

**PLANNING AND DEVELOPMENT SERVICES STAFF REPORT**

**For Planning Commission Meeting of June 2, 2020**

**SUBJECT: Valhalla Ann Arbor Annexation, Rezoning, and Site Plan  
(84 Valhalla Drive)  
Project No. SP19-018, Z19-009, A19-007 through A19-019**

**PROPOSED CITY PLANNING COMMISSION MOTION**

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the annexation and the Valhalla Ann Arbor Rezoning Petition to R4E (Multiple-Family District) based on the proposed zoning and accept these conditions:

- The density not to exceed 50 units per acre.
- The maximum height of any building will be 79 feet.
- The inclusion of nine affordable housing units as described in Statement of Conditions.

The approval is subject to executing a Conditional Zoning Statement of Conditions.

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**Alternate Staff Rezoning Recommendation  
PROPOSED CITY PLANNING COMMISSION MOTION**

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Valhalla Ann Arbor Annexation and R1D (Single-Family Dwelling District) Zoning.

**PROPOSED CITY PLANNING COMMISSION MOTION**

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve Valhalla Site Plan and Development Agreement.

**STAFF RECOMMENDATION:**

Staff recommends that the R4E Conditional Zoning District be **denied** because it is not consistent with the Master Plan Land Use Element and does not demonstrate how it would be advantageous to the City.

Staff recommends that the Valhalla Ann Arbor Development Site Plan be **denied** because the development is not consistent with the Master Plan Land Use Element and does not adequately address other elements of the Master Plan including sustainability and Affordable housing.

Staff recommends that the annexation petitions be **approved** because the lots are within the City's water and sewer service area.

Staff recommends that R1D Zoning District be **approved** because it is generally consistent with the Master Plan Land Use Element and is compatible with the surrounding zoning designations and land uses.

#### **LOCATION:**

The site is located on the east side of South Main Street near the intersection of Scio Church Road, north of Ann Arbor Saline Road and adjacent to University of Michigan's golf course.

#### **SUMMARY:**

The project contains a total of 15 parcels, 13 parcels are still located in Pittsfield Township and will be annexed to the City. After annexation, this proposal will conditionally rezone all 15 parcels (9.8 acres) to R4E (Multiple-Family Residential District). Six houses currently exist on the site, four of which remain under township jurisdiction and of the remaining two houses, one is zoned R1C and one is zoned R1A. All existing structures will be removed.

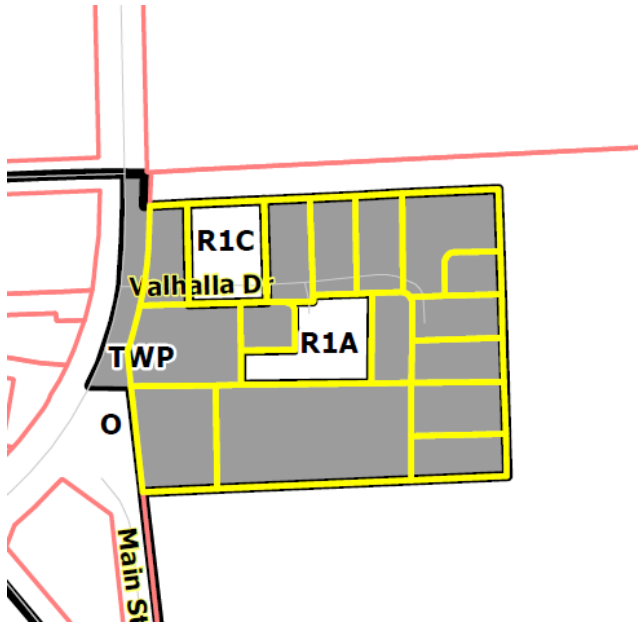
The proposal includes a total of 454 dwelling units in several stacked flat apartment buildings and five townhouse buildings. The units provided will be a mix of studio, one and two bedrooms. The townhouse buildings will contain a total of 19 units, the remaining apartment units will be constructed in one large building oriented around a center courtyard and three smaller buildings along the east side of the parcel. The eastern buildings will appear separate above ground but will be connected through the underbuilding parking garages. The larger building will also have understructure parking for a majority of the parking spaces provided. The townhouse units will each have private two-car garages. The remainder of parking will be provided adjacent to the private drives both as parallel and perpendicular spaces. There are no public roads within the development.

The project is proposing 3 units leased at or below 80 percent of the City of Ann Arbor median household income, 3 units leased at or below 70 percent of the City of Ann Arbor median household income, and 9 units leased at or below 60 percent of the City of Ann Arbor median household income, totaling 15 affordable housing units. 9 of the units proposed meet the City of Ann Arbor's definition of affordable housing which is housing provided for those making 60% or less of the Average Median Income for Ann Arbor. 60% of Area Median Income for a household of two people is \$48,600.

The project includes solar panel installation and approximately 10,000 square feet of vegetated roof area. According to the petitioner, the solar panels are designed and projected to produce a total of over 435,000 kWh per year for the project, which is projected to offset over 12-13% of

the Project's total energy consumption. A Solar Study Report has been submitted by the petitioner and uploaded to etrakit.

#### REZONING PETITION:



Current Zoning – The site is currently 15 separate parcels. Two of the parcels are under the jurisdiction of the City, one is zoned R1C, the other is zoned R1A. The remaining parcels are still under township jurisdiction.

Proposed Zoning -- The proposed conditions were drafted by the petitioner to allow the following uses and configuration of the site:

- The density not to exceed 50 units per acre.
- The maximum height of any building will be 79 feet.
- The inclusion of 15 affordable housing units as described in Statement of Conditions.

#### SITE PLAN PETITION:

Existing Conditions – The site currently contains six single-family houses; the remaining parcels are vacant. The aerial photo does show an additional house which was demolished in 2019.

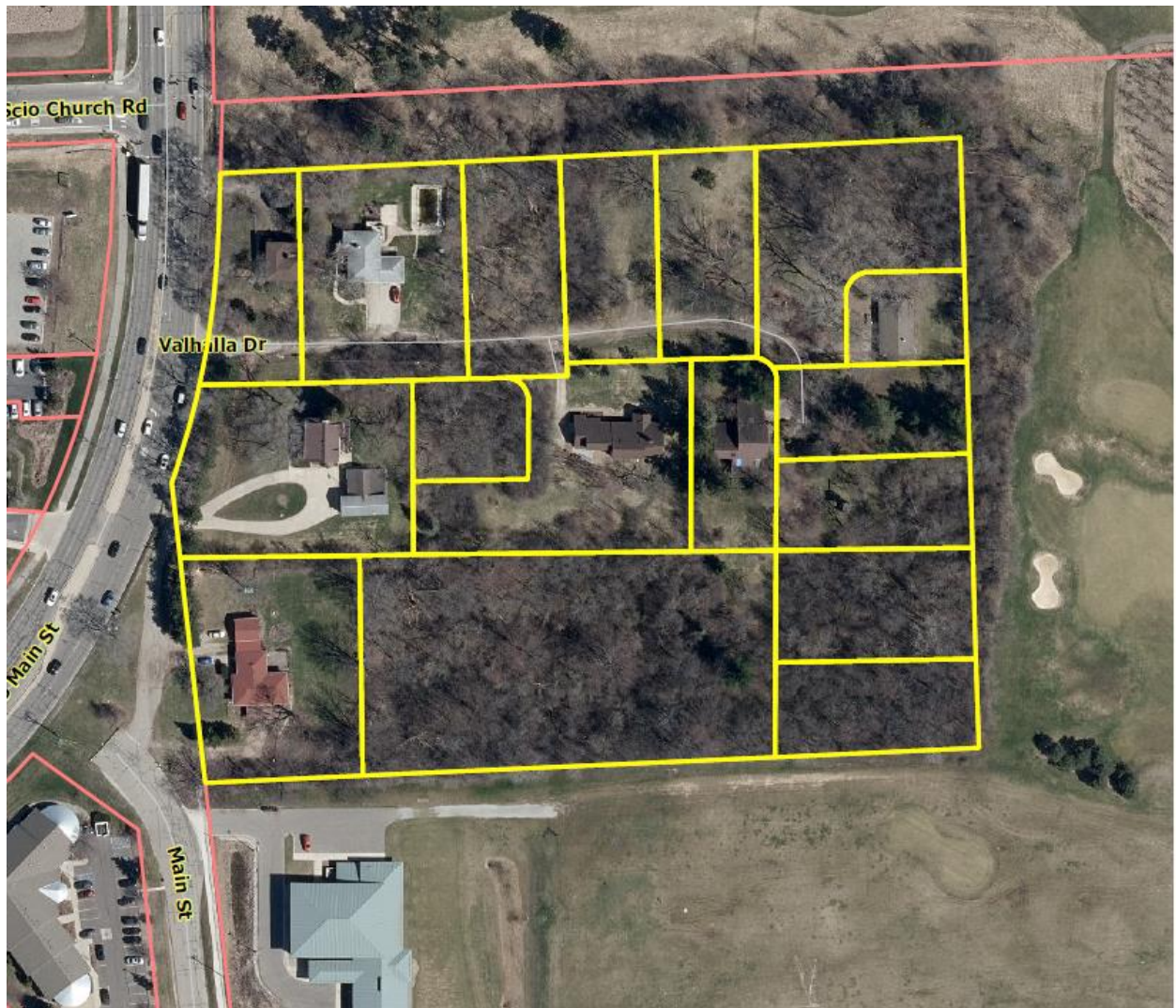
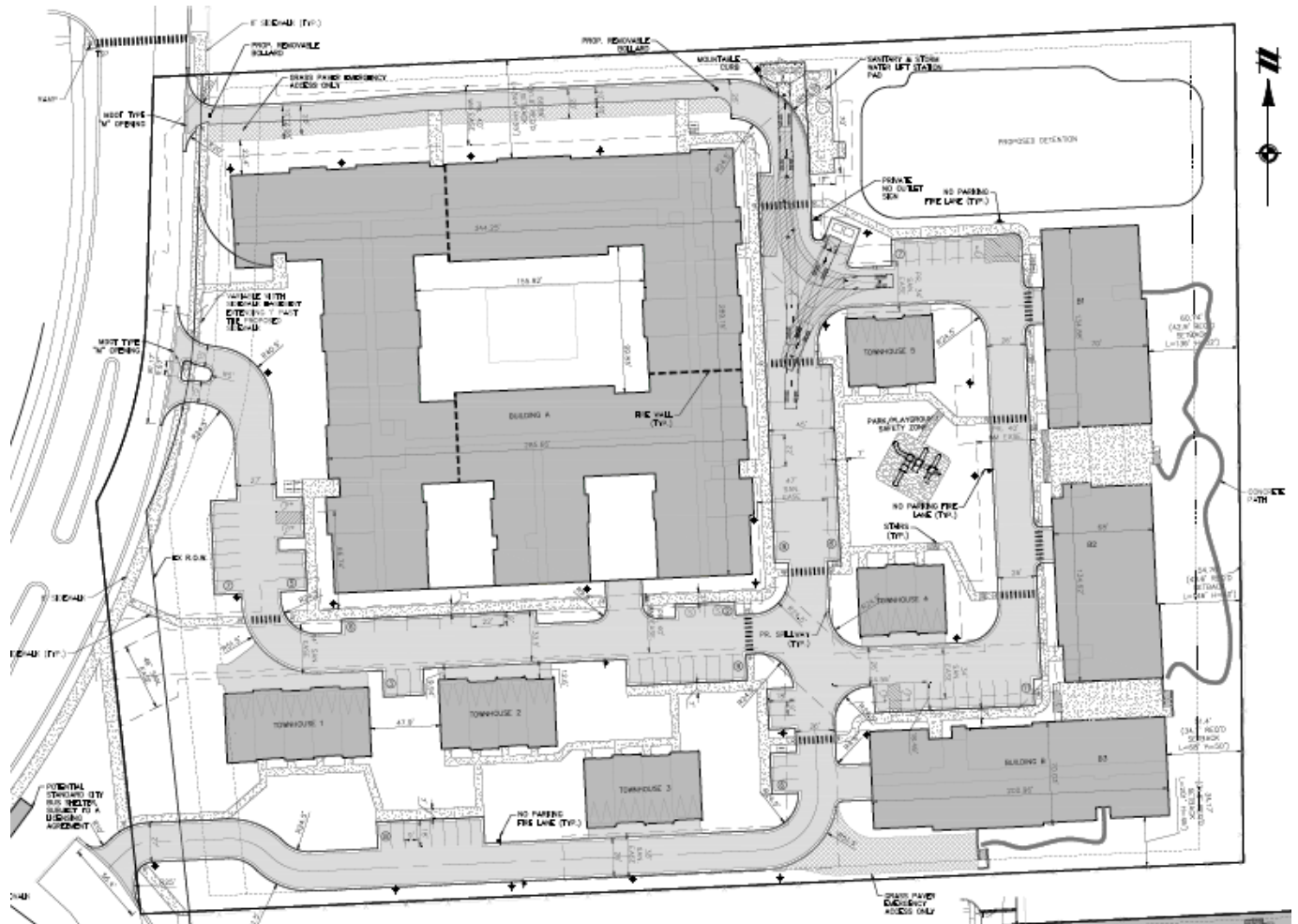


Figure 1: Existing Conditions (2018)

Site Layout – The proposed site plan and additional color renderings show the larger center apartment building with the three additional apartment buildings along the eastern property line. The townhouse units are represented by the five smaller buildings.



Access and Parking – The site currently has one unimproved access drive for parcels off South Main Street. It is not a public road and is used to access four of the remaining houses, the other two houses are accessed from the old South Main Street stub.

The site plan proposes two public access points to the site and one emergency-only access drive. The southern access drive will be off the South Main Street stub, which will lead to South Main and the traffic light at the intersection with Ann Arbor-Saline Road. The northern access drive will be from South Main Street before it merges into Ann Arbor-Saline Road. An Emergency-only access drive is located along the northern property line. This access drive is required to be 20 feet in width. The petitioner is proposing a 10-foot-wide paved surface for non-emergency, non-motorized access. The petitioner will construct an additional 10-foot-wide grass paver system that will be capable of supporting emergency equipment. The drive will be protected with a removable bollard to prevent access by private vehicles.

A total of 731 parking spaces will be provided, 681 parking spaces are required by code (1.5 spaces per unit). Parking is provided utilizing a mixture of structured parking (609 spaces) underneath the apartment buildings, parking spaces located off the private drive (79 spaces) and garages with the townhome units (38 spaces). Of the total number of parking spaces, the petitioner will provide 24 EV charging stations for electric vehicles. Bicycle parking is provided

in various locations around the site. A total of 91 bicycle spaces are required (1 space per 5 units) and 544 spaces are being provided in a mixture of Class A, B and C. Exterior bicycle parking (Class C) 22 spaces, is available near the main entrances of the larger buildings, while 313 spaces will be Class A (fully enclosed and secured room) and 231 will be Class B (in the structure, but not separate room).

Traffic Study – A traffic study has been prepared for the proposed development and has been reviewed and approved by City Traffic Engineering staff. The traffic study examined overall traffic generation, turning movements, impact to nearby intersections and driveway operations in the area. Review comments from the Traffic Engineer are detailed under Staff Comments.

Natural Features – There are 50 landmark trees located on the site along with numerous additional trees of smaller sizes, including invasive species. 24 of the landmark trees will be removed for construction. Mitigation is proposed per City Code with a total of 169 new native Michigan trees provided on site. The site does have a significant slope to the northeast corner, however it does not qualify as a Steep Slope for protection under City Code.

Landscaping, Screening, Buffers – The petitioner will be planting a total of 245 new trees on the site, 169 are required as mitigation for landmark tree removal. The remaining trees and additional shrubs will be planted along the drives and within landscape islands with the development. Parking lot landscape islands and bio-retention areas are proposed as required by code.

Storm Water Management – Storm water management is under the jurisdiction of the Washtenaw County Water Resources Commission. Detention of a 100-year storm event volume is proposed via the use of a large basin in the northeast corner of the site. Due to the lack of large-scale infiltration on the site, the petitioner is required to provide 120% the storage capacity on-site. The petitioner is also responsible for small bio-retention basins that are planned in landscape islands. All storm water in these basins will infiltrate, and with the construction of the large detention basin this development will not increase storm water flow off-site.

Building Design and Materials – The site plan indicates the large central building ranging in height from seven stories (79 feet) at the highest portion along the north to six stories (64 feet) for the south façade along the interior drive. The apartment building along the eastern edge range from four stories for the west façade along the interior drive to six stories, due to the slope, along the back adjacent to the golf course. The townhomes are three stories and approximately 35 feet in height.

Building materials are composed primarily of face brick, masonry and painted metal. Some cementitious siding will be used as accent materials. Painted metal will be used for railings and canopies.

Site Amenities – The petitioner is constructing an approximately 6,400 square foot common area with playground equipment between the eastern townhome units and the adjacent drives. This area is surrounded by sidewalks and will be available for all residents within the development. There is also a large central courtyard which measure approximately 156 feet by 100 feet located in the largest building near the center of the site. The courtyard area will contain a pool, deck area with lawn, outdoor kitchen with grills, and a firepit. This area is open for all residents of the development. The development will also provide a clubhouse which will contain workout facilities with club room and common kitchen.

Park Contribution – In addition to the on-site amenities, the petitioner has agreed to contribute \$150,000 as a parks contribution. Contribution will be used to improve surrounding area parks such as Cranbrook, Ward, Waymarket parks, and regional community-wide parks such as Veterans Memorial Park, Gallup Park, and Buhr Park.

**SITE PLAN DATA ANALYSIS:**

	<b>R4E REQUIRED</b>	<b>CONDITIONAL R4E PROPOSED</b>
Zoning District	R4E (Multiple-Family)	R4E (with Conditions)
Lot Area	.32 acres (14,000 sq ft)	9.80 acres (428,195 sq ft)
Density	75 units/acre	50 units/acre (Requested condition)
Setback: Front (West) S. Main St	15 ft MIN/ 40 MAX	20 ft
Setback: Side (North)	10 ft* plus additional req = 51.8 ft MIN	66.9 ft
Setback: Side (South)	10 ft* plus additional req = 31.6 ft MIN	34.2 ft
Setback: Rear (East)	30 ft** plus additional req = 42.9 ft MIN	54.8 ft
Height	None	79 ft MAX (from average grade) (Requested condition)
Open Space	40%	79,675 sf or 52%
Land Uses	Residential	Residential
Vehicle Parking	1.5 space per unit – 681 spaces	726 spaces total: Garage – 647 spaces, including 24 EV ready spaces; Private drives– 79 spaces
Bicycle Parking	1 space per 5 dwelling units - 91 spaces 50% Class A spaces 50% Class C spaces	544 spaces total: 313 Class A; 231 Class B; 22 Class C

\*Required side setback shall be increased 1 ½ inches for each foot of building length over 50 feet and 3 inches for building height above 35 feet.

\*\*Required rear setback shall be increased 1 ½ inches for each foot of building length over 50 feet and 1.5 inches for building height above 35 feet.

**LAND USE ANALYSIS (SURROUNDING LAND USES AND ZONING):**

	<b>LAND USE</b>	<b>ZONING</b>
NORTH	U of M Golf Course	PL (Public Land)
EAST	U of M Golf Course	PL (Public Land)
SOUTH	U of M Golf Course	PL (Public Land)
WEST	Office (across S. Main St)	O (Office)

### **CITIZEN PARTICIPATION:**

The applicant held a meeting for citizens regarding the proposed rezoning and site plan on April 8, 2019 and provided a summary report as required. Notices were mailed out to all residents within 1,000 feet of the development area and 13 people attended the meeting in addition to the project team.

### **CITY MASTER PLAN:**

Eight documents constitute the elements of the City Master Plan:

1. Sustainability Framework (2013)
2. Land Use Element (2009)
3. Downtown Plan (2009)
4. Transportation Plan Update (2009)
5. Non-motorized Transportation Plan (2007) and Update (2013)
6. Parks and Recreation Open Space Plan (2016-2020)
7. Natural Features Master Plan (2004)
8. Treeline Allen Creek Urban Trail Master Plan (2018)

Chapter Five (Land Use) of the Master Plan: Land Use Element designates the future land use for this site as single-family residential. Sustainability and affordable housing goals are other prominent goals of the City identified in different studies and plans. The Sustainability Framework component of the Master Plan reinforces the goals of the Master Plan Land Use Element in echoing the need for diverse housing including affordability and environmental conservation.

*To ensure that development projects are designed and constructed in a way that preserves or enhances the integrity of natural systems.*

*Encourage affordable housing units to be constructed as part of new development projects.*

Chapter Five (Land Use) also describes Land Use Goals, Objectives and Action Statements the Valhalla Ann Arbor petition addresses the objectives/goals identified:

*Locate higher residential densities near mass transit routes and in proximity to commercial, employment and activity centers*

### **REZONING ANALYSIS:**

Changes to the text or map of the Unified Development Code (Chapter 55 of the Ann Arbor City Code) may be made pursuant to Section 5.29.9. To assist the Planning Commission and City Council with their decision, applicants provide a petition with justifications in support of the request. The petition addresses:

1. The extent to which the rezoning is necessary.
2. How the rezoning will affect the public welfare and property rights of persons located in the vicinity.



3. How the rezoning will be advantageous to the City.
4. How this particular location will meet the convenience and service requirements of potential users and occupants.
5. Any changed or changing conditions in any particular area, or in the City generally, which may have bearing on the request.
6. Other circumstances and factors which further justify the request.

Planning Staff Comments: The site plan and rezoning of this parcel from R1C/R1A and Township to R4E zoning is not supported by City Planning Staff. The rezoning application lacks adequate justification for the requested zoning district and subsequent deviation from the Master Plan. The proposed project includes 454 units, a significant increase from the Master Plan Future Land Use recommendation of single-family. At an R1D zoning based on lot area only (not removing land area for roads, drives, and utilities), a maximum of 84 units could be constructed.

The proposal does accomplish some goals identified in the City's Land Use Element Master Plan, such as increased density along transit corridors, LEED Silver, solar panels, and nine Affordable Housing units (according to the City's definition of Affordable Housing) (2% of total units). However, the significant increase in density warrants more advancement of these areas of the Master Plan (ex: Sustainability, Alternative Transportation, Affordable Housing). While the petitioner is proposing 15 units as affordable, three of the units will be rented at 80% AMI and additional three will be rented at 70% AMI which do not meet the City's definition of Affordable Housing, which is defined as housing provided for those making 60% of the Area Median Income. Partially vegetated roofs and solar panels have been shown, Solar panels are estimated to provide over 435,000 kWh per year or 12-13% of the electrical power for the buildings.

In coordination with City Policy to accept annexations when the property applies, staff does support annexation of all the Township parcels. Assigning a zoning district of R1D (single-family, lot minimum size of 5,000 square feet) enables the annexation to proceed while acknowledging that increased density on the site is appropriate. This increase of density is consistent with the single-family land use recommendation. This will also allow existing residential uses to continue while not precluding a subsequent higher density rezoning in the future if the rezoning is justified. Rezoning to any district other than single-family will require either a site plan or area plan reviewed by Planning Commission and approved by City Council in coordination with such future rezoning request.

In summary, while Planning staff agrees with the petitioner that the site could support increased density over the single-family recommendation, the current proposal does not substantially advance other elements and goals of the City's Master Plan to correlate with the requested zoning designation.

#### **SERVICE UNIT COMMENTS:**

Planning – Planning staff does not support the project as presented, while the site plan proposal does offer some positive aspects, the substantial increased density over the Master Plan recommendation is a significant hurdle to overcome. Staff is recommending R1D zoning to allow an increase in density while maintaining compliance with the Master Plan Land Use Element. Staff has composed a recommended motion for R1D zoning. See staff comments under rezoning request.

Planning staff worked with the petitioner from the time of submittal to add both sustainability features and affordability to justify the zoning request. As stated above, some features have been added such as solar panels and an additional six affordable units at 60% AMI (for a total of 9 affordable units). Other changes to site plan elements included modified sidewalk layout, and elimination of a dead-end parking aisle resulting in reduced impervious surface along the north side of the site.

The Draft Development Agreement has not yet been reviewed by the City Attorney's office. This review takes place after City Planning Commission makes a recommendation and before City Council considers the petition.

Engineering – The project involves a sanitary sewer lift station due to the grade changes and availability of existing utilities. The petitioner is responsible for design and construction of the lift station after City of Ann Arbor review and approval of detailed engineering plans.

Natural Features Coordinator – Petitioner is still working with staff to complete all required landscaping elements on the site. Revisions are needed specifically to the planting of several trees within landscape islands. While the changes are minor, future revisions to the Landscape plan are needed before the plan could be recommended for approval. Based on the recommendation of staff the project is okay to proceed to Planning Commission, but these issues must be resolved before City Council action.

Transportation - The proposed development will not have a significant impact on the nearby signalized intersections. The development, and its access, will have a significant impact on driveway operations for existing and proposed parcel access on Main Street between the intersections of Scio Church Road and Ann Arbor Saline Road. The transportation impact analysis addresses the need for design change and additional control in the median island of this street segment; however, the plans do not currently show a design.

Transportation Engineering staff approves the plan conditioned upon implementation of the transportation impact analysis recommendations. The transportation impact analysis recommends closing the median opening to all movements except the northbound left; design details were not provided. Modification to the median and opening is required for opening of the proposed development. Centerline hardening for the approach to the Scio Church Road intersection will also be needed. Staff would also support the following considerations:

- Truck apron on the northbound left turn to further discourage improper personal vehicle use but allow for easy turns by delivery vehicles.
- An alternative median design that would allow for an exiting turn from the existing commercial drive on the west if it would meet design best practice.

The design process for this project will require engagement with the public regarding the proposed changes. The process for public engagement shall follow the City's Public Engagement Toolkit and be designed to an International Association for Public Participation level of "Consult". The public participation process must be submitted to the City for review prior to proceeding with the engagement. Design of the improvements will be submitted to the City for review through normal construction plan review channels.

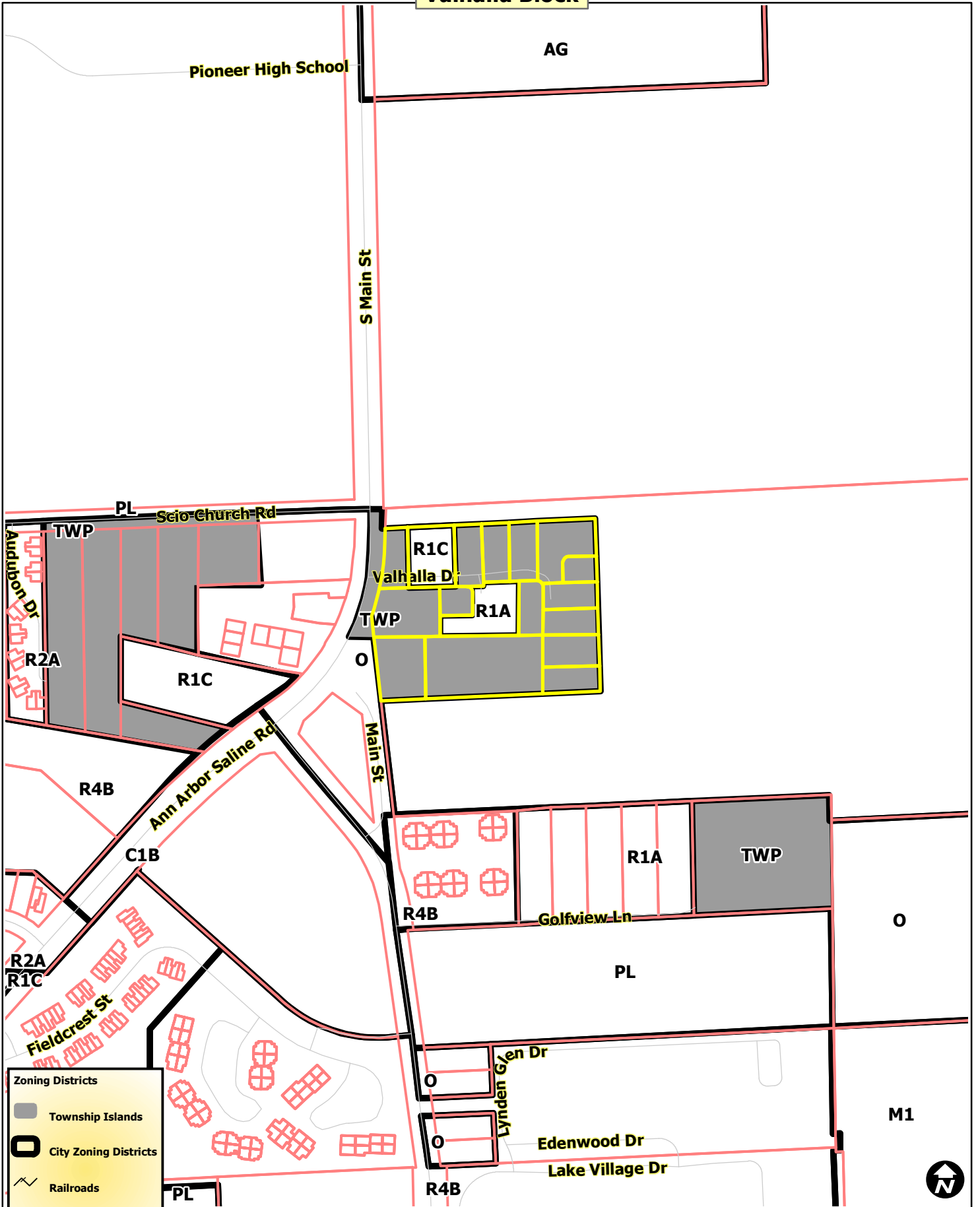
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Reference Documents:      [Zoning Application](#)  
                                     [Site Plan](#)  
                                     [Architectural Plans](#)  
                                     [Petitioner's Solar Study](#)  
                                     [Petitioner's Planning Consultant Report](#)  
                                     [Petitioner's letter to Planning Commission](#)

Attachments:                [Zoning Map](#)  
                                     [Aerial Photo](#)  
                                     [Draft Development Agreement](#)  
                                     [Statement of Conditional Zoning](#)

c: Anthony Toth, PEFT Development, LLC (Owner)  
    Todd Pascoe, Atwell, LLC (Project Engineer)  
    Systems Planning Staff  
    Project No. SP19-018, Z19-009, A19-007 through A19-019

**Valhalla Block**



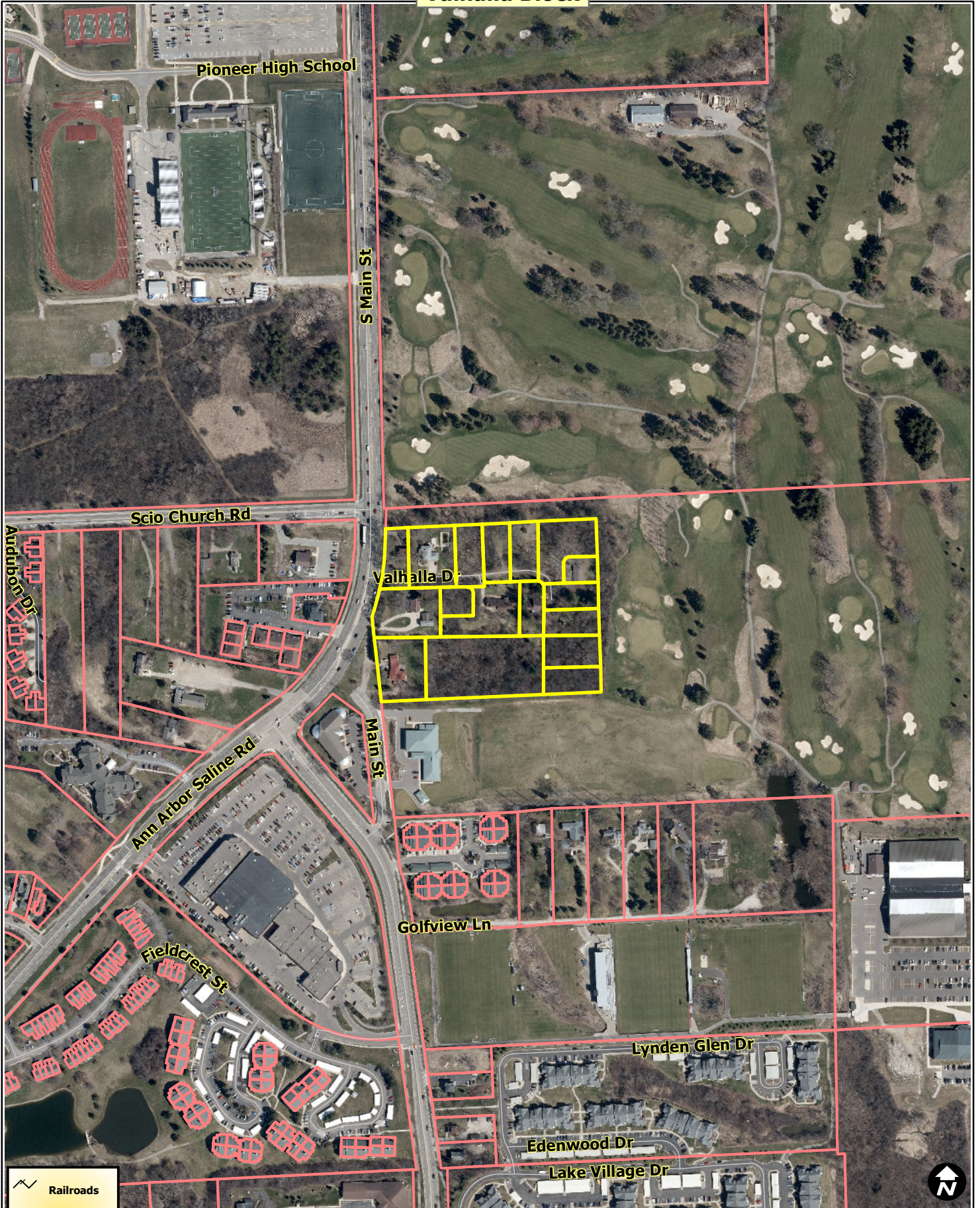
**Zoning Districts**

- Township Islands
- City Zoning Districts
- Railroads
- Huron River
- Tax Parcels



Map date: 3/7/2019  
 Any aerial imagery is circa 2018 unless otherwise noted  
 Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)

# Valhalla Block



-  Railroads
-  Huron River
-  Tax Parcels



Map date: 3/7/2019  
Any aerial imagery is circa 2018  
unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)

**VALHALLA ANN ARBOR DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and PEFT Development, Michigan limited liability company, with principal address at 2373 Oak Valley Drive, Suite 170, Ann Arbor Michigan, 48103 ), hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as *Valhalla Ann Arbor*, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as *Valhalla Ann Arbor*, and desires *site plan* and development agreement approval thereof, and

WHEREAS, the DEVELOPER desires to build or use certain Improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to ensure that all of the Improvements required by pertinent CITY ordinances and regulations be properly made, and that the DEVELOPER will install these Improvements prior to any permits being issued.

**THE DEVELOPER(S) HEREBY AGREE(S):**

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water and sanitary sewer mains, sanitary lift station, public and private storm water management systems, public streets, sidewalks and streetlights ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the Improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the DEVELOPER fails to construct the Improvements, the CITY may send notice via first class mail to the DEVELOPER at the address listed above requiring it to commence and complete the Improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER, if the DEVELOPER does not complete the work within the time set forth in the notice. Every owner of a portion of the property, including co-owners of

condominium units, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on that Property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the public Improvements set forth in Paragraph P-1 above have been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the DEVELOPER'S engineer inspects.

(P-4) Prior to the issuance of building permits , to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the CITY, easements for the construction and maintenance of public utilities and public streets. The escrow agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(P-5)To provide, prior to the issuance of building permits, a signing plan to the Fire Department and install all street name signs according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public. At the request of the DEVELOPER, the CITY will provide and install all street name signs and invoice the DEVELOPER for actual cost of installation.

(P-6)To install all water mains, storm sewers, sanitary sewers, sanitary lift station, and public streets, through the first course of asphalt, pursuant to CITY approved plans and specifications, necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any building permits. The final course of asphalt paving shall be completed prior to the issuance of first certificate of occupancy on the site.

(P-7)To maintain the streets, including snow and ice removal, if certificates of occupancy are finalized before the street Improvements have been accepted for maintenance by the CITY.

(P-8)To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to South Main Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along South Main Street, frontage when such Improvements are determined by the CITY to be necessary.

(P-9) To indemnify, defend and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the DEVELOPER, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.

(P-10) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the development prior to final written acceptance of the public improvement(s) by the CITY. Evidence of such insurance shall be produced prior to any construction of improvement and a copy filed with the City Clerk's Office and shall remain in

full force and effect during construction of the public improvement(s) and until notice of acceptance by the CITY of the Improvements.

(P-11) Existing landmark, street trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER in good condition for a minimum of three years after acceptance of the public Improvements by the CITY or granting of Certificate of Occupancy. Existing landmark and street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public Improvements or granting of Certificate of Occupancy shall be replaced by the DEVELOPER as provided by Chapter 55 of the Ann Arbor City Code.

(P-12) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$ 150,000 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for Improvements to surrounding area parks such as Cranbrook, Ward, Waymarket parks, and regional community-wide parks such as Veterans Memorial Park, Gallup Park, and Buhr Park

(P-13) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation Services Unit in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the DEVELOPER to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the DEVELOPER one year after the date of acceptance by the CITY.

(P-14) To construct, repair and/or adequately maintain on-site storm water management system. If the DEVELOPER fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the DEVELOPER at the address listed above, requiring it to commence and complete the items stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER if the DEVELOPER does not complete the work within the time set forth in the notice.

(P-15) After construction of the private on-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area.

(P-16) That traffic mitigation measures in South Main Street will be beneficial to the DEVELOPER'S property:

Prior to the issuance of CO, closing the median opening to all movements except the northbound left. Modification to the median and opening is required for opening of the proposed development. Centerline hardening for the approach to the Scio Church Road intersection will also be needed.

- a. The design process for this project will require engagement with the public regarding the proposed changes. The process for public engagement shall



follow the City's Public Engagement Toolkit and be designed to an International Association for Public Participation level of "Consult".

The CITY has the right, in its sole discretion, to choose which traffic mitigation measures it will implement. However, the CITY agrees that it will not charge the DEVELOPER for more than \$\_\_\_\_\_, as set forth above, of the traffic mitigation measures the CITY finds necessary to address the impact of the DEVELOPER'S development.

(P-17) To install rooftop solar panels that provide an energy offset of approximately 12-13 %. The PROPRIETOR will provide written verification by a solar energy consultant prior to the request or issuance of any certificate of occupancy that the estimated offset has been installed. This solar panel installation will represent coverage over the majority of available roof surface area of the proposed development as shown on the approved site plan.

(P-18) To provide a minimum of 3 units leased at or below 80 percent of the City of Ann Arbor median household income, 3 units leased at or below 70 percent of the City of Ann Arbor median household income, and 9 units leased at or below 60 percent of the City of Ann Arbor median household income as defined by the United States Department of Housing and Urban Development (HUD) in perpetuity. The PROPRIETOR or its designee shall verify the income eligibility of the tenant using a form approved by the CITY and the CITY or its designee shall certify that the renter is income eligible. The PROPRIETOR agrees to execute a Housing Affordability Covenant with the CITY, and to record such covenant prior to recording of the Master Deed.

(P-19) To design, construct, repair and maintain this development in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said development will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said development and incorporate necessary design and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.

(P-20) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the DEVELOPER proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The DEVELOPER is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-21) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development Improvements, and within one month after completion or abandonment of construction.

(P-22) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the building has been designed to achieve a minimum of LEED SILVER under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, based on the most recent version in effect at the date of this agreement. Compliance with this requirement shall be verified and documented by the independent, qualified professional using an industry standard software energy modeling tool (EQUEST or equivalent).

(P-23) DEVELOPER is the sole title holder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the person(s) signing below on behalf of DEVELOPER has (have) legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-24) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved Agreement's terms and conditions shall constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the DEVELOPER complies with the approved site plan and/or the terms and conditions of the approved Agreement. The DEVELOPER shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or Agreement.

(P-25) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-26) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and to pay for the cost of recording all documents granting easements to the CITY.

**THE CITY HEREBY AGREES:**

(C-1) In consideration of the above undertakings, to approve the *Valhalla Ann Arbor*.

(C-2) To use the park contribution described above for Improvements to the Cranbrook, Ward, Waymarket parks, and regional community-wide parks such as Veterans Memorial Park, Gallup Park, and Buhr Park.

(C-3) To use the \$ *insert sum as stated above* contribution for traffic mitigation measures at the *insert name of improvement as stated above*.

(C-4) To provide timely and reasonable CITY inspections as may be required during construction.

(C-5) To record this Agreement with the Washtenaw County Register of Deeds.

## GENERAL TERMS

Both the DEVELOPER and the CITY agree as follows:

(T-1) This Agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the DEVELOPER, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

City of Ann Arbor, Washtenaw County, Michigan

### LEGAL DESCRIPTION OF PARCELS OF LAND LOCATED IN THE N 1/2 OF SECTION 5, T2S, R6E, PITTSFIELD TOWNSHIP AND THE CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN

The overall parcel being more particularly described as the following:

Commencing at the true N 1/4 corner of Section 5, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, thence N89°56'00"E 591.30 feet along the north line of said Section 5; thence S02°07'30"W 66.05 feet to the POINT OF BEGINNING;

thence continuing S02°07'30"W 568.50 feet;

thence N89°57'00"W 750.26 feet;

thence N03°25'00"W 281.06 feet along the centerline of South Main Street Road (66' wide); thence along the centerline of Ann Arbor-Saline Road (Variable Width) in the following two (2) courses:

94.89 feet along a non-tangential curve to the left, radius 287.92 feet, central angle 26°19'02", and a long chord of N17°39'32"E 131.09 feet

N04°30'00"E 161.80 feet;

thence N90°00'00"E 146.83 feet;

thence N89°56'00"E 588.80 feet to the POINT OF BEGINNING. Being part of the N 1/2 of Section 5, T2S, R6E, Pittsfield Township and the City of Ann Arbor, Washtenaw County, Michigan, and containing 9.83 acres of land, more or less. Being subject to the rights of the public of the Westerly 33 feet thereof as occupied by said South Main Street Road, and that westerly portion thereof as occupied by said Ann Arbor-Saline Road, also being subject to easements and restrictions of record, if any.

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the DEVELOPER, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the DEVELOPER in writing that the DEVELOPER has satisfactorily corrected the item(s) the DEVELOPER has failed to perform.

(T-6) This agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

CITY OF ANN ARBOR, MICHIGAN  
301 East Huron Street  
Ann Arbor, Michigan 48107

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to Substance:

\_\_\_\_\_  
Tom Crawford, Interim City Administrator

Approved as to Form:

\_\_\_\_\_  
Stephen K. Postema, City Attorney

ENTITY NAME

By: \_\_\_\_\_  
Anthony Toth, PEFT Development LLC, *Member*

STATE OF MICHIGAN )  
 ) ss:  
County of Washtenaw )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan  
municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
County of Washtenaw, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Washtenaw

STATE OF \_\_\_\_\_ )  
 ) ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_-, a  
\_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
County of \_\_\_\_\_, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

DRAFTED BY AND AFTER RECORDING RETURN TO:  
Ann Arbor Planning & Development Services  
ATTN: Brett Lenart  
Post Office Box 8647  
Ann Arbor, Michigan 48107  
(734) 794-6265

Valhalla Ann Arbor  
Conditional Zoning Statement of Conditions

This Conditional Zoning Statement of Amended Conditions (“Statement of Conditions”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Ann Arbor (“City”), a Michigan municipal corporation, with offices located at 301 E. Huron St., Ann Arbor, Michigan 48107, and PEFT Development, LLC (“Developer”), a Michigan limited liability company, with principal address at 2373 Oak Valley Drive, Suite 170, Ann Arbor Michigan, 48103., Ann Arbor, MI 48103.

**Recitals**

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land when the City is amending its zoning map, or a conditional zoning of land when the City is zoning property in MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developer, for certain conditions to be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On May 23, 2019, the Developer applied for an amendment to the City zoning map for land in the City of Ann Arbor site planned as Valhalla Ann Arbor, as more fully described on the attached **Exhibit A** (the “Property”).
- D. On May 23, 2019, the Developer voluntarily offered in writing conditions regarding the use and development of the land to be incorporated into the zoning of the Property.
- E. On \_\_\_\_\_, the Planning Commission, after public hearing, recommended approval of the rezoning of the Property to R4E (Multiple-Family District) with Conditions. The Developer also submitted a Site Plan showing the specific proposed use and site design of the property.
- F. On \_\_\_\_\_, the Ann Arbor City Council approved the conditional rezoning subject to the Conditions.
- G. Based on the specific facts and circumstances regarding this property, the City has decided to accept the Developer’s offer of conditional zoning.
- H. By executing this Statement of Conditions, the City and the Developer desire to set forth and confirm the conditions under which the City grants conditional zoning of this Property.

NOW, THEREFORE, Developer and City agree:

1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached **Exhibit A**. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developer and the City, and their heirs, successors and assigns, and shall run with the Property.
2. Site Plan. The conditional zoning was granted by the City based, in part, by the Developer's stated proposed use of the Property as a residential development, as shown in an excerpt from the proposed Site Plan attached as **Exhibit B**.
3. List of Conditions. The conditional zoning was granted to the Developer based on conditions that were voluntarily offered by the Developer. The City and Developer agree that restrictions on the use and development of the land are necessary for consistency and conformance to the Master Plan – Future Land Use Element with regard to new development in the South planning area. The conditions which form the basis of the City's grant of the conditional zoning are as follows:
  - A. Density not to exceed 50 units per acre.
  - B. The height for any part of a building or structure on the Property shall be a maximum of 79 feet from the average grade adjacent to the building. The maximum height limitations shall include architectural features such as parapet walls, railings, skylights and similar structures, but shall exclude structures such as chimneys and ventilation assemblies, mechanical equipment and screens, elevator penthouses, solar panel installations, antennae and similar structures.
  - C. Inclusion of the following affordable dwelling units to be included as a permanent part of the project: (1) studio, (1) one-bedroom and (1) two-bedroom dwelling unit at rents deemed affordable by the city & county housing office to those individuals or families making a wage equal to 80% AMI plus (1) studio, (1) one-bedroom and (1) two bedroom dwelling unit at rents deemed affordable by the city & county housing office to those individuals or families making a wage equal to 70% plus (7) studio, (1) one-bedroom and (1) two bedroom dwelling unit at rents deemed affordable by the city & county housing office to those individuals or families making a wage equal to 60% AMI (total of 15 units). The Washtenaw County housing office will provide income verification services and forward the names and contact information of qualified individuals to the project leasing office -county to also provide ongoing income verification on an annual basis for the duration of the tenancy of those qualifying for the affordable units.

D. The Property shall only be developed as Valhalla Ann Arbor Site Plan as approved by the Ann Arbor City Council on \_\_\_\_\_, as well as any administrative amendments to the Site Plan. The complete, approved Site Plan and amended Site Plan, are on file with the City of Ann Arbor. An excerpt is attached as Exhibit B.

4. Developer Acknowledgment. Developer acknowledges that it voluntarily offered and consented to all of the provisions contained in this Statement of Conditions. Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional zoning, and are necessary to insure capability with adjacent and surrounding uses of land; to promote use of the Property in a socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.
5. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developer, and Developer acknowledges that it is the owner of the Property or has been authorized by the owner to conditionally zone this Property. Furthermore, the signatory for Developer acknowledges that he is authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.
6. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as well as the surrounding land uses and other characteristics regarding this property, and approval of these conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional zoning.
7. Obligation to Obtain Other Approvals. Developer acknowledges that any use or development approved by this conditional zoning that may require a special land use permit, a variance, or site plan approval under the terms of Ann Arbor City Code, may only be commenced if such special land use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of Ann Arbor City Code.
8. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.
9. Compliance with Statement of Conditions. Developer shall continuously operate and maintain the development and/or use of the Property in full



compliance with all of the conditions set forth in this Statement of Conditions. Any failure to comply fully with the conditions contained with the Statement of Conditions shall constitute a violation of the Zoning Ordinance of Ann Arbor City Code, and shall be punished accordingly. Any such violation shall be deemed a nuisance per se and subject to judicial abatement, or any other remedy as provided by law.

- 10. Rezoning. Developer acknowledges that nothing in this Statement of Conditions shall prohibit the City from exercising its right to rezone the property at any time as allowed by law. The City acknowledges that nothing in this Statement of Conditions shall prohibit the Developer from requesting a rezoning of the Property at any time.

CITY OF ANN ARBOR  
a Michigan municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

PEFT Development, LLC  
a Michigan limited liability company

By: \_\_\_\_\_

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW    )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by Christopher Taylor and Jacqueline Beaudry, the Mayor and City Clerk respectively of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Acting in the County of Washtenaw  
My Commission Expires: \_\_\_\_\_

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW    )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_, of 325 E Summit Condo, LLC, a Michigan limited liability company, on behalf of the company.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Acting in the County of Washtenaw  
My Commission Expires:\_\_\_\_\_

Drafted by and after recording return to:  
Kevin S. McDonald (P-61761)  
Senior Assistant City Attorney  
City of Ann Arbor, Office of the City Attorney  
P.O. Box 8647  
Ann Arbor, MI 48107-8647

Exhibit A

LEGAL DESCRIPTION OF PARCELS OF LAND LOCATED IN THE N 1/2 OF SECTION 5, T2S, R6E, PITTSFIELD TOWNSHIP AND THE CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN

The overall parcel being more particularly described as the following:

Commencing at the true N 1/4 corner of Section 5, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, thence N89°56'00"E 591.30 feet along the north line of said Section 5; thence S02°07'30"W 66.05 feet to the POINT OF BEGINNING; thence continuing S02°07'30"W 568.50 feet; thence N89°57'00"W 750.26 feet; thence N03°25'00"W 281.06 feet along the centerline of South Main Street Road (66' wide); thence along the centerline of Ann Arbor-Saline Road (Variable Width) in the following two (2) courses: 94.89 feet along a non-tangential curve to the left, radius 287.92 feet, central angle 26°19'02", and a long chord of N17°39'32"E 131.09 feet N04°30'00"E 161.80 feet; thence N90°00'00"E 146.83 feet; thence N89°56'00"E 588.80 feet to the POINT OF BEGINNING. Being part of the N 1/2 of Section 5, T2S, R6E, Pittsfield Township and the City of Ann Arbor, Washtenaw County, Michigan, and containing 9.83 acres of land, more or less. Being subject to the rights of the public of the Westerly 33 feet thereof as occupied by said South Main Street Road, and that westerly portion thereof as occupied by said Ann Arbor-Saline Road, also being subject to easements and restrictions of record, if any.

Parcel ID# \_\_\_\_\_

Exhibit B

Excerpt From Site Plan approved by City Council