

**APPLICATION FOR APPEAL**  
**BOARD OF ZONING APPEALS**  
**CITY OF CLEVELAND**

APPROVED FOR FILING  
BY \_\_\_\_\_

CALENDAR NUMBER: \_\_\_\_\_

***This form must be filled out by the Appellant prior to a hearing before the Board of Zoning Appeals.***

DATE 11/8/2022

Appellant's Name (Owner of Record) Lutheran Metropolitan Ministry  
Appellant's Mailing Address 4515 Superior Ave., Cleveland, OH 44103  
Appellant's Telephone Number (216) 696-2715

Prospective Purchaser of Property (If Any) \_\_\_\_\_  
Prospective Purchaser's Address \_\_\_\_\_  
Prospective Purchaser's Telephone \_\_\_\_\_

Tenant's Name (If Any) \_\_\_\_\_  
Tenant's Mailing Address \_\_\_\_\_  
Tenant's Telephone \_\_\_\_\_

Attorney's or Agent's Name Benjamin J. Ockner, Esq.  
Berns, Ockner & Greenberger, LLC  
Attorney's or Agent's Address 3733 Park East Drive, Suite 200 Beachwood, OH 44122  
Attorney's or Agent's Telephone (216) 831-8838, Ext. 203

Location of Property In Question: 4100 Franklin Blvd., Cleveland, OH 44113

**This is an appeal for a permit to erect, alter, convert, maintain, and/or use premises for:**  
(please include a simple statement of proposed work below)

Minor Interior renovation of existing building, addition of a rear vestibule and patio, and minor upgrades to site including repaving of parking lot and new privacy fence with gates.

**AND / OR:**

This is an appeal from a Violation Notice, an Administrative Order, Waste Collection Ticket or other: (Please specify type below)  
Notice of Non-conformance dated May 13, 2022 ("Notice") with respect to Site/Zoning Application B22009273

Lutheran Metropolitan Ministry appeals the Notice and, for reasons in the attached statement and as supported in any hearing, asks the BZA to either reverse the decision or to grant a variance or special permit to allow the proposed use.

SIGNED BY APPELLANT OR REPRESENTATIVE \_\_\_\_\_  
(Please print name below signature) Benjamin J. Ockner, Esq.  
Berns, Ockner & Greenberger, LLC

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To: Cleveland Board of Zoning Appeals (“BZA”)  
From: Benjamin J. Ockner, Esq., Berns, Ockner & Greenberger, LLC  
Counsel for Lutheran Metropolitan Ministry  
Re: Appeal of 5/13/22 Notice of Non-Conformance, 4100 Franklin Blvd.  
Site/Zoning Application B22009273 (“Application”)  
Date: November 8, 2022

Lutheran Metropolitan Ministry (“LMM”) hereby appeals the City of Cleveland’s Zoning Administrator’s Notice of Non-Conformance (“Notice”) dated May 13, 2022 concerning the referenced Application.

The Application was for a zoning review of minor exterior and interior renovations of the existing building at 4100 Franklin Blvd. (“Property”) in the City of Cleveland (“City”) including an updated appearance of the front of the building, the addition of a rear vestibule and patio (resulting in a de minimis increase in the building’s footprint from 4,250 sf to 4,418 sf.), parking lot repaving, and a new privacy fence with gates, for a Youth Drop-In Center (“Center”). LMM owns the Property and, with its predecessors, has used the building for decades to provide a continuum of family and social services to children, youth, individuals and families including adoption services and related family counseling and supports; behavioral health services including counseling, education and support for individuals and groups; workforce education and training; youth parenting and other educational groups; benefits assistance and case management; family events; and meeting, work and office space for LMM’s nonprofit business operations, social service partners, and others. The Center will continue the provision of that continuum of family and social services, with particular attention to the specific needs of young people experiencing homelessness or housing instability.

According to the Notice, LMM’s Application fails to conform to Sections 337.02(g), 337.03(b), and 359.01(a) of the City’s Zoning Code (“Code”).

LMM respectfully disagrees and urges you to either reverse the Zoning Administrator’s decision (pursuant to Code §329.02(d)), or, in the alternative, grant it such relief (by way of variance, special permit or otherwise pursuant to Code §§329.03, 359.01, or any other applicable provisions) that will allow for the continued realization of the charitable institutional goals for the Property.

## **LMM**

The Lutheran Metropolitan Ministry Association of Greater Cleveland was incorporated as a non-profit corporation in 1971 with its principal office at the Property. In 1990, the name was changed to Lutheran Metropolitan Ministry.

LMM describes itself as a “faith-based social justice organization that engages in service and advocacy with people who are oppressed, forgotten and hurting.”

And it describes its purpose as follows:

The Corporation is organized and formed for the exclusive purpose of engaging in charitable, religious, educational, social service and scientific activities within the meaning of §501 (c)(3) of the Internal Revenue Code of 1986, as amended (“Code”), (or the corresponding provision of any future United States Internal Revenue Law) and specifically to develop responses to some of the most challenging needs of people in the greater Cleveland community through listening, serving and empowering.

Cleveland is the only major metropolitan area in the State without a youth drop-in center. LMM and others are committed to changing that unfortunate fact.

### **The Center**

For more than a year, LMM worked with A Place 4 Me (“AP4M”), the Sisters of Charity Foundation of Cleveland (“SOCF”), and the Cleveland/Cuyahoga County Office of Homeless Services to evaluate the use of the Property for the Center. Those concerted efforts culminated in the proposal now before the City.

The Center will provide services targeted to young people ages 16-24 experiencing homelessness or who are housing unstable. The services provided will be within the existing social services framework, including: basic needs, behavioral health services, benefits assistance, case management and counseling, education, job placement assistance, housing placement assistance and other related support. The Center will include a kitchen, laundry facilities, and showers, along with a living and dining room and a library. Guests will be provided food, clothing, and personal hygiene items. A small computer lab will be available for guests to use for job search, online education, virtual connections for services and other purposes, as well as multiple charging pods. There will be a safe area for guests’ children to play. Staff will link guests to a variety of housing supports and services, including access to diversion and prevention assistance, family mediation and reunification support, emergency rental assistance, Rapid Re-Housing, and supportive housing. Offices and conference areas will be used to house professional staff and co-located service partners. The Center is not a shelter. It will not provide overnight bed capacity.

The Center will operate 10 hours per day, seven days a week, between 9 or 10 a.m and 7 or 8 p.m., although weekend hours may be shorter, to align as much as possible with the needs of

young people and partners who provide services in this area. LMM anticipates that there will be 12 to 15 young adult guests on the premises at any given time, along with anywhere from 5 to 12 staff members and 2-3 service partners. LMM and its partners in this endeavor anticipate that many guests will avail themselves of the services offered by the Center on just a few occasions, while some may make greater use of the Center. The Center is intended for youths and young adults experiencing homelessness or housing instability. Others who seek to use the Center will be directed elsewhere.

**A. The Decisions in the Notice are Incorrect and Should be Reversed Per Code §329.02(d).**

1. LMM's Proposed Use Is Consistent With And Part Of The Property's Approved Existing Office And Charitable Institution Uses.

The Notice asserts that LMM's proposed use fails to conform to Code §§ 337.03(b) and 337.02(g) as follows:

Charitable institution in Two Family Residential District must be at least 30 feet away from adjoining premises, and requires review and approval by the Board of Zoning Appeals including public notice and public hearing to determine if adequate yard spaces and other safeguards to preserve the character of the neighborhood are provided, and if in the judgment of the Board such buildings and uses are appropriately located and designed and will meet a community need without adversely affecting the neighborhood. Use is not 30 feet from adjoining premises.

As acknowledged by the Zoning Administrator, LMM's use of the Property has been as an "existing, legal non-conforming charitable institution in a Two Family Residential District..." The Certificate of Occupancy ("COO"), issued July 14, 2009, confirms its use for social services and office use. As explained above, LMM's proposed use of the Property for the Center is wholly consistent with, conforms to, and is a part of the already "existing, legal non-conforming charitable institution" and office use to which the Property has been devoted for decades. Nothing about the Center's continued office and charitable institution use requires further action or consideration. Respectfully, we do not believe that the BZA needs to review and approve the proposed use of the building for the Center.

2. LMM's Proposed Use Is Not An Enlargement, Expansion, Or Substitution Of, Or Change In LMM's Use Of The Property As An "Existing, Legal Non-Conforming Charitable Institution."

The Notice also asserts that LMM's proposed use runs afoul of Code §359.01(a) as follows:

A use of building or land for which a permit has been lawfully issued, may be continued even though such use does not conform to the provisions of this Zoning Code for the use district in which it is located, but no enlargement or expansion shall be permitted except as a variance under the terms of Chapter 329, and no

substitution or other change in such nonconforming use to other than a conforming use shall be permitted except by special permit from the Board of Zoning Appeals. Such special permit may be issued only if the Board finds after public hearing that such substitution or other charge is no more harmful or objectionable than the previous nonconforming use in floor or other space occupied, in volume of trade or production, in kind of goods sold or produced, in daily hours or other period of use, in the type or number of persons to occupy or to be attracted to the premises or in any other characteristic of the new use as compared with the previous use.

LMM has chosen to continue its use of the Property for offices and as an “existing, legal non-conforming charitable institution” by tailoring some of its charitable services for the benefit of a discrete group of vulnerable youths and young adults in need of those services. The Center will include much-needed food, laundry, and personal hygiene services, all of which, in one form or another and at one time or another, have been part of the building’s use. As such, the Center is not a new, additional, substitute, or change in LMM’s use of the Property as a charitable institution. The Center is not a use of the Property allowed or contemplated by Code §337.02(g)(3)(A), (B), (C), (D), (E), or (F), or any other provision of Code §337.02(g)(3) other than part (G), or by any other provision of Code §337.03 other than §337.03(b). Nor does the Center amount to either an enlargement or expansion of LMM’s use of the Property as an “existing, legal non-conforming charitable institution.”

The Notice also suggests that LMM’s proposed use will entail expanded hours of operation. Use of the Property was reduced significantly during the Covid Pandemic. So it is inevitable that charitable services focused on vulnerable youth and young adults, including those adversely affected by the Pandemic, would be provided at hours that are commensurate with both their needs and with legal non-conforming office uses of the building. The Code does not appear to include any “hours of operation” limitations for 1F, 2F, or Charitable Institution uses. Nor does it appear that the COO or other approvals for the Property included any such limitations. As such, there is no legal basis for using the Center’s proposed hours of operation as grounds for reviewing or denying LMM’s proposed use.

The building used by LMM for an “existing, legal ... charitable institution” appears to be within 30 feet of Parcel No. 003-25-065 owned by Mark G. Pokrandt. It has been that way at all relevant times, including since long before the COO was issued in July 2009. It is not entirely clear from the Notice if the distance between the building and Mr. Pokrandt’s property is why the Zoning Administrator believes there is a non-conforming use on the Property.

Nor is it clear from the Code if, in fact, the location of the building on the Property qualifies as a “nonconforming use” as that term is used in Code §359.01(A). Code §325.52 defines “Nonconforming Use” as “a use of a building or premises that does not conform to the regulations of the use district in which it is located.” Code §325.53, however, defines “Nonconformity” as “any feature, such as location, size, bulk, height or use of a building or premises, that does not conform to the regulations of the district in which it is located.” (Emphasis added.) The Code recognizes that “use” is one feature among several that can be “nonconforming.” For the reasons explained earlier,

LMM's proposed use entails no change in either the use of the Property for a charitable institution, or the location of the building on it.

Finally, any nonconformity in the use of the Property or the location of the building is unchanged by the nominal exterior construction work proposed. The work on the front will not lessen the distance between the building and the Franklin Boulevard right-of-way, or between the building and the parcels to the east or west of Property. The same is true of the work in the rear of the building.

Based on the foregoing, LMM respectfully urges the BZA to reverse the Zoning Administrator's decisions in the Notice.

**B. If The Decisions in the Notice are Correct, The BZA Should Grant LMM Relief Under Code §§359.01 and/or 337.02(g) and/or 329.03.**

1. Per Code §359.01(a), To The Extent LMM's Proposed Use Amounts To A Substitution Or Other Change In The Existing Lawful Nonconforming Use To Other Than A Conforming Use, The BZA Should Grant A Special Permit For It.

LMM's proposed Center is unquestionably a continuation of the pre-existing lawful nonconforming use of the Property as a Charitable Institution. But if the BZA disagrees and decides that the Center somehow is not a charitable institutional or other conforming use, LMM respectfully urges it to grant a special permit for such use.

Code §359.01(a) prohibits a "substitution or other change in ...[a] nonconforming use to other than a conforming use" except by special permit.

Such special permit may be issued only if the Board finds after public hearing that such substitution or other change is no more harmful or objectionable than the previous nonconforming use in floor or other space occupied, in volume of trade or production, in kind of goods sold or produced, in daily hours or other period of use, in the type or number of persons to occupy or to be attracted to the premises or in any other characteristic of the new use as compared with the previous use.

As explained above, the Center will continue to provide Charitable Institution uses as such uses have been provided on the Property by LMM and others for decades. Assuming (for the sake of argument) that it amounts to a "substitution or other change" in the existing lawful nonconforming use, and that the existing lawful nonconforming use somehow is "harmful or objectionable," the Center will be no more harmful or objectionable than the previous or current nonconforming use of the Property. There will be no change in the amount of floor or other space used (apart from a nominal change from the addition of a vestibule in the rear of the building). There will be no "trade or production" on the Property. The kinds of services to be offered by the Center will be charitable and largely the same kind of services that are already provided or have been provided on the Property, albeit with some programmatic changes. The daily hours will be similar to those

associated with office uses with any difference being attributable to the Pandemic. The Center's guests will include the "type of persons" for whom the charitable institutional uses have historically been provided on the Property.

LMM has significant concerns about the "type of persons" criterion in Code §359.01(a). It is not clear how or why the Center's guests would be the "types of persons" who are worthy or unworthy of the BZA's favor, nor is it clear if the BZA has proper authority to exercise such power. Accordingly, LMM respectfully reserves its rights with respect to that provision.

A special permit would also be appropriate under Code §337.02(g) to the extent one is required. The proposed use will provide "adequate yard spaces and other safeguards to preserve the character of the neighborhood." After all, for decades, the charitable institution and office uses of the Property have been part of the "character" of the neighborhood.

LMM is aware that some nearby homeowners have observed that the neighborhood is already negatively impacted by nearby shelters. The Center is not a shelter and is not intended to be put to such use. To the contrary, the purpose of the Center is to provide vulnerable youth and young adults who are homeless or experiencing housing instability with support, care, guidance, and counselling to encourage their transition to greater housing stability and security. Among its highest priorities, and a part of its core mission, the Center will strive daily to ensure that before they leave, its guests have a specific place to go for the night and a way of getting there. A long-time resident of the neighborhood, LMM is committed to doing what it can to enhance the quality of the lives of its guests without diminishing the quality of life in the neighborhood.

In assessing whether the building on the Property is appropriately located and designed for the Center, the BZA should take into account the long-time use of the Property for charitable institution uses, and the fact that the Center will meet a community need without adversely affecting the neighborhood.

Accordingly, to the extent the BZA concludes one is necessary, LMM respectfully urges the BZA to grant a special permit for the Center.

2. To The Extent The BZA Concludes That LMM's Proposed Use Somehow Amounts to An Enlargement Or Expansion Of The Existing Lawful Nonconforming Use, It Should Grant LMM a Variance Under Code Ch. 329 Allowing Such Enlargement Or Expansion.

As explained above, LMM's proposed use does not entail any enlargement or expansion of the existing lawful nonconforming use of the Property as a Charitable Institution. But if the BZA disagrees, or if the BZA concludes there is any other basis on which a variance is needed for the proposed use, LMM respectfully urges it to grant a variance allowing the proposed use in accordance with Code §329.03(b), (d), (e), and (g).

Per Code §329.03(b), if one is in fact needed, a variance to allow the Center is appropriate for the following reasons:

(1) A practical difficulty “inheres in and is peculiar” to the Property because of its long-established size and the location of the building on it vis-à-vis nearby residential properties. The building cannot be moved, nor can the property that is less than 30 feet away from the building. As such, strict application of the Code creates a practical difficulty not generally shared by other land or buildings in the same district.

(2) Denying the variance will deprive LMM of substantial property rights since the proposed use is for Charitable Institutional uses like those already offered on the Property, such that denying the variance would be wholly arbitrary. Denying LMM’s proposed use (by denying a variance to the extent one is needed, or otherwise) would certainly raise the specter that it was improperly based, at least in part, on the fact that the Center is intended to help young people experiencing homelessness or housing instability.

(3) That granting the variance will not be contrary to the purpose and intent of the provisions of the Code is best evidenced by the COO for the charitable and office use of the Property.

Per Code §329.03(d)(1), moreover, the character of the neighborhood is safeguarded in that the building is already present, the services to be provided are of a type already available or provided in the past, and no changes to either that are arguably proposed will cause any change in the presence, size, location, or charitable use of the Property.

Per Code §329.03(d)(2), moreover, approving a variance to allow the Center will “not tend to perpetuate a nonconformity which otherwise might be discontinued at an earlier date.” The Code expressly allows Charitable Institution uses in the 2F zoning district, and a COO has been granted for that use and offices. The only possible nonconformity, the location of the building within 30 feet of the residential parcel east of the Property, is unaffected by the Center or any proposed changes to the building.

Per Code §329.03(d)(3), moreover, the Charitable Institution use to which LMM wants to devote the Property is expressly listed in the Code provisions regarding 1F and 2F uses.

A variance is also appropriate under Code §329.03(e)(2) since the existing yard on the Property provides “adequate light and ventilation ... and will not tend to create an unhealthful or unsanitary condition under the proposed conditions of arrangement, use and occupancy.”

Finally, a variance to the 30-foot minimum distance prescribed by Code §337.02(g)(3)(G) for Charitable Institution uses will not adversely affect the safety, health and general welfare of the neighborhood, so it would be appropriate under Code §329.03(g).

Accordingly, to the extent one is necessary, a variance allowing the proposed use in accordance with Code §329.03(b), (d), (e), and (g) is warranted.



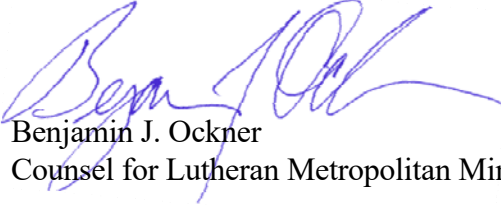
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Based on the foregoing, reserving all of its rights, LMM respectfully urges the BZA to reverse the Zoning Administrator's decisions in the Notice. Otherwise, the BZA should grant either a special permit or a variance allowing LMM's proposed use of its Property.

Sincerely,



Benjamin J. Ockner

Counsel for Lutheran Metropolitan Ministry

cc: Lutheran Metropolitan Ministry  
A Place 4 Me  
Sisters of Charity Foundation of Cleveland