00 PM

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by Chairman Steve Welch at 5:00 PM.

A. PLEDGE OF ALLEGIANCE

B. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Don Jones	Alt. Commissioner	Present	
Christina Conley	Council Representative	Present	
Scott Hynes	Commissioner	Present	
Tim Rapacz	Commissioner	Present	
Deb Walton	Commissioner	Present	
Michaeline Ward-Terry	Vice Chairperson	Excused	
Steve Welch	Chairman	Present	
Joey Richvalsky	Alt. Commissioner	Excused	
Rick Fuhst	Commissioner	Present	

C. STAFF PRESENT

Amber Abbey, Planning & Zoning
Rik Hayman, Chief of Staff
Marcy Kimball, Records Tech

D. APPROVAL OF MINUTES

None.

E. VARIANCE

1. ZBA#19-13

By: Daniel Peake
2111 Delaney St.
Burton, MI 48509

Re: 2111 Delaney St. Burton, MI 48509
59-03-300-040 R-1B Zone,

For: To construct a 4' chain-link fence in the front yard, objection received from
adjoin property owner.

Daniel Peake from Delaney Street stated I would like to put up a 4 ft. chain link
fence from the front of my house, where the privacy fence stops and out to the end
of the property line.

Cheryl DuShane from Delaney Street and neighbor of Mr. Peake's, said if the fence is

there it will be very hard for me to mow my lawn. My property at the end is slanted, which makes it even harder for me next to a chain link fence.

Mrs. Abbey stated we are not here to decide on a variance. You are only deciding on whether or not he can have the fence. Our ordinance states that when a fence goes into a front yard we notify the adjoining property owners. We received one objection back from Cheryl Dushane. What the board needs to decide on is if this fence is appropriate for this area. Properties are small and tight in this neighborhood.

Mr. Rapacz asked Mr. Peake, do you plan on encircling your front yard or just run down the property line and what is the reason for the fence.

Mr. Peake stated eventually I hope to encircle my front yard, but for now I would just like to run the fence down the side yard. I want to put this up to slow the foot traffic through there and keep stray animals out.

Motion to construct a 4' chain-link fence in the front yard, objection received from adjoin property owner.

RESULT: WITHDRAWN

2. Motion to allow a split rail fence on the north, side property line only.

Mrs. Walton stated when you own property and you have other people who were approved cyclone fences in your neighborhood, I do not think it is right to not allow it for another person.

Mrs. Conley stated she agreed with Mrs. Walton.

Motion to allow a split rail fence on the north, side property line only.

RESULT: FAILED [3 TO 4]
MOVER: Scott Hynes, Commissioner
SECONDER: Tim Rapacz, Commissioner
AYES: Jones, Hynes, Welch
NAYS: Conley, Rapacz, Walton, Fuhst
EXCUSED: Ward-Terry, Richvalsky

3. Motion to construct a 4' chain-link fence on the north side property line only, objection received from adjoining property owner.

RESULT: CARRIED [5 TO 2]
MOVER: Deb Walton, Commissioner
SECONDER: Christina Conley, Council Representative
AYES: Jones, Conley, Walton, Welch, Fuhst
NAYS: Hynes, Rapacz
EXCUSED: Ward-Terry, Richvalsky

4. ZBA #19-14

By: Allen Automotive, LLC.
 2447 E. Judd Rd.
 Burton, MI 48529

Re: This is not a specific property request. The request is for the City as a whole.

For: An interpretation of the zoning ordinance as it relates to the distance requirements under the commercial medical marijuana facilities portion of the ordinance.

Chris Stritmatter from Davison stated (and David Allen, Owner of Allen Automotive spoke) this is the second time we have been in front of this board. Originally, we asked for a variance concerning this property use for medical marijuana and the distance from the high school and the other building south of it. We are asking for an explanation as to how the spirit and intent of the zoning ordinance is met by when his variance was denied for that. He is zoned in a perfect spot. It is made for industrial use in that area. Facilities have been approved near it. It doesn't help an automotive business as the properties around it are continuing to be approved for this type of business. The distance between his property and the school is completely wooded and fenced. Mr. Allen would actually prefer to relocate his automotive business but the only people that have been interested in his building are these marijuana growers.

Thomas Panek from 2457 E. Judd said he is in support of this variance.

Mrs. Abbey stated the City of Burton has had a medical marijuana ordinance in place since 2010. Since that time, we have used property line to property line to measure out distances. We have not changed that and anyone who wished to appeal that came before the Zoning Board of Appeals. Each individual case was taken into consideration and decisions were made. If you change the way we have been doing things by changing the way this distance is measured, you will essentially change this city as a whole not his individual property. You will not be protecting the intent of the ordinance which is absolutely to protect uses not buildings or the way that the road is traveled. Two properties could share a property line without actually sharing road frontage. If this was approved and changed then you would open the city up to some very significant problems when it comes to distances. It takes that completely out of my hands and uses a measurement other than what we have been using for the last 9 years. Most recently we have divulged into the recreational marijuana ordinance requirements and through that text change we have 100% cleared up this language for the location limitations to say from property line to property line. This is not an effective ordinance so if the board decides tonight to use the traveled road as the way it is measured then we would have to edit that language.

Mrs. Walton, Chair of the Planning Commission, said we have worked very hard on this. We felt that property line to property was the best way to go. We did not make this decision lightly, we made this decision with our residents in mind.

Motion to confirm the interpretation of the zoning ordinance by the administration and to make no change as it relates to the distance requirements under the commercial medical marijuana facilities portion of the ordinance. The distance requirement will stay from property line to property line.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Scott Hynes, Commissioner
SECONDER:	Don Jones, Alt. Commissioner
AYES:	Jones, Conley, Hynes, Rapacz, Walton, Welch, Fuhst
EXCUSED:	Ward-Terry, Richvalsky

5. ZBA #19-15

By: Doris Dell
4243 Keene Dr.
Burton, MI 48519

Re: 4243 Keene Dr. Burton, MI 48519
59-34-551-045 R-1B Zone,

For: To conduct an M-1 special use in an R-1B Single Family Residential zone to allow more than 2 adult dogs.

Doris Dell from Keene Drive, read a letter from her doctor stating that he is prescribing an emotional support animal that will help Doris. She meets the definition of disability under the Americans Disability Act. Due to her mental illness, Doris has certain limitations regarding anxiety, grief response and PTSD. Ms. Dell said my daughter died three years ago and her three girls live with me. One of the girls has traumatic brain injury and is in a wheelchair. The bus stops at the end of my driveway to pick her up. The neighbor parked her car almost on the property line, so the bus cannot come in completely to pick her up. They have to pick her up in the middle of the road where it is muddy. The neighbor has also adjusted my security light on my porch. This light shines down on our handicap ramp. The light does not shine in their window.

Betsy Snyder from Howe Road, stated she has lived next door to Ms. Dell for over 30 years. Three of the dogs they have come with the three grandkids that moved in to Ms. Dells home. There is a total of four dogs, two cats, 5 people. One person is very handicapped and one is elderly. This is in a home that is a little over 900 sq. ft. with very little property. They do not leash their dogs and scream for them to come in day and night. They have no fenced in yard so they walk them on Consumers property and probably do not clean up their droppings. The dogs pee on my fence. I don't feel I should have to live this way. The law is there to protect not only us but the community. It is there to protect our mail carriers, delivery people, the garbage men, you next door neighbor, the kids riding bikes, the bus drivers that let the kids on and off the bus.

Larry Snyder from Howe Road said he did not park in her driveway, he parked in front of his house. They do not leash their dogs.

Heather Allen from Howe Road stated we should only be allowed two dogs. We have small homes and the yards are not fenced. If you add to the number of dogs allowed, that's where hoarding starts.

Tammy Dell from Bristol Road said I don't see any reason they cannot have a light shining on their ramp.

Mrs. Walton asked if the dogs have ever bitten anyone.

Ms. Dell stated no.

Mrs. Abbey stated this is a variance for dogs only and all other concerns need to be addressed through the Police Department. Our code enforcement officer received a complaint about the number of dogs they had. He advised them to remove the extra dogs or apply for a variance. They applied for a variance and that is why we are here today. Their request says they have three dogs but they currently have four. The administration is going to leave this decision to the board.

One of the ladies that lives in Doris Dell's home stated, I have recently moved out with my dog.

Mrs. Abbey said the request for the variance has gone from four dogs down to three dogs.

Mr. Hynes stated the cards that we received were issued in July. I also googled them and it was for an ad. I question the validity of the cards. I do not question the validity of the doctors note. We have some upset neighbors here and I wish they would handle it in a neighborly manner. However, I am a firm believer that if we have neighbor objections, we need to stick to the ordinance.

Motion to conduct an M-1 special use in an R-1B Single Family Residential zone to allow more than 2 adult dogs with the following stipulations:

1. To allow for 3 dogs at this time.
2. Must reapply for the variance every 2 years.
3. When the number of dogs goes down to two, there will be no replacement of a third dog. At this time, they will only be allowed to have two dogs as the ordinance states.
4. They must show proof of all dog licenses to the city every year. Failure to do so, will result in the loss of the variance.

RESULT:	FAILED [4 TO 3]
MOVER:	Deb Walton, Commissioner
SECONDER:	Christina Conley, Council Representative
AYES:	Jones, Conley, Rapacz, Walton
NAYS:	Hynes, Welch, Fuhst
EXCUSED:	Ward-Terry, Richvalsky

F. BOARD DISCUSSION

Mrs. Walton spoke regarding the building that Lowes on Court Street was in. On the radio station it was stated that Costco was going to go in there but because of our administration and council they have decided not to. My question to the administration is, have you ever heard from Costco in any way?

Mrs. Abbey stated I can only speak for myself as the superintendant of Planning and Zoning. I have not spoken to Costco and I am not aware of anyone else who has.

Mrs. Conley stated people with big businesses are going to come here because of the business, population, expressways and location.

The next regularly scheduled meeting will be held on Thursday, August 15, 2019, at 5:00 p.m.



City of Burton
 Department of Public Works
 4093 Manor Drive
 Genesee County, Burton, Michigan 48519
 (810) 742-9230

Date Filed: 6-5-19
 Fee Paid: N/A
 Receipt #: _____
 Check #: _____
 Received by: AA
 Date Mailed: _____

ZBA Case #: 19-13 4 Votes Required

APPLICATION FOR ZONING BOARD OF APPEALS HEARING:

PLEASE PRINT

DATE OF ZONING BOARD OF APPEALS HEARING: July 18, 2019 AT 5:00 P.M.

APPLICANTS NAME: Denise L. Peake

APPLICANTS ADDRESS: 2111 Delaney St

CITY: Burton, MI 48509

APPLICANTS PHONE: 810 429 5716

ADDRESS AND PARCEL OR LOT NUMBER: 2111 Delaney St.

59-03-300-040 R-1B

NOTE: ZBA meets on the 3rd Thursday of each month. All applications and associated drawings must be on file at least six (6) weeks prior to the meeting. Notification of property within 300' must be postmarked at least 15 days prior to the meeting. Including publication in local newspaper.

VARIANCE REQUESTED: to construct a 4' chainlink
fence in the front yard, objection
received.

APPLICANTS SIGNATURE: Denise L. Peake

MANDATORY ATTENDANCE AT THE ABOVE MEETING IS ACKNOWLEDGED BY THE APPLICANTS SIGNATURE.

APPLICANT: Please explain your hardship or reason this variance is needed.

Attachment: Back up 19-13 (4460 : ZBA #19-13)



APPLICATION & NOTICE FOR CONSTRUCTION OF A FRONT YARD FENCE

DATE PERMIT CAN BE ISSUED: 6-10-19DATE FILED: 5-28-19FEE PAID: -RECEIPT NO.: -CHECK NO.: -APPLICANTS NAME: Daniel PeatrAPPLICANTS ADDRESS: 2111 Delaney*DATE MAILED: 5-28-19APPLICANT'S PHONE NO.: 810 4295716MAILED BY: JBLEGAL DESCRIPTION OF PROPERTY: 59-03-300-040 2111 DelaneyFENCE DESCRIPTION: HEIGHT: 4' WOOD ☐ CHAINLINK ☒ VINYL ☐LOCATION OF THE FENCE: North SideAPPLICANT'S SIGNATURE: Daniel Peatr

*NOTE: The adjoining property owner shall, within seven (7) days of the notice, request a hearing before the Zoning Board of Appeals, in writing to the Building Division, 4093 Manor Drive, Burton, Michigan 48519 – if you have any objections to this application. Postmark notice five to seven (5-7) days prior to mandatory seven (7) day objection period.

Adjoining properties:

1. 2117 Delaney - Cheryl Dushane
2. 2103 Delaney - Paul & Dawn Zuhlke
3. _____
4. _____

Objection blank: (Complete Below & Return, if you object)

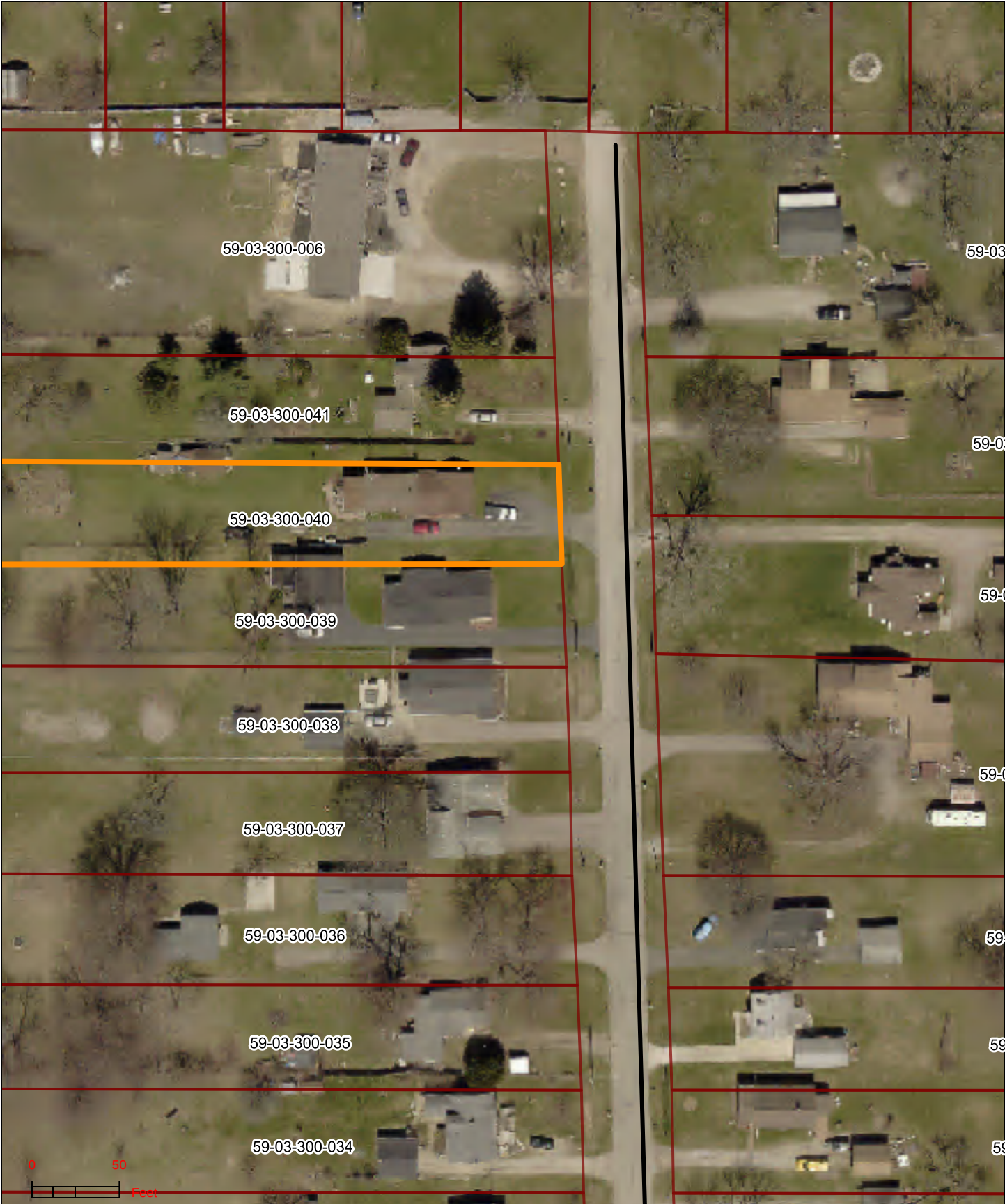
I, Cheryl Du Shane an adjoining property owner at 2117 Delaney St wish to object to this application and request a hearing at Burton City Hall, 4303 South Center Road. The date and time will be determined by the Department of Public Works.

SIGNATURE: Cheryl Du ShaneDATE: June 3, 2019TELEPHONE NO.: 288-8638

NOTICE GIVEN BY – BUILDING DIVISION OFFICIAL: _____

Attachment: Back up 19-13 (4460 : ZBA #19-13)

BURTON



Attachment: Back up 19-13 (4460 : ZBA #19-13)



City of Burton
 Department of Public Works
 4093 Manor Drive
 Genesee County, Burton, Michigan 48519
 (810) 742-9230

Date Filed: 6-14-19
 Fee Paid: \$200.00
 Receipt #: _____
 Check #: 17361
 Received by: AA
 Date Mailed: _____

ZBA Case #: 19-14

majority Present.
 Votes Required

APPLICATION FOR ZONING BOARD OF APPEALS HEARING:

PLEASE PRINT

DATE OF ZONING BOARD OF APPEALS HEARING: July 18, 2019 AT 5:00 P.M.

APPLICANTS NAME: Allen Automotive LLC

APPLICANTS ADDRESS: 2447 E. Judd Road

CITY: Burton, MI 48529

APPLICANTS PHONE: 810-813-7897

ADDRESS AND PARCEL OR LOT NUMBER: 2447 E. Judd Road, Burton, MI 48529

**This is not a specific property request. City as a whole!*

NOTE: ZBA meets on the 3rd Thursday of each month. All applications and associated drawings must be on file at least six (6) weeks prior to the meeting. Notification of property within 300' must be postmarked at least 15 days prior to the meeting. Including publication in local newspaper.

VARIANCE REQUESTED: Applicant requests an interpretation of the Zoning ordinance.
 Please see Exhibit 1 for a detailed explanation.

APPLICANTS SIGNATURE:  6-5-19

MANDATORY ATTENDANCE AT THE ABOVE MEETING IS ACKNOWLEDGED BY THE APPLICANTS SIGNATURE.

APPLICANT: Please explain your hardship or reason this variance is needed.

Also see Exhibit 1

Attachment: Back up 19-14 (4461 : ZBA #19-14)

EXHIBIT 1 – REQUEST FOR INTERPRETATION § 157.154(B)(2)(a)

In February, Allen Automotive LLC asked the Zoning Board of Appeals for a variance from the zoning requirements that a marihuana establishment be at least 500 feet from any other marihuana establishment and 1000 feet from any school.

The variance was denied, but Allen Automotive pointed out that the subject property is located in the M-1, and Bendle High School is located approximately 664 feet from the subject property if measured as the crow flies (but the ordinance requires 1000 feet separation). It is also located approximately 480 feet (just 20 feet shy of the 500-foot restriction) from an existing medical marijuana transaction facility located at 4232 S. Dort Highway if measured as the crow flies.

However, if the measurement was not a strict interpretation of straight lines a person would not normally travel; the facility may qualify under the ordinance. Rather, if the mode of travel was used, and the distance measured as vehicles would travel, then Bendle High School is approximately 3696 feet from the subject parcel. The existing marihuana facility is approximately 1056 feet if measured in this way.

Allen Automotive now asks the ZBA to clarify that the City measures “as the crow flies” for measurement restrictions from schools and other marihuana facilities under the Marihuana Ordinance of the City of burton; and how that protects the public health, safety, and welfare of the City.

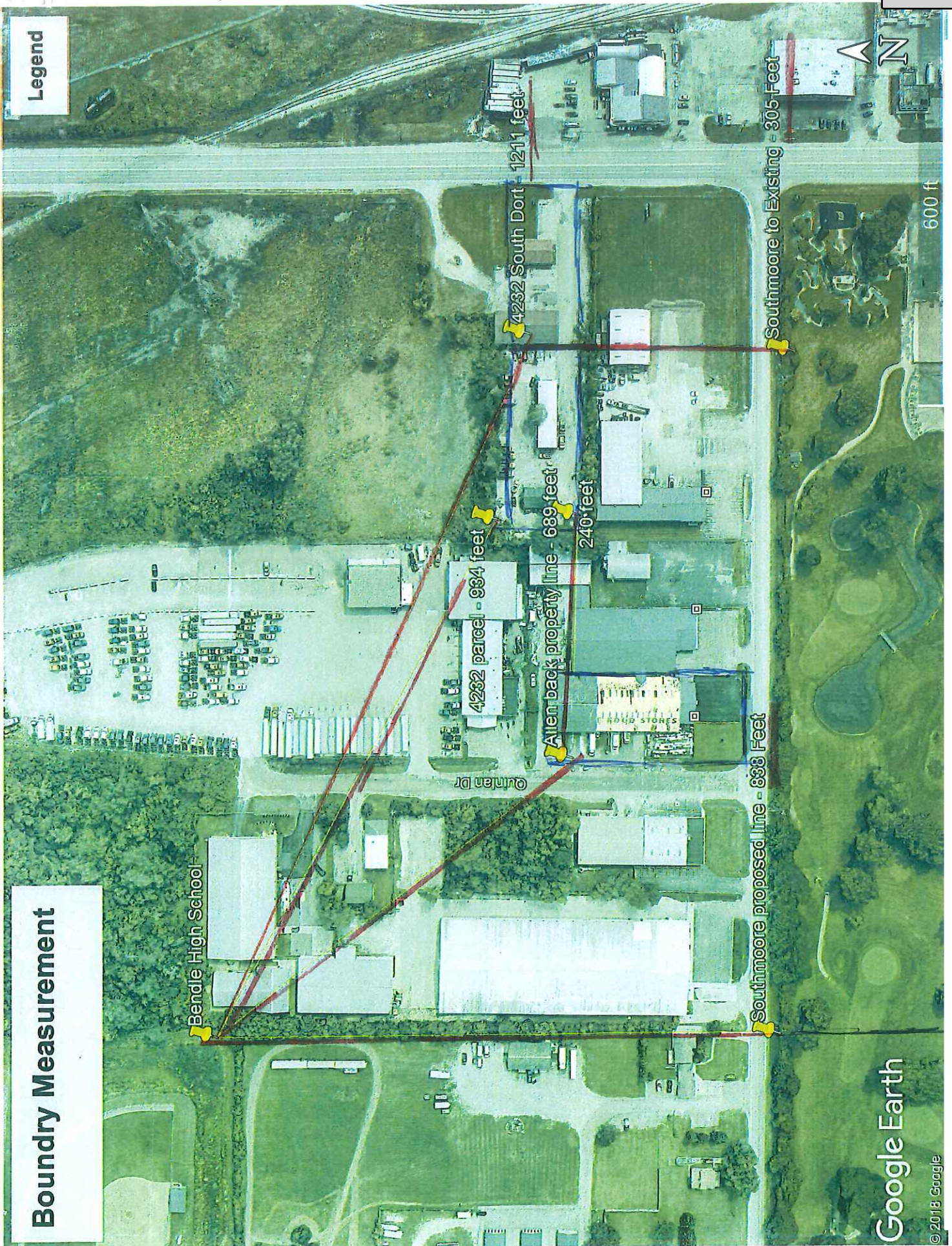
The subject property is located in the area of the City that is ideally suited to accommodate any of the medical marihuana facilities. Allen Automotive wishes to maximize the value of the subject property by marketing it for medical marihuana facilities, but by denying the variance under a strict interpretation of “as the crow flies” this is not possible.

Also for your consideration, please see the additional documentation and pictures provided and incorporated into Exhibit 1.

Attachment: Back up 19-14 (4461 : ZBA #19-14)

Legend

Boundry Measurement



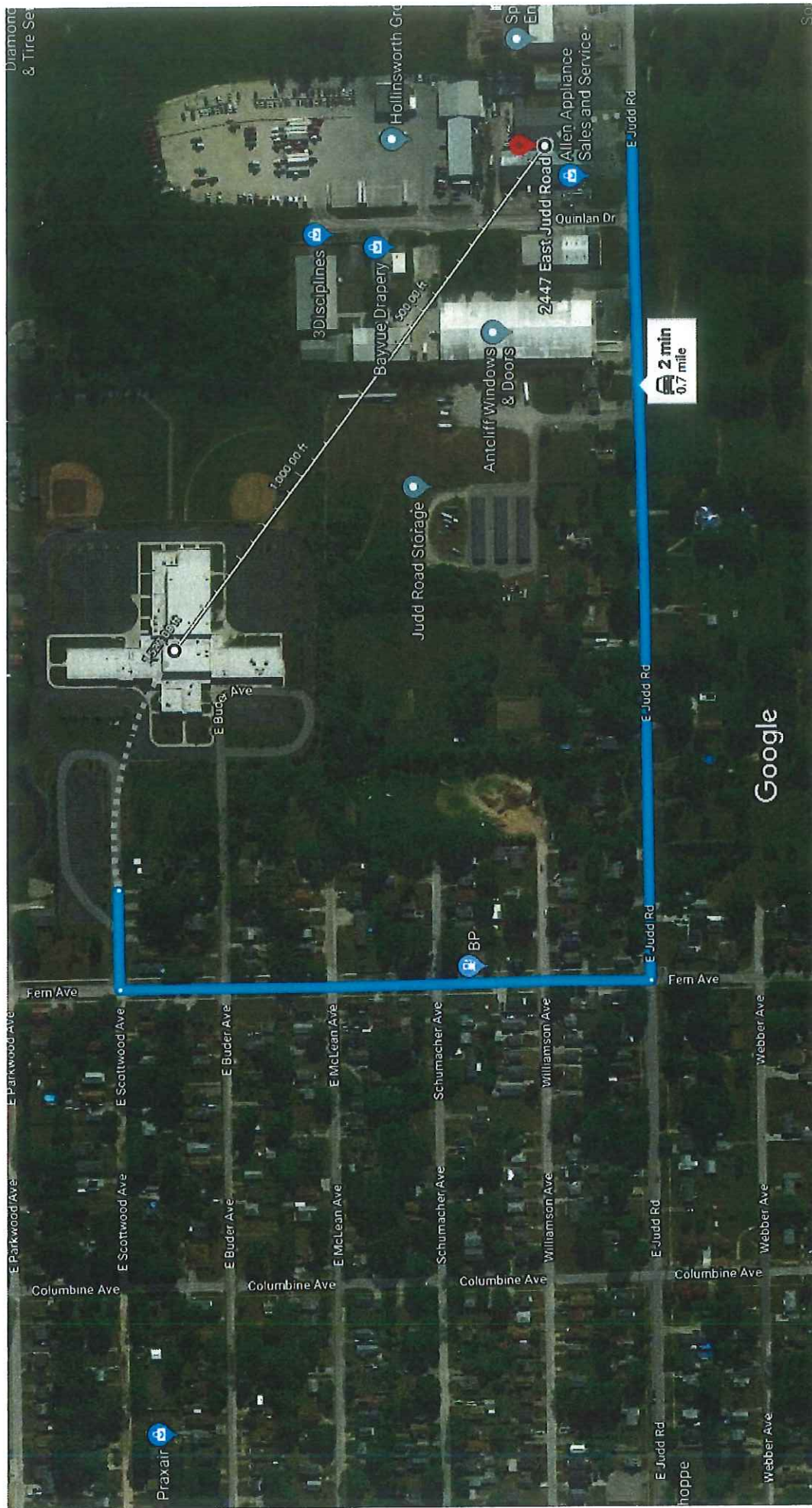
Google Earth

© 2018 Google



Bendle High School to 2447 E Judd Rd, Burton, MI 48529

Drive 0.7 mile, 2 min



Imagery ©2018 DigitalGlobe, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2018 Google



via Fern Ave and E Judd Rd

Fastest route

2 min

0.7 mile



Imagery ©2018 DigitalGlobe, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2018 Google 100 ft



via M-54 S and E Judd Rd

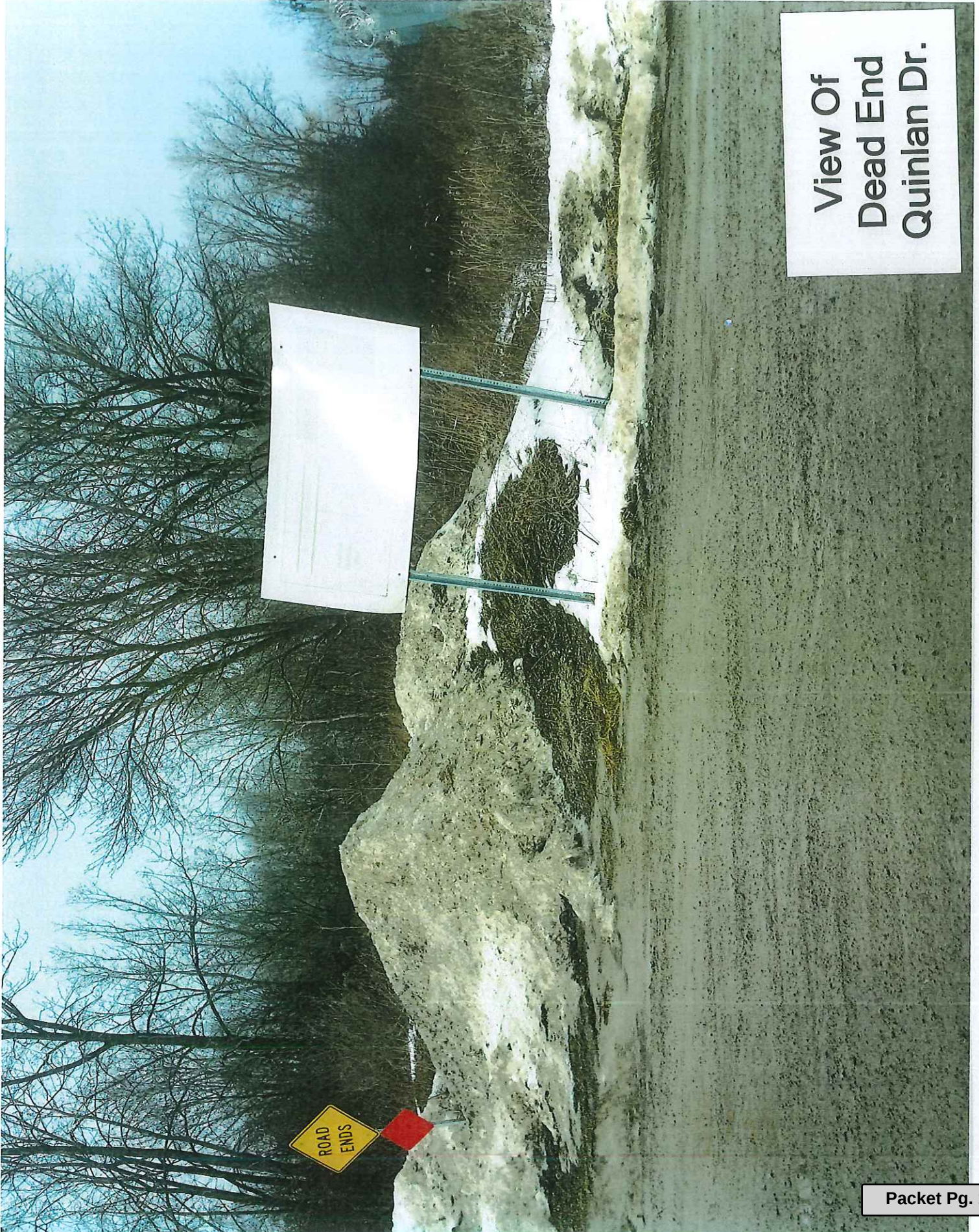
Fastest route

1 min

0.2 mile

View of
South Bendle
Elementary with
Southmoor Golf Behind





View Of
Dead End
Quinlan Dr.

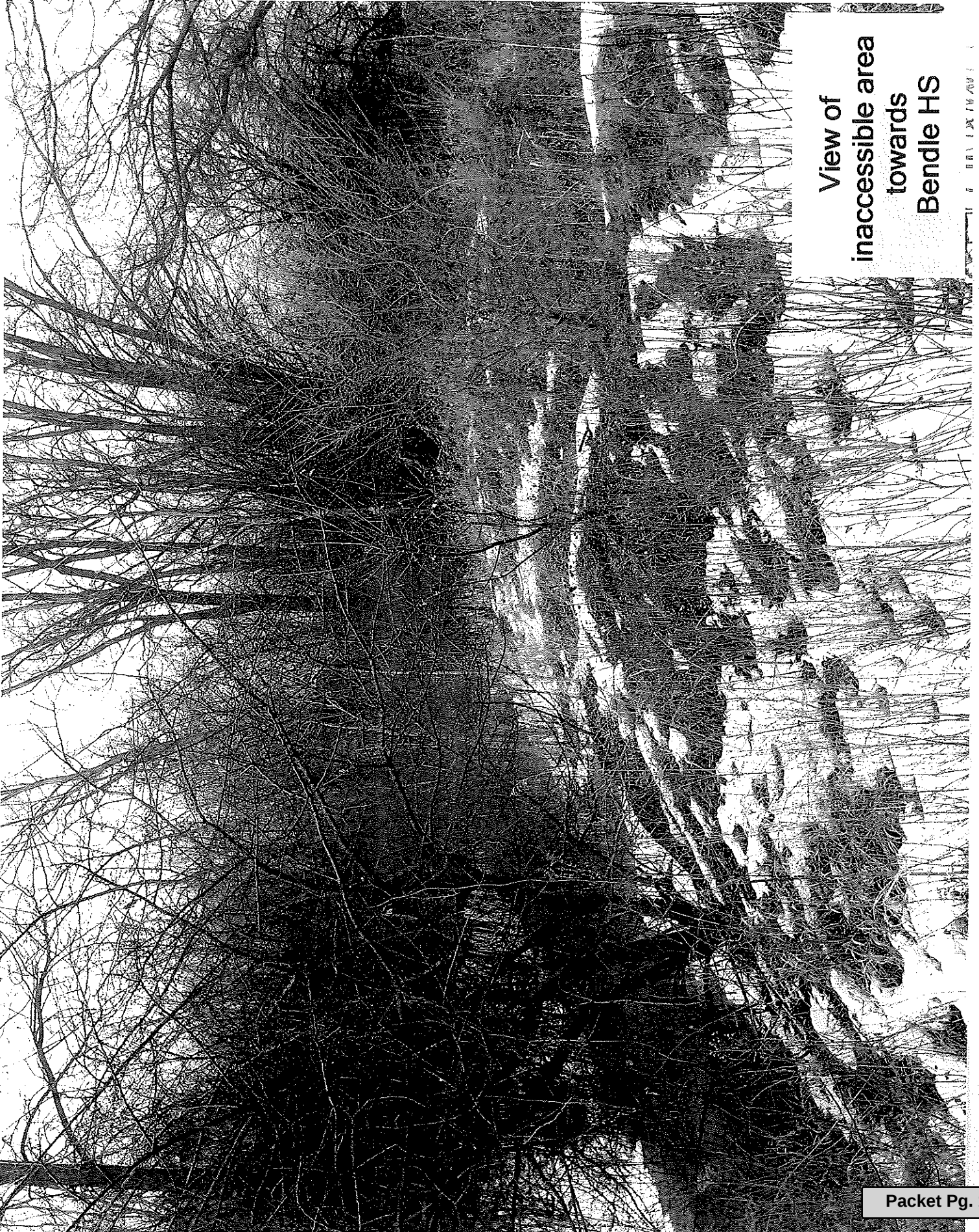
Attachment: Back up 19-14 (4461 : ZBA #19-14)



View of
inaccessible area
towards
Bendle HS

Attachment: Back up 19-14 (4461 : ZBA #19-14)

View of
inaccessible area
towards
Bendle HS





View of
inaccessible area
towards
Bendle HS

View of
South Bendle
Elementary with
Southmoor Golf Behind



Attachment: Back up 19-14 (4461 : ZBA #19-14)

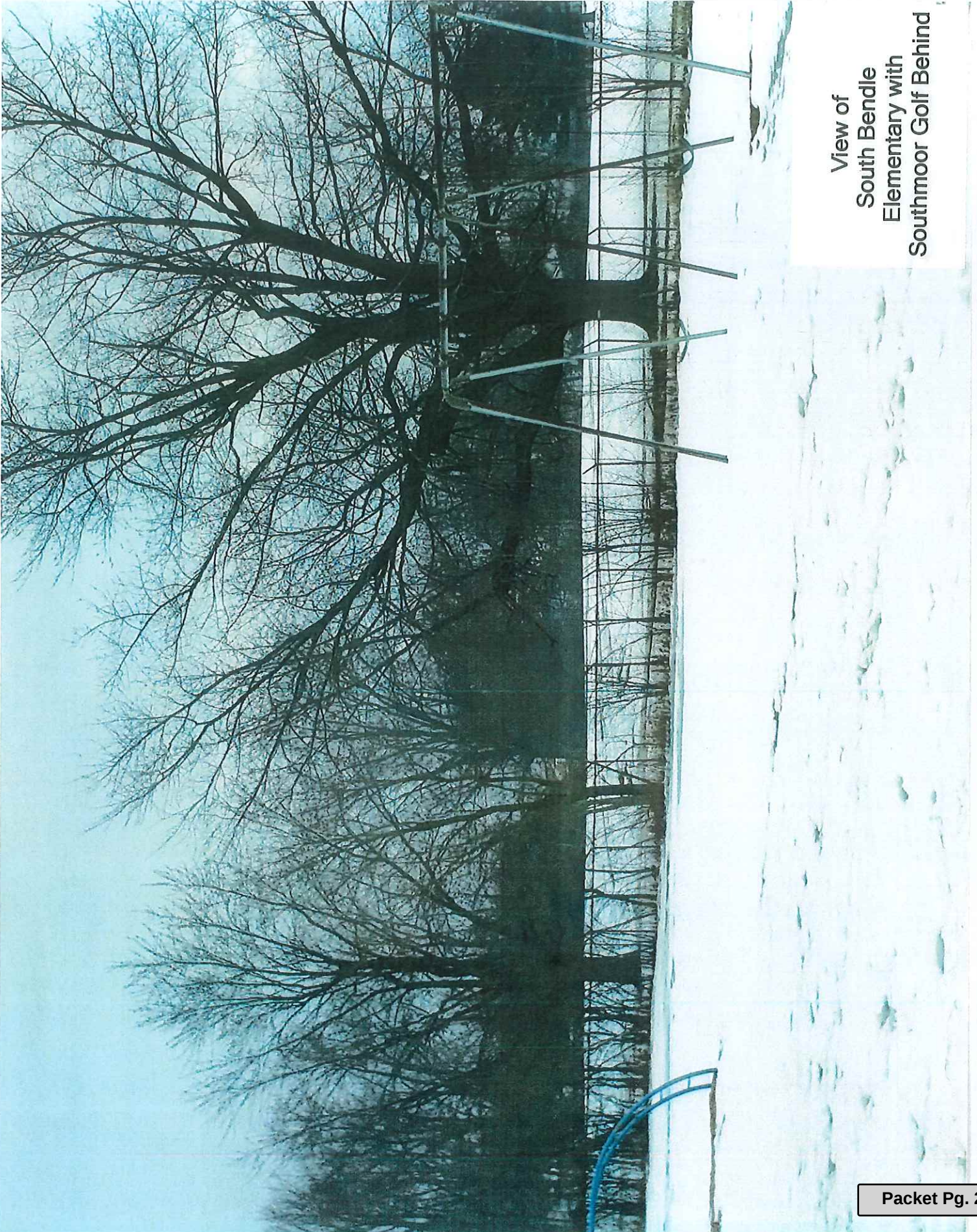
View of
South Bendle
Elementary with
Southmoor Golf Behind



Attachment: Back up 19-14 (4461 : ZBA #19-14)



View of
South Bendle
Elementary with
Southmoor Golf Behind



View of
South Bendle
Elementary with
Southmoor Golf Behind

Attachment: Back up 19-14 (4461 : ZBA #19-14)



City of Burton
 Department of Public Works
 4093 Manor Drive
 Genesee County, Burton, Michigan 48519
 (810) 742-9230

Date Filed: _____
 Fee Paid: _____
 Receipt #: _____
 Check #: _____
 Received by: _____
 Date Mailed: _____

ZBA Case #: _____ Votes Required

APPLICATION FOR ZONING BOARD OF APPEALS HEARING:

PLEASE PRINT

DATE OF ZONING BOARD OF APPEALS HEARING: July 18, 2019 AT 5:00 P.M.

APPLICANTS NAME: Allen Automotive LLC

APPLICANTS ADDRESS: 2447 E. Judd Road

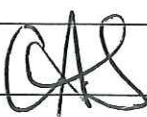
CITY: Burton, MI 48529

APPLICANTS PHONE: 810-813-7897

ADDRESS AND PARCEL OR LOT NUMBER: 2447 E. Judd Road, Burton, MI 48529

NOTE: ZBA meets on the 3rd Thursday of each month. All applications and associated drawings must be on file at least six (6) weeks prior to the meeting. Notification of property within 300' must be postmarked at least 15 days prior to the meeting. Including publication in local newspaper.

VARIANCE REQUESTED: Applicant requests an interpretation of the Zoning ordinance.
Please see Exhibit 1 for a detailed explanantion.

APPLICANTS SIGNATURE:  6-5-14

MANDATORY ATTENDANCE AT THE ABOVE MEETING IS ACKNOWLEDGED BY THE APPLICANTS SIGNATURE.

APPLICANT: Please explain your hardship or reason this variance is needed.

Also see Exhibit 1

Attachment: Back up 19-14 (4461 : ZBA #19-14)



City of Burton
 Department of Public Works
 4093 Manor Drive
 Genesee County, Burton, Michigan 48519
 (810) 742-9230

Date Filed: 6-20-19
 Fee Paid: 450.00
 Receipt #: Cash
 Check #: AA
 Received by: AA
 Date Mailed: _____

ZBA Case #: 19-15 5 Votes Required

APPLICATION FOR ZONING BOARD OF APPEALS HEARING:

PLEASE PRINT

DATE OF ZONING BOARD OF APPEALS HEARING: July 18, 2019 AT 5:00 P.M.

APPLICANTS NAME: Dodis Dell

APPLICANTS ADDRESS: 4243 Keene Drive

CITY: Burton M.

APPLICANTS PHONE: 510 744 4498

ADDRESS AND PARCEL OR LOT NUMBER: 4243 Keene Dr.

59-34-551-045 R-1B zone.

NOTE: ZBA meets on the 3rd Thursday of each month. All applications and associated drawings must be on file at least six (6) weeks prior to the meeting. Notification of property within 300' must be postmarked at least 15 days prior to the meeting. Including publication in local newspaper.

VARIANCE REQUESTED: FOR TREE Small Dogs -

to keep Four (4) Dogs. in a residential
zone, M-1 special use zone. required

APPLICANTS SIGNATURE: [Signature]

MANDATORY ATTENDANCE AT THE ABOVE MEETING IS ACKNOWLEDGED BY THE APPLICANTS SIGNATURE.

APPLICANT: Please explain your hardship or reason this variance is needed.

Attachment: Back up 19-15 (4462 : ZBA #19-15)

BURTON



Attachment: Back up 19-15 (4462 : ZBA #19-15)