

**CITY OF MURFREESBORO
BOARD OF ZONING APPEALS**

Regular Meeting, February 23, 2022, at 1:00 p.m.
City Hall, 111 West Vine Street, Council Chambers, 1st Floor

A G E N D A

1. Call to order
2. Determination of a quorum
3. Consideration of minutes for the regular meeting on December 12, 2021
4. New Business

Special Use Permit Request

- a. **Application Z-22-001 by Mr. Lester Earl Harris**, is requesting a special use permit in order to operate a temporary outdoor vending establishment (fruit, vegetable, and plant sales) in a Heavy Industrial (H-I) zone for property located at 535 NW Broad Street. (Project Planner: Brad Barbee)
5. Staff Reports and Other Business
 6. Adjourn

**MINUTES
OF THE CITY OF MURFREESBORO
BOARD OF ZONING APPEALS**

City Hall, 111 W. Vine Street, Council Chambers

December 20, 2021, 1:00 PM

Members Present:

Davis Young, Chair
Ken Halliburton, Vice-Chair
Misty Foy
Julie King

Staff Present:

Marina Rush, *Principal Planner*
Joel Aguilera, *Planner*
Roman Hankins, *Assistant City Attorney*
Serena Harris, *Recording Assistant*

1. Call to order:

Chair Young called the meeting to order.

2. Determination of a quorum:

Chair Young determined that a quorum was present.

3. Consideration of Minutes:

With there being no objection by any of the Board members, the minutes of the November 22, 2021, BZA meeting were approved as submitted.

4. New Business:

Zoning application [2021-027] for Mai True Thao, requesting a special use permit to operate a home-based business for clothing alterations at 5134 Green Acres Lane in an existing single-family residence. Property is zoned Single-Family Residential (RS-10). (Project Planner: Joel Aguilera)

Joel Aguilera presented the Staff Comments regarding this item, a copy of which is maintained in the permanent files of the Planning Department and is incorporated into these minutes by reference.

Ken Halliburton inquired if there would be any signage on the property.

Joel Aguilera stated that there will be no signage, per their applicant's letter.

Ms. Thao's daughter, Yang, came forward to address the board and expressed gratitude for the meeting on behalf of the applicant.

Chair Young opened the public hearing.

MURFREESBORO BOARD OF ZONING APPEALS MINUTES

December 20, 2021

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There being no one else to speak for or against the request, Chair Young closed the public hearing.

There being no further discussion, Misty Foy moved to approve the special use permit application subject to all staff recommendations; The motion was seconded by Julie King and carried by the following vote:

Aye: Julie King
Misty Foy
Vice-Chair Ken Halliburton
Chair Davis Young

Nay: None

5. Staff Reports and Other Business:

- a. Marina Rush reminded the board members to complete their annual disclosure forms and turn into Matthew Blomeley.
- b. City Call will be closed Thursday, December 23, 2021, and Friday, December 24, 2021, due to the holiday.

6. Adjourn.

There being no further business, Chair Young adjourned the meeting at 1:09 p.m.

CHAIRMAN

SECRETARY

MURFREESBORO BOARD OF ZONING APPEALS

STAFF REPORT

FEBRUARY 23, 2022

PROJECT PLANNER: BRAD BARBEE

Application: Z-22-0001

Location: 535 NW Broad St.

Applicant: Lester Earl Harris

Owner: Marietta J. Bishop

Zoning: Heavy Industrial (H-I)

Requests: A Special Use Permit in order to operate a temporary outdoor vending establishment (fruit, vegetable, and plant sales).



Overview of Request

The applicant, Mr. Lester Earl Harris, is requesting a Special Use Permit to operate a temporary vending business (produce sales) with a selling season from March 21, 2022 until May 31, 2022 (70 days) at the property located at 535 NW Broad Street. The property is currently developed with a vacant Krystal restaurant and associated parking.

The temporary use will not have tent or other structures erected and will have a single trailer for the produce display and an area of the parking lot designated for plant display. The applicant will provide portable toilet, located at the rear of the property near the dumpster enclosure. Trash will be managed with the trash enclosure onsite or removed daily. Parking will be provided in the existing spaces located adjacent to the building with additional spaces on the adjacent property to the east (also by permission of the same owner).

The proposed trailer will meet the required 42ft front setback requirement along NW Broad Street and the exit ramp from Memorial Boulevard and will be removed from the property each night. No generators, lighting, or signage will be used with this stand. The applicant has provided a copy of the lease from the property owner granting the applicant permission to operate the plant, vegetable, and fruit stand. The site is adjacent to commercially developed property to the south, also zoned H-I. The property across NW Broad Street is also used commercially and zoned Highway Commercial (CH). The property across Old Fort Parkway has been developed and is zoned H-I, as well.

Relevant Zoning Ordinance Sections

Section 25(D)(5) of the City of Murfreesboro Zoning Ordinance allows temporary vending establishments as a special use in the H-I district. City of Murfreesboro Zoning Ordinance Section 9(D)(2)(eeee) sets forth standards for temporary vendors in addition to the Standards of General Applicability in Section 9(C).

The applicable standards are listed below with information from Staff on how the applicant intends to address them. After reviewing the criteria for the special use requirements for temporary vending uses, this project appears to meet the criteria.

Standards of General Applicability with Staff analysis:

- (1) The proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety, and general welfare:**

The use is temporary, the applicant will provide a portable toilet onsite, sufficient parking is onsite, and trash will be managed. As proposed, it would not have an adverse impact on the above-mentioned list.

- (2) The proposed building or use will be constructed, arranged, and operated so as to be compatible with the immediate vicinity and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations:**

The temporary display is on the Krystal property near the NW Broad Street intersection and will not interfere with the neighboring property or the regular operation of nearby businesses. No new structures are proposed. On site circulation will remain as designed.

- (3) The proposed buildings or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water and sewers; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services:**

The site is currently developed, and these services are existing to the site. Staff believes this application will not hinder the above services. Parking on this site is in ample supply because the restaurant use is vacant.

(4) The proposed building or use will not result in the destruction, loss, or damage of any feature determined by the BZA to be significant natural, scenic, or historic importance:

No features of significant natural, scenic, or historic importance have been identified on the subject property.

(5) The proposed building or use complies with all additional standards imposed on it by the particular provision of this section authorizing such use. These include the following:

Additional Standards for Temporary Vendors with Staff Analysis:

Temporary vendors shall be subject to the following additional standards:

- a. The application for a temporary vendor Special Use Permit shall include the signature of the owner of the property or the owner's authorized agent. The owner of the property may be the applicant if the owner is to be the operator of the temporary use.**

The signature of the property owner is included on the application.

- b. The site for a temporary vendor shall be improved to provide adequate parking as determined by the BZA and shall provide for an on-site turn around area so that backing onto the street will not be necessary. Parking areas shall have an asphalt, concrete, or other hard dustless surface. In the event the proposed location will be on the site of an existing permanent business, the applicant must provide verification that the parking spaces displaced by the temporary vendor (including areas for tents, trailers, inventory, and parking for the temporary vendor) will not total more than 25% of the total parking available on the site.**

Much of the property is currently paved with concrete. The current structure is vacant, and the property owner has indicated that it will remain vacant during the duration of this use.

- c. Traffic control measures may be required by the BZA. These may include a requirement that the applicant make provisions for directing traffic during expected peak hours of operation.**

The applicant is aware that additional traffic control measures could be required by the BZA. Entrance into the site to the north is very close to the off-ramp of bridge over Broad Street. Ingress into the site may be directed to the southerly driveway, if the BZA determines it is needed for safety.

- d. Temporary facilities, including vehicles, trailers or tents, will be permitted provided they are erected or placed in conformance with all applicable Codes. Any tent must provide an emergency exit remote from the point of entrance into the tent. Vehicles, trailers, and tents must be located on an asphalt, concrete or hard dustless surface and in no event may be erected or placed on a gravel or grass area. All approved vehicles, trailers or tents must be maintained in good condition. Any vehicle, trailer or other moveable equipment used in connection with such temporary vendor shall be removed from the site at the conclusion of each business day. No such vehicle, trailer or equipment shall be removed and then be parked or stored in a residential area where such parking or storage is prohibited by ordinance or restrictive**

covenant. A vehicle or trailer may remain on the site overnight only if it is being used to provide security for items for sale remaining on the site, which items are not in a vehicle or trailer, provided the vehicle or trailer is constantly occupied or attended. The applicant shall be required to identify any vehicle, trailer or equipment to be used, and its overnight use and location, in the application.

According to the applicant, one trailer will be used to display produce. The applicant has stated he will remove the trailer each night.

- e. Any site used for a temporary vendor must be located so that all parts of all facilities and sales inventory on the site are no more than five hundred feet from an operable fire hydrant.**

A fire hydrant is located on site along the NW Broad Street frontage.

- f. A deposit in the amount of five hundred dollars (\$500) per site shall be made with the Building and Codes Department. In the event the site has not been cleared and cleaned within the time specified, the deposit shall not be refunded. Additionally, unless the owner (and permit holder, if different) can prove good cause, the site shall not be eligible for other permits for temporary vendors, and the permit holder shall not be eligible for another temporary vendor Special Use Permit, for six (6) months for the first offense, twelve (12) months for the second offense and eighteen (18) months for the third and all subsequent offenses. Except as otherwise specifically provided herein in subsection [10], all sites must be cleared and cleaned within five (5) days after the expiration of the Special Use Permit.**

The applicant is aware of the deposit and the requirement to clean up the site after the selling season.

- g. Adequate provision shall be made for restroom facilities on the property. Restroom facilities must be located on-site for all temporary vendor locations that include on-site overnight security. Portable toilets, if used, shall be located on the site and may not be located in any required front setback or in any required side yard. The BZA may approve the use of off-site restroom facilities provided they will be available during all business hours and provided that the applicant provides the written permission of the owner or manager of the off-site facilities.**

According to the applicant, a portable toilet will be provided on site. See included site plan.

- h. The applicant shall post on the property documentation of the BZA's granting of a temporary vendor Special Use Permit for inspection by City officials or others during the course of the temporary use.**

The applicant will comply with this requirement.

- i. No special use permit shall be granted to any applicant who occupies or proposes to occupy premises for the temporary vendor where conditions exist on the site which are in violation of the sign, building, fire, electrical, or other ordinances of the City. If any such violations occur after the issuance of the temporary vendor Special Use Permit and same are not cured within 24 hours after notice, the Special Use Permit may be suspended, revoked or terminated by written notice, any temporary electrical service may be interrupted, and the deposit may be forfeited. The written notice referenced in the previous sentence may be given by the Director of the Planning and Zoning Department, the Director of the Building and Codes Department, the City Manager or**

the Assistant City Manager. The City may, in addition, initiate any other enforcement remedies with respect to such violations as may be provided by law.

The applicant stated he understands these requirements.

- j. Any electric meter installed on a freestanding permanent pole and/or any temporary pole installed to supply power to a temporary vendor shall be removed within 14 days after the Special Use Permit expires.**

According to the applicant, no power by a freestanding pole or generator will be utilized.

- k. Any site for a temporary vendor must be located so that all parts of all facilities and/or tents and all inventory are outside of any easements for electric power transmission or distribution.**

The site of the display area is not located in any easements.

- l. Adequate provision shall be made for solid waste management. If a dumpster is to be located on-site, it shall be located in such a manner as to minimize impact on adjoining properties or other businesses on the same lot of record.**

According to the applicant, a trash can will be provided. The existing trash enclosure is located in the rear of the property.

- m. Signage for a temporary vendor shall conform to the requirements of the City's sign regulations including but not limited to an application for a sign permit and payment of applicable sign permit fees. The granting of a temporary vendor Special Use Permit shall not, by itself, allow any signage on the site in addition to that which was allowed prior to the granting of such permit.**

According to the applicant, no signage will be utilized.

- n. The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, live band, amplifiers, loudspeakers, or other machine or device for producing or reproducing sound in such a manner as to disturb the peace, quiet and comfort of neighboring residents at any time with louder volume than is necessary for convenient hearing for the persons responsible for producing or reproducing such sound shall not be permitted.**

The applicant is aware of this requirement and will comply.

- o. A site may be used for temporary vending for no more than 70 days during any 12-month period. The BZA may approve a site to be used by multiple temporary vendors provided that no site shall be used by more than one temporary vendor at any time. A Special Use Permit for temporary vending shall expire at the end of one year after the date of approval. Notwithstanding the foregoing, a site which was approved by the Board of Zoning Appeals as a location for a temporary vendor of food or retail merchandise during the 12 months immediately preceding the effective date of this ordinance will continue to be an eligible site for a temporary vendor Special Use Permit for up to six months during any 12 month period provided all other conditions for site approval continue to be met, and provided further, that the eligibility of any such site for the issuance of an extended Special Use Permit shall end at the end of any 12 month period during which the site was not given approval for use by a temporary vendor of food or retail merchandise, or on March 24, 2022, whichever shall first occur.**

The application is for 70 days and will not exceed the amount of time stipulated above.

- p. The BZA may require additional standards be met in order to assure compatibility of the proposed location with adjoining properties.**

The applicant will adhere to any additional requirements.

- q. Notwithstanding subsections [2] and [4] above, a temporary vendor may be permitted to locate parking areas, tents and other facilities on lots with gravel surfaces if such gravel surfaced lots were legally established, in existence and had been used for temporary vending purposes prior to January 1, 2007 provided however that the exception in this subsection shall end on November 14, 2017.**

The parking lot consists of concrete.

- r. The application for and grant of a Special Use Permit for the temporary vending of food, beverages, animals, produce, other merchandise and any other such temporary sales event that is not an accessory use to the principal use on a lot or a portion of a lot shall be subject to the following additional conditions: [aa] Tables, chairs, or other furniture that would allow or facilitate on-site consumption of food or beverages shall not be allowed on the site.**

No vending of food or beverage is proposed in this application.

Recommended Conditions of Approval:

- 1) This temporary vending permit is for the sale of plants, vegetables, and fruits only.
- 2) The use shall not start before the surety has been posted and the permit has been issued.
- 3) Applicant must obtain a City of Murfreesboro business license prior to opening for business.
- 4) The applicant shall provide the required \$500.00 deposit to the Buildings and Codes Department as specified in additional standard 9(D)(2)(eee)(6).
- 5) The proposed trailer will be removed from the property daily.
- 6) The applicant will leave the property in a neat and orderly appearance daily.
- 7) Provide a barrier to define the sales area and separate it from the drive aisle.
- 8) Maintain 22-ft of drive aisle width along the main entrance.

Attached Exhibits

1. Site photos
2. Letter of explanation from applicant
3. BZA Application
4. Copy of Lease Agreement
5. Site Sketch

Site Photo #1



Site Photo #2



Site Photo #3



Site Plan for 535 NW Broad St

- Purpose of Use:
 - o Sell seasonal plants (i.e. flowers and shrubs) and locally grown and sourced produce to the community
- When:
 - o March 21st 2022 through May 31st 2022
- Hours of Operation:
 - o 10:00 am through 7:00 pm 7 days of week
- Property Layout:
 - o Please see the provided photo of the property. The shaded areas depict how the property will be used
 - o The existing building is unoccupied and will not be used
 - o No tents or other temporary structures will be erected
- Facilitates:
 - o A portal potty will be provided for customer use during operating hours.

Standards For Special Permit Use. Section 9.

(c) Standards of general applicability. An applicant for a special permit shall present evidence at the public hearing on such special permit, which evidence must establish:

(1) that the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting public health, safety, and general welfare:

The intended use of the property will not encroach on the neighboring property therefore the neighboring property will not be adversely affected.

The display and sells of annual plants and produce will not affect the character of the neighborhood.

The property currently has a dual ingress, egress and an egress on NW BroadSt that will be utilized for all traffic flow.

There are 24 parking spaces available for customer use. There will be no public utilities used.

(2) That the proposed building or use will be constructed, arranged, and operated to be compatible with the immediate vicinity and to not interfere with the development and use of adjacent property in accordance with the applicable district regulations:

The arrangement/display of plants and produce will not encroach on the city rideaway or neighboring properties.

(3) that the proposed buildings or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water and sewer; or

that the person or agencies responsible for the establishment of the proposed use will provide adequately for such services.

The existing ingress and egress on NW Broad St will be of adequate service. The 24 existing parking space will adequately serve my needs.

The existing drainage will be adequate. Refuse will be removed daily by myself.

No flammable equipment or liquids will be used on site therefore the current fire protection services will be adequate.

No public utilities will be needed for my use.

(4) that the proposed building or use will not result in the destruction, loss, or damage of any feature determined by BZA to be of significant natural, scenic, or historic importance: and

(5) that the proposed building or use complies with all additional standards imposed on it by the particular provision of this section authorizing such use.

The existing property will not be altered in any way. No temporary tents or other structures will be erected.

[9]{7} Adequate provisions shall be made for restroom facilities on the property: a porta potty will be provided during operating hours.

I Have provided a topographical photo of the property in question that highlights and illustrates how each section will be utilized.

APP A:77, A:78, A:79, A:80, A:81

[9]{1} Applicant and property owner signatures are on the BZA application.

{2} the property currently has 24 striped parking spaces. There is no streetparking for this location.

The entire lot surface is concrete.

There is no business currently operating on this site.

{3} A turn right only sign at both egress points can be installed if recommended.

{4} A utility trailer which will be used to sell produce will be located in the designated sales area as indicated on the topographical photo of the location.

{5} A fire hydrant is located on the property next to the sidewalk. The entire sales lot is within two hundred twenty-five feet of an operable fire hydrant.

{6} not requested by Brad

{7} A porta potty will be available for customer and employee use during operating hours.

{8} will post once issued

{9} I believe the proposed site meets all current city ordinances.

{10} no electrical services needed.

{11} no known easements exist.

{12} all solid waste will be removed daily.

{13} No sign permit requested.

{14} No music will be played.

{15} There will only be one vendor during the allotted 70 days.

{16} N/A

{17} N/A

{18} N/A

{19} N/A

{20} No tables, chairs, or other furniture for customer use provided.

City of Murfreesboro
BOARD OF ZONING APPEALS **HEARING REQUEST APPLICATION**

Location/Street Address: 535 NW Broad Street Zoning District: C/HI
 Tax Map: Group: Parcel: Zoning District: C/HI

Applicant: Lester Harris E-Mail: freddys42@gmail.com
 Address: 5991 Mansford Rd Phone: 615-556-6842
 City: Winchester State: TN Zip: 37398

Property Owner: Marketta J. Bishop (chapter: Rick)
 Address: 1103 E. Main Street #100 Phone: 615-336-1730
 City: Murfreesboro State: TN Zip: 37130

Request: Temporary Use Permit
 Zoning District: _____
 Applicant Signature: [Signature] Date: 2/7/2022

Received By: S. HARRIS Receipt #: 530121
 Application #: 2022-001 Date: 2-7-2022

✓ # 1011

Murfreesboro
Board of
Zoning Appeals



T E N N E S S E E
HEARING APPLICATION
AND
GENERAL INFORMATION

**COMMERCIAL LEASE AGREEMENT
(Single – Tenant Facilities)**

1 For and in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and
2 sufficiency of which is hereby acknowledged, Lester Harris as
3 tenant (hereinafter referred to as "Tenant"), and Marietta Bishop as
4 landlord (hereinafter referred to as "Landlord"), do hereby enter into this Lease Agreement ("Lease" or "Agreement") on this
5 day of _____ ("Binding Agreement Date"). Landlord leases to Tenant, and Tenant leases
6 from Landlord, the Property described as follows: All that tract of land known as:
7 535 NW Broad Street / 37120 (Address),
8 Murfreesboro (City), Tennessee, TN (Zip), as recorded in Rutherford County
9 Register of Deeds Office, _____ deed book(s) _____ page(s), and/or _____
10 instrument no. and further described as:

11 Old Krystal Building parking lot / Parking lot only
12 together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as the
13 "Property", as more particularly described in Exhibit "A", or if no Exhibit "A" is attached as is recorded with the Register of
14 Deeds Office of the county in which the Property is located and is made a part of this Lease by reference.

15 1. **Term.** term of this lease shall begin either on the earlier of the completion of work described in any attached Work Letter
16 or _____ ("Commencement Date"). The initial term of this Lease shall be for _____ years,
17 _____ months following the Commencement Date ("Expiration Date").

18 **Option to Extend.** This lease shall extend at the end of the term for a period of ___ years ___ months ending on
19 _____, if written notice is given to landlord by tenant _____ days prior to the Expiration Date. Any other change
20 in terms shall be agreed upon via an addendum or amendment to this Agreement.

21 **No extension**

22 2. **Possession.** If Landlord is unable to deliver possession of the Property on the Commencement Date, rent shall be abated
23 on a daily basis until possession is granted. If possession is not granted within _____ days from the Commencement
24 Date, Tenant may terminate this Lease in which event Landlord shall promptly refund all payments and deposits to Tenant.
25 The aforementioned remedies are the sole remedies recoverable from the Landlord for delays in delivery of possession to
26 Tenant. Landlord shall have no liability for any delays in possession caused by strikes, acts of God or nature, or delays
27 directly caused by Tenant's improvements. In the event of such delays, the date of Possession may be extended by the
28 number of days resulting from such delays, not to exceed _____ calendar days; Landlord shall notify Tenant of any such
29 delays. Inclement weather or other delays shall not extend the performance date unless they prevent the completion of
30 work which would otherwise have been actually performed. Tenant acknowledges that Tenant has inspected the Premises
31 and that it is fit for its stated use as described herein.

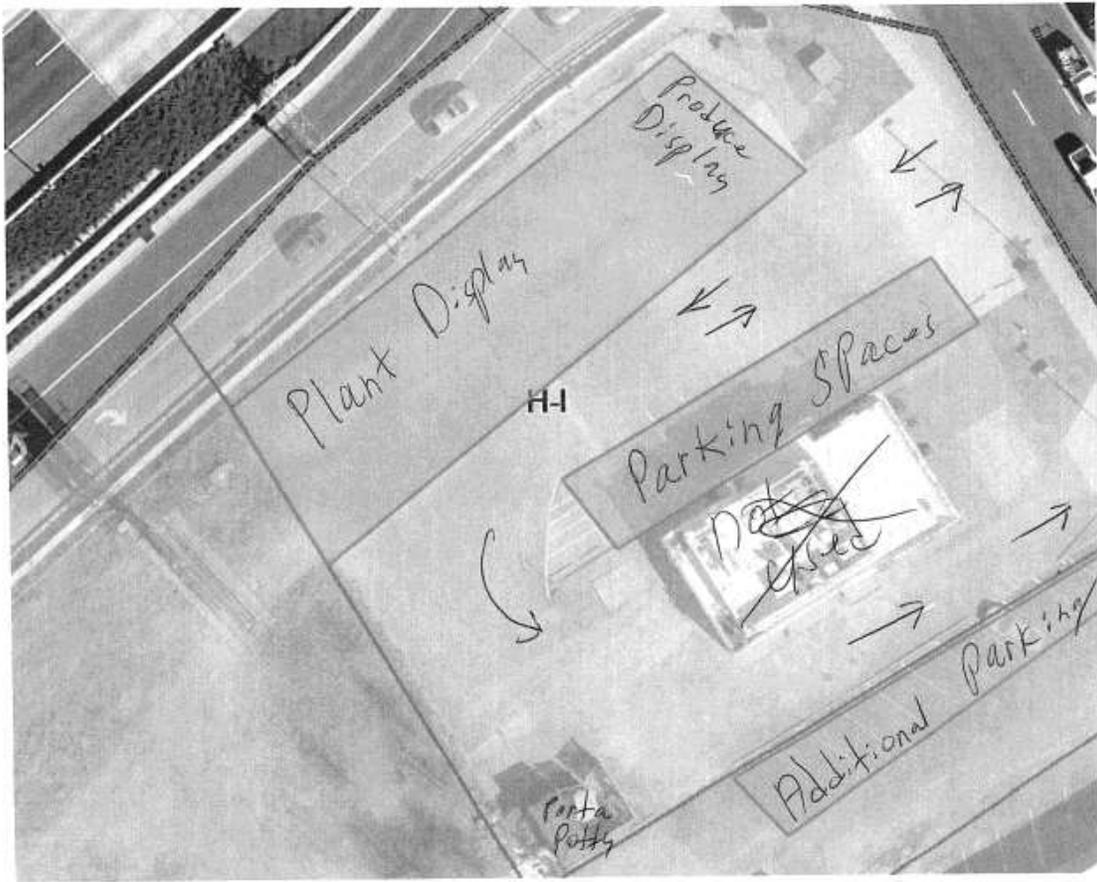
32 3. **Rent.** Tenant shall pay base rent ("Base Rent") to Landlord without demand, deduction or setoff, in advance, payable as
33 follows:

34 \$2,000.00 (Two thousand dollars and no/one hundredths) due on day
35 one (March 15, 2022), Month 2 (two) due on April 15, 2022
36 for \$2,000.00 and balance of \$67.00/day due on
37 May 1, 2022

38 Rent shall be due, without notice or demand, on the first day of each month during the term of the Lease or any renewals
39 or extensions thereof, at the address set forth in the Notice Section of this Lease (or at such other address as may be
40 designated from time to time by Landlord in writing). If the Rent Commencement Date begins on the second (2nd) through
41 the last day of any month, the initial Rent and the last month's Rent shall be prorated for that portion of those months. The
42 initial month's Rent shall be paid at the time of leasing the Property. Tenant shall also pay additional rent ("Additional
43 Rent") as may be provided elsewhere in this Lease. Such Additional Rent shall be paid in the same manner as the Base
44 Rent. Base Rent and any Additional Rent shall be collectively referred to as "Rent".



535 N. Broad St



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