

City of Detroit

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January 15, 2021

HONORABLE CITY COUNCIL

RE: Request of Paul Silveri on behalf of Kirby Holdings, LLC and the Detroit City Planning Commission to amend Article XVII, District Map No. 6 of the 2019 Detroit City Code, Chapter 50, Zoning, by showing an R5 (Medium Density Residential District) zoning classification where an R3 (Low Density Residential District) zoning classification currently exists on six (6) parcels, commonly identified as 399, 401, 425, 433, 443 and 457 E. Kirby Avenue, generally bounded by E. Ferry Street to the north, Beaubien Street to the east, E. Kirby Street to the south and Brush Street to the west. **(RECOMMEND APPROVAL)**

NATURE OF REQUEST AND PROJECT PROPOSAL

The City Planning Commission (CPC) has completed its review and deliberations on the request of Paul Silveri on behalf of Kirby Holdings, LLC and the Detroit City Planning Commission to amend Article XVII, District Map No. 6 of the 2019 Detroit City Code, Chapter 50, Zoning, by showing an R5 (Medium Density Residential District) zoning classification where an R3 (Low Density Residential District) zoning classification currently exists on six (6) parcels, commonly identified as 399, 401, 425, 433, 443 and 457 E. Kirby Avenue, generally bounded by E. Ferry Street to the north, Beaubien Street to the east, E. Kirby Street to the south and Brush Street to the west.

Upon reviewing both the Master Plan of Policies, the adjacent zoning classifications of zoning Map No. 6, and upon conducting a site visit to assess the current conditions and land uses associated with the subject area, CPC staff has determined it is appropriate to co-petition and seek the rezoning of five additional parcels which are presently zoned R3 to R5. Those properties are identified below along with the owner-of-record information made available from the City Assessor's Office database:

- 399 E. Kirby Avenue (City of Detroit, Planning and Development Department)
- 401 E. Kirby Avenue (Kimberly Wyche Huyghue)
- 425 E. Kirby Avenue (Kimberly Wyche Huyghue)
- 433 E. Kirby Avenue (433 E. Kirby LLC)
- 443 E. Kirby Avenue (John K Loftus)

399 E. Kirby through 443 E. Kirby are being recommended for rezoning by the City Planning Commission in order to bring the existing properties into conformance with the Master Plan of Policies designation of Medium Density Residential by changing the zoning classification from Low-Density Residential District to Medium Density Residential District.

According to Chapter 50 of the 2019 Detroit City Code ‘Zoning’:

The **R3 Low Density Residential District** is designed as a low-density multi-family district. The regulations are designed to promote and encourage town and terrace house development, courts, and garden apartments. It is intended that this district be used primarily on local thoroughfares thereby encouraging a suitable environment for family life. Among others, uses permitted by right include single- and two-family dwellings, townhouses, multi-family dwellings, and community facilities necessary to serve a residential district.

This **R5 Medium Density Residential District** is designed to provide for a range of residential development from the single-family detached dwelling to medium-density multiple-family dwellings. The primary use in this district will be the rental apartment structure. In addition to permitted residential uses, certain specified non-residential uses which can be properly blended into this district may be permitted.

BACKGROUND

The subject properties are located in Council District 5 and measure approximately 1.1 acres in area. The parcel commonly identified as 457 E. Kirby Avenue is currently under the sole ownership of the applicant, Kirby Holdings LLC. The subject property is currently developed as a five-story multi-family residential 30-unit building, built in 1925, which is currently on local, state, and national historic registries.

Proposed Development

The proposed map amendment is being requested to allow for the establishment of “Retail sales and personal service in multiple-residential structures” at 457 E. Kirby, as provided for in Section 50-12-312 of this Code,” more specifically, a “coffee shop,” or “standard restaurant.” The petitioner is looking to establish a “Doc’s Ice Cream Shop” and “Art Gallery.” Upon approval, this location would be the petitioner’s second “Doc’s Ice Cream Shop” location in the Metro Detroit area. The proposed retail use as well as the food and beverages service use would be permitted on a conditional basis in the proposed R5 zoning district.

SURROUNDING LAND USE AND ZONING

The zoning classifications and land uses surrounding the subject area are as follows:

- North: R5; Single-family Residential and Multi-family Residential along E. Ferry Avenue.
- East: R3; Single-family Residential and Multi-family Residential along E. Kirby Avenue.
- South: R5; Peck Park.
- West: PD; Center for Creative Studies Institute of Music and Dance

CITY PLANNING COMMISSION PUBLIC HEARING & OTHER COMMUNITY MEETINGS

On November 5, 2020, the City Planning Commission held a public hearing on the subject rezoning request. Six members of the public who were in attendance expressed a desire to speak to the matter. Four persons spoke in support of the proposed rezoning and two spoke, expressing their frustrations with the petitioner’s lack of community outreach and their concerns over increased traffic, and commercial activities.

The Commission expressed a desire for the petitioner to engage in meaningful community outreach directed to the adjacent property owners along E. Kirby and Beaubien Street. The Commission instructed CPC staff work with the petitioners to organize an additional community meeting in the project area to ensure that residents might have another opportunity to be informed of the proposed development and express their opinions or concerns.

Since the initial public hearing of November 5, 2020, CPC staff has received several correspondences in regards to this proposed rezoning. Upon the recommendation of this Commission, the petitioner held a community meeting on Saturday, November 7, 2020, at Peck Park at which Mr. Peter Putnam along with four other neighbors were in attendance.

Chiefly among the concerns expressed by members of the public at the November 5, 2020 public hearing was a lack of off-street parking and the anticipated increase in vehicular and pedestrian traffic that the proposed conditional uses might generate.

In a separate correspondence dated Friday, November 13, 2020, residents in the immediate area expressed their concerns over the proposed rezoning and/or commercialization of the subject area. Those correspondences have been attached for your review, and the Commission offers the following in response to the concerns outlined therein.

In the correspondence from Mr. Peter Putnam, which generally offered support for the proposed rezoning, there were five points of concern which the community raised in their initial email to the Commission, for which we offer the following for your consideration.

- 1. The residents want a signed agreement that, for several reasons (noise, hours, grease, rodents), no "standard restaurant," now or at any future date, occupy this space. (At our 11/7/2020 meeting in Peck Park, Mr. Silveri offered to put this in writing.)*

In this regard, the Commission believes that neither the Commission, nor the City Council has the authority to ask any developer to enter into a written agreement and/or impose deed restrictions upon their property to prohibit a particular use, with the exception of within the designation of a Planned Development (PD) zoning classification. The proposed uses, which in essence are the subject of the proposed rezoning, i.e. ice cream shop/ coffee shop/ art gallery, are all conditional land uses under the R5 provisions of the zoning ordinance. Therefore, before a permit is issued for any of these uses, a Special Land Use hearing before the Buildings, Safety Engineering, and Environmental Department (BSEED) *MUST* be held, in which the residents and property owners within 300 radial feet of the subject property would be notified of the request and of the hearing date, and be allowed to voice their concerns, support, or objections.

The zoning ordinance does not distinguish an ice cream shop or coffee shop as specific land uses, rather "Standard Restaurant" is the catch-all classification under which these uses fall. If there were any objections to a "standard restaurant" use at the aforementioned Special Land Use Hearing, and that objection was upheld by BSEED, neither the ice cream shop nor the coffee shop would be permitted to locate at 457 E. Kirby.

- 2. The residents want to know the plan for tenant parking for the 30 tenants at 457 E. Kirby.*

The petitioner has indicated that they are in preliminary talks with an adjacent property owner to acquire land which could be utilized for parking. Given the age and location of the development,

despite the property being 98% occupied, no off-street parking is required for the residential aspect of this site. In regards to the newly proposed uses of a standard restaurant and art gallery, given that the combined spaces are less than 3,000 square feet, no additional off-street parking is required for either of these uses as proposed.

- 3. To curb noise, the residents want reasonable hours of operation for the ice cream/coffee shop/gallery.*

Reasonable hours of operation for the ice cream shop/coffee shop/art gallery can be established and added as one of the conditions required following the BSEED special land use hearing. Hours of operation are typically one of the permit conditions which are added for land uses located adjacent to or across the street from land zoned for residential uses.

- 4. The residents want an agreement that the outer area surrounding the ice cream/coffee shop/gallery be kept clean.*

This certainly can be added as a permit condition by BSEED.

- 5. The residents are requesting a stop sign at the southwest corner of E. Kirby and Beaubien, directly across the street from the proposed shop. (This is especially essential since the ice cream shop will undoubtedly draw youth from the three schools that are all within a two-block vicinity of the shop.)*

As a part of the Commission's recommendation to Your Honorable Body, we support the community in their request that the Department of Public Works / Traffic Engineering Division erect a stop sign at the intersection of E. Kirby and Beaubien for safety purposes.

Additionally, correspondence was received from the residents of the Centurion Place On Ferry Street condominium complex in which they state their unanimous opposition to the proposed conditional land uses sought by the petitioner. Among their concerns are additional noise along Beaubien Street generated by vehicular and pedestrian traffic, as well as noise pollution from passenger vehicles, delivery trucks, and ambient noise, etc.

The letter presented by the residents of Centurion Place On Ferry Street also expressed a concern over a "standard restaurant" use obtaining a state-issued liquor license which would accommodate a different type of clientele with extended hours of operation along with additional deleterious effects such as grease disposal, garbage disposal, additional truck deliveries, etc. The Commission assures City Council and members of the public that "standard restaurants" which serve beer and/or wine are not permitted in the R5 zoning classification, as they are notably first permitted in the B2 (Local Business/Residential District) zoning classification. In response to the condominium association's concerns over a future owner changing the destination of any of the commercial or retail spaces, anything outside of an art gallery or standard restaurant would require another Special Land Use Hearing at BSEED in which residents and property owners within 300 radial feet would again be notified of the proposed use. However, if a "more intensive" restaurant operation wanted to locate on site they would be permitted to do so (provided they meet all other standards and permit requirements) as the zoning designation runs with the land and not with the owner.

Also among the concerns expressed by the condominium association are those of parking. For those residents who do not have the benefit of off-street parking associated with their dwellings, Kirby Holdings, LLC has committed to working with the established neighborhood association and the City of Detroit's Municipal Parking Department to pursue residential permit parking for the residents along E. Kirby and Beaubien. To the Commission's knowledge, the Department of Public Work's Traffic Engineering Division has not conducted specific traffic and/or parking studies geared towards the occupancy of 457 E. Kirby. As stated previously, given the age of the subject property and the less than 3,000 sq ft allocation of commercial space for the proposed uses, no additional off-street parking is required, however, the petitioner is exploring the possibility of acquiring additional land to utilize for off-street parking.

In regards to the condominium association's concerns over light trespass from any type of signage, the subject property is within a local historic district, the East Kirby Street Historic District, which would require any signage to be reviewed and approved by the Historic District Commission before any permits being issued. As a provision of the newly revised Chapter 4 – Signs, sign types will be based on Master Plan designation. In this case, the Master Plan designation of Medium Density Residential correlates to the sign district classification of High-Density Residential/Mixed Use Sign District which would prohibit any type of dynamic/animated/ or digital signs. Illuminated wall signs such as what is proposed by the petitioner are permitted to be illuminated either internally or externally in the R5 zoning classification, however, given the subject properties proximity to the Centurion Place On Ferry Street condominiums, only shielded directional external lighting, which is directed away from all residences, would be permitted.

LETTER OF SUPPORT

Also attached for your review and consideration is a letter of support from Ms. Anne Beck, the CFO of the College for Creative Studies, which was submitted by the petitioner following the Saturday, November 7, 2020 meeting.

MASTER PLAN CONFORMANCE

The subject site is located within the Lower Woodward area of Neighborhood Cluster 4 of the Detroit Master Plan of Policies. The Future Land Use map for this area shows “Medium Density Residential” for the subject properties. The Planning and Development Department (P&DD) has provided a report dated October 15, 2020 which speaks to the appropriateness of the requested rezoning.

ANALYSIS

The proposed zoning classification of R5 would permit the requested uses of a “Standard Restaurant” and “Art Gallery” on a conditional basis.

The proposed R5 zoning classification would permit 35 by-right residential, public, civic, institutional, and other uses. The most intensive uses in the R5 zoning classification include “Hospital or hospice,” and “Outdoor recreation facility.”

The following analysis details how the proposed rezoning either meets or fails to meet the eight approval criteria of Section 50-3-70 of the Zoning Ordinance, which must be considered in making recommendations and decisions on standard rezoning requests.

- (1) Whether the proposed amendment corrects an error or meets the challenge of some changing condition, trend, or fact;

In this regard, the subject site has recently been renovated and restored to its former grandeur in conformance with the requirements of the local historic district, preserving the medium density residential character of the neighborhood as contemplated by the Master Plan of Policies.

- (2) Whether the proposed amendment is consistent with the Master Plan and the stated purposes of this Zoning Ordinance;

The proposed rezoning of R5 is consistent with the Master Plan of Policies as indicated in PDD's October 15, 2020 staff report.

- (3) Whether the proposed amendment will protect the health, safety, and general welfare of the public;

There are no foreseen adverse effects associated with the requested zoning classification in terms of health, safety, and/or the general welfare of the public. There have been concerns expressed by members of the public regarding the amount of increased vehicular and pedestrian traffic the proposed conditional uses may generate. As a result, the Commission is urging Council to support the community's request for the Department of Public Works – Traffic Engineering Division to erect a stop sign at the intersection of E. Kirby and Beaubien Street.

- (4) Whether the City and other service providers will be able to provide adequate public facilities and services to the subject property while maintaining adequate levels of service to existing development;

The physical characteristics of the subject property will not change significantly as a result of any future development. Disruption to city services is not anticipated.

- (5) Whether the proposed rezoning will have significant adverse impacts on the natural environment, including air, water, soil, wildlife, and vegetation and with respect to anticipated changes in noise and regarding stormwater management;

There are no anticipated adverse impacts associated with rezoning regarding any of the aforementioned.

- (6) Whether the proposed amendment will have significant adverse impacts on other property that is in the vicinity of the subject tract;

Residents of the Centurion Place On Ferry Street condominium complex believe that the proposed conditional uses would have an adverse impact on their property, however, the zoning classification of Medium Density Residential is not objectionable, nor does it present any significant adverse impacts on other property.

- (7) The suitability of the subject property for the existing zoning classification and proposed zoning classification; and

The R5 zoning classification has been determined to be appropriate for the subject site.

(8) Whether the proposed rezoning will create an illegal “spot zone.”

Given the residential and mixed-use nature of the corridor in which this rezoning has been requested along with the size and proposed rezoning's consistency with the Master Plan of Policies, the staff is of the opinion that the proposed rezoning would not constitute an illegal "spot zone."

Land Use

The Commission believes that an R5 zoning classification is an appropriate designation consistent with the characteristics of the adjacent properties, which will allow for the establishment of mixed-use residential and commercial related uses.

RECOMMENDATION

On November 19, 2020 the City Planning Commission voted 7-2 to recommend approval of the request of Paul Silveri on behalf of Kirby Holdings, LLC and the Detroit City Planning Commission to amend Article XVII, District Map No. 6 of the 2019 Detroit City Code, Chapter 50, Zoning, by showing an R5 (Medium Density Residential District) zoning classification where an R3 (Low Density Residential District) zoning classification currently exists on six (6) parcels, commonly identified as 399, 401, 425, 433, 443 and 457 E. Kirby Avenue, generally bounded by E. Ferry Street to the north, Beaubien Street to the east, E. Kirby Street to the south and Brush Street to the west consistent with the approval criteria of Sec. 50-3-70 of the Zoning Ordinance. The Zoning Ordinance map amendment has been approved-as-to-form by the Law Department and is attached for your consideration.

Respectfully submitted,

ALTON JAMES, CHAIRPERSON



Marcell R. Todd, Jr, Director
George A. Etheridge, Staff

Attachments:
Zoning Map No. 59
Ordinance

Alton James
Chairperson
Lauren Hood, MCD
Vice Chair/Secretary

Marcell R. Todd, Jr.
Director

City of Detroit

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NOTICE OF PUBLIC HEARING

Governor Gretchen Whitmer's "Stay Home, Stay Safe" Executive Order (EO 2020-21) went into effect on March 24, 2020. Therefore, the Detroit City Planning Commission (CPC) will be meeting virtually using video conferencing software in response to the COVID-19 Pandemic. A regular meeting of the CPC is set for **Thursday, November 5, 2020**. This action is being taken in accordance with Governor Whitmer's Executive Order 2020-15, which allows electronic meetings for public bodies.

The CPC meeting may be viewed in the following manner.

Online:

<https://cityofdetroit.zoom.us/j/96355593579?pwd=TTloMzN5M3pmU1RKNXp1MjJlczN3UT09>

Or iPhone one-tap:

US: +12678310333,,96355593579# or +13017158592,,96355593579#

Or by Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 267 831 0333 or +1 301 715 8592 or +1 312 626 6799 or +1 213 338 8477 or +1 253 215 8782 or +1 346 248 7799 Webinar ID: 963 5559 3579

A PUBLIC HEARING WILL BE HELD **THURSDAY, NOVEMBER 5, 2020 AT 5:10 PM**

to consider the request of Paul Silveri on behalf of Kirby Holdings, LLC and the Detroit City Planning Commission to amend Article XVII, District Map No. 6 of the 2019 Detroit City Code, Chapter 50, Zoning, by showing an R5 (Medium Density Residential District) zoning classification where an R3 (Low Density Residential District) zoning classification which currently exists on six (6) parcels, commonly identified as 399, 401, 425, 433, 443 and 457 E. Kirby Avenue.

The location of the proposed rezoning is specifically indicated as the shaded area on the accompanying map.

The proposed map amendment is being requested to allow for the establishment of a "Retail sales and personal service in multiple-residential structures, as provided for in Section 50-12-312 of this Code," i.e., "coffee shop," or "standard restaurant" at 457 E. Kirby. The proposed retail use as well as the food and beverages service use would be permitted on a conditional basis in the proposed R5 zoning classification.

399 E. Kirby through 443 E. Kirby are being recommended for rezoning by the Planning Commission in order to bring the existing properties into conformance with the Master Plan of Policies by changing the zoning classification from Low-Density Residential District to Medium Density Residential District.

The pertinent zoning district classifications are described as follows:

R3 – Low Density Residential District

The R3 Low Density Residential District is designed as a low-density multi-family district. The regulations are designed to promote and encourage town and terrace house development, courts, and garden apartments. It is intended that this district be used primarily on local thoroughfares thereby encouraging a suitable environment for family life. Among others, uses permitted by right include single- and two-family dwellings, townhouses, multi-family dwellings, and community facilities necessary to serve a residential district.

R5 – Medium Density Residential District

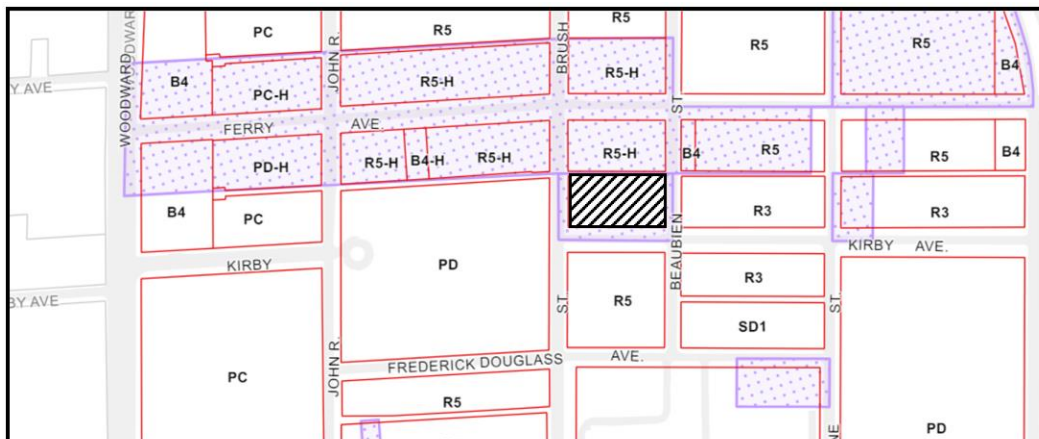
This R5 Medium Density Residential District is designed to provide for a range of residential development from the single-family detached dwelling to medium-density multiple-family dwellings. The primary use in this district will be the rental apartment structure. In addition to permitted residential uses, certain specified non-residential uses which can be properly blended into this district may be permitted.

A Zoning Ordinance map amendment requires approval of the City Council after a public hearing and after receipt of a report and recommendation by the City Planning Commission. This Zoning Ordinance map amendment request is being considered consistent with the provisions of Article III, Division 3 of Chapter 50 of the 2019 Detroit City Code, the Detroit Zoning Ordinance. All interested persons are invited to be present and be heard as to their views. Persons making oral presentations are encouraged to submit written copies to the City Planning Commission at cpc@detroitmi.gov via e-mail, for the record.

Public comment/testimony may be given at the appropriate times during the meeting when called for. If you desire to speak and are attending the meeting online press the raise your hand icon at the bottom of the screen or press ALT-Y for a PC or OPT-Y for a MAC to raise your hand virtually. If attending by phone press *-9 to raise your hand.

If interpretation or translation services are needed, including for the hearing impaired, call the Department of Civil Rights, Inclusion & Opportunity at [313-224-4950](tel:313-224-4950).

For further information on this proposal or the public hearing, please call (313) 224-6225. CPC Webpage: <https://detroitmi.gov/government/commissions/city-planning-commission>



Proposed Rezoning from R3 to R5

SUMMARY

This ordinance amends Chapter 50 of the 2019 Detroit City Code, *Zoning*, by amending Article XVII, *Zoning District Maps*, Section 50-17-7, *District Map No. 6*, to revise the zoning classification for the properties commonly identified as 399, 401, 425, 433, 443, and 457 East Kirby Avenue, generally bounded by the alley south of East Ferry Street to the north, Beaubien Street to the east, East Kirby Avenue to the south, and Brush Street to the west, from the R3 Low Density Residential District zoning classification to the R5 Medium Density Residential District zoning classification.

BY COUNCIL MEMBER _____ :

1 **AN ORDINANCE** to amend Chapter 50 of the 2019 Detroit City Code, *Zoning*, by
2 amending Article XVII, *Zoning District Maps*, Section 50-17-7, *District Map No. 6*, to revise the
3 zoning classification for the properties commonly identified as 399, 401, 425, 433, 443, and 457
4 East Kirby Avenue, generally bounded by the alley south of East Ferry Street to the north,
5 Beaubien Street to the east, East Kirby Avenue to the south, and Brush Street to the west, from
6 the R3 Low Density Residential District zoning classification to the R5 Medium Density
7 Residential District zoning classification.

8 **IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT**
9 **THAT:**

10 **Section 1.** Chapter 50 of the 2019 Detroit City Code, *Zoning*, Article XVII, *Zoning*
11 *District Maps*, Section 50-17-7, *District Map No. 6*, is amended as follows:

12 **CHAPTER 50. ZONING**

13 **ARTICLE XVII. ZONING DISTRICT MAPS**

14 **Section 50-17-7. District Map No. 6.**

15 For the properties commonly identified as 399, 401, 425, 433, 443, and 457 East Kirby
16 Avenue, generally bounded by the alley south of East Ferry Street to the north, Beaubien Street
17 to the east, East Kirby Avenue to the south, and Brush Street to the west, and described more
18 specifically as: N KIRBY W 25 FT 9 BLK 27 BRUSHS SUB L17 P28 PLATS WCR 1/79
19 25X161.53 4038 SQ FT, inclusive of N KIRBY E 20 FT 9 ALL 8 BLK 27 BRUSHS SUB L17
20 P28 PLATS WCR 1/79 65.32 X 161.53 10551 SQ FT, inclusive of N KIRBY 20 D M FERRYS
21 L17 P35 PLATS, W C R 1/80 45 X 161.53, inclusive of N KIRBY 19 W 18 FT 18 D M
22 FERRYS L17 P35 PLATS, W C R 1/80 63 X 161.53, inclusive of N KIRBY E 27 FT 18 W 23

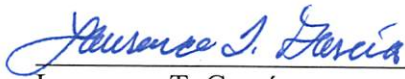
1 FT 17 D M FERRYS L17 P35 PLATS, W C R 1/80 50 X 161.53 NEZH CERT #2007-2333,
2 RELATED PARCEL #27072333., inclusive of N KIRBY E 22 FT 17 W 38 FT 16 D M
3 FERRYS L17 P35 PLATS, W C R 1/80 60 X 161.53, the existing R3 Low Density Residential
4 District zoning classification is revised to the R5 Medium Density Residential District zoning
5 classification.

6 **Section 2.** All ordinances or parts of ordinances in conflict with this ordinance are
7 repealed.

8 **Section 3.** This ordinance is declared necessary for the preservation of the public peace,
9 health, safety, and welfare of the people of the City of Detroit.

10 **Section 4.** This ordinance shall become effective on the eighth day after publication in
11 accordance with Section 401(6) of Public Act 110 of 2006, as amended, MCL 125.3401(6), and
12 Section 4-118, paragraph 3 of the 2012 Detroit City Charter.

Approved as to Form:



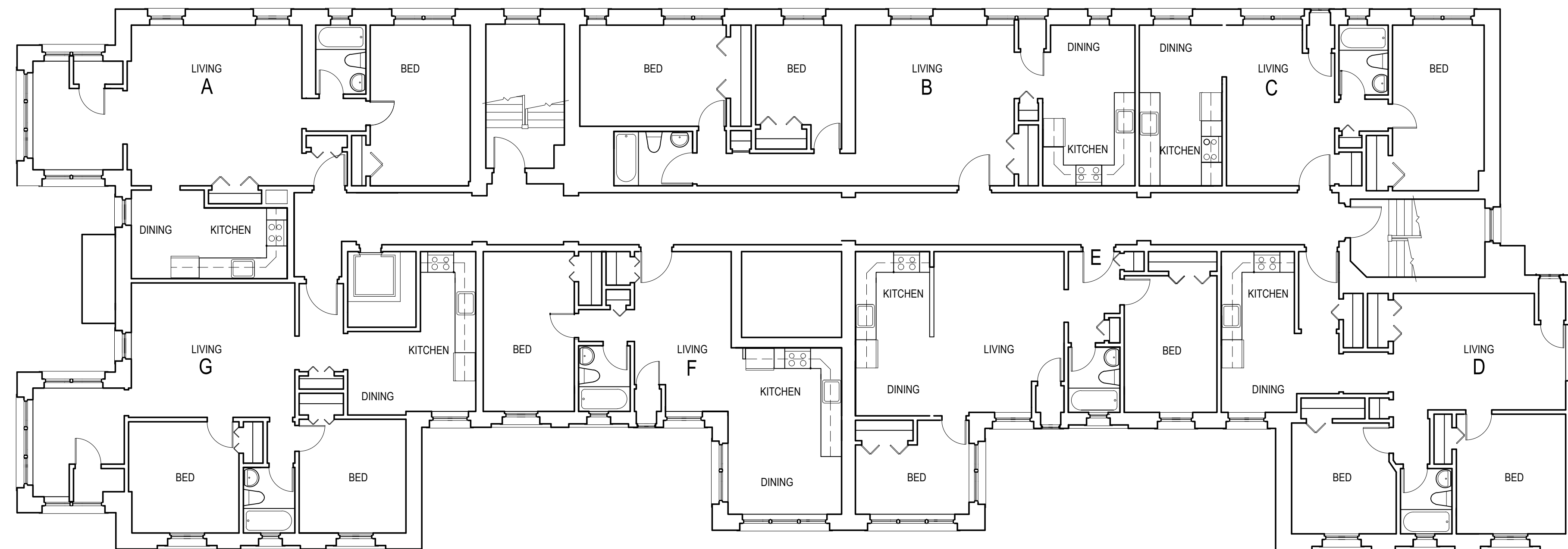
Lawrence T. Garcia
Corporation Counsel



EAST ELEVATION
0 8'-0"



SOUTH ELEVATION
0 8'-0"



TYPICAL FLOOR PLAN
0 8'-0"

East Kirby Avenue Historic District

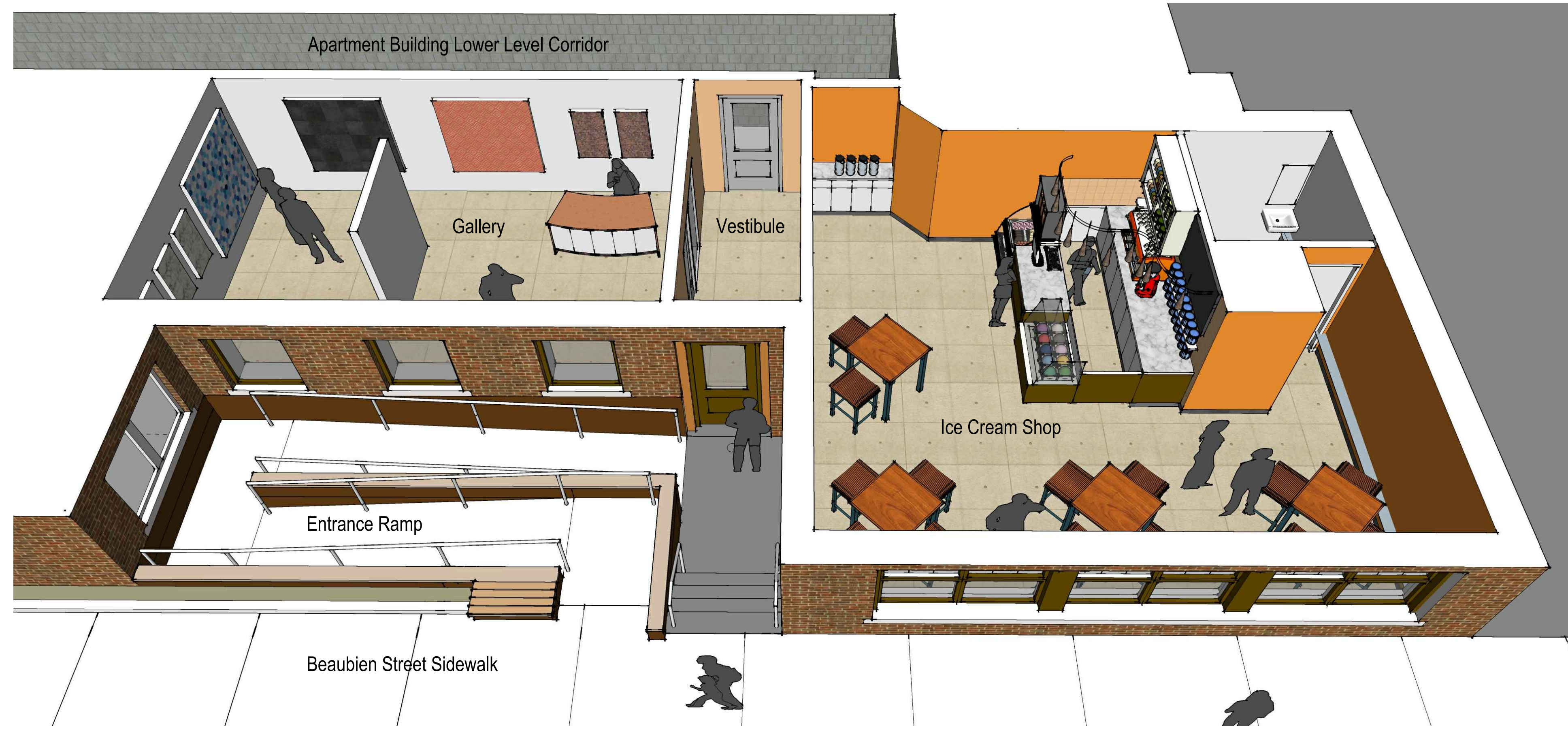
30 Units

5 Levels

Built in 1925

457 East Kirby
Detroit, Michigan 48202 10-2020

Kirby Holdings LLC



Ice Cream Shop and Gallery Interior



Ice Cream Shop and Gallery Beaubien Street Entrance