



CITY of MEDINA

Board of Zoning Appeals

Board of Zoning Appeals

Meeting Date: April 11, 2019

Meeting Time: 5:30 pm

Present: Brandilyn Fry, Paul Roszak, Bert Humpal, Rob Henwood, Mark Williams, Jonathan Mendel, (Community Development Director), Sandy Davis (Administrative Assistant)

Absent: None

Mr. Williams made a motion to approve the minutes of March 14, 2019 meeting as submitted. The motion was seconded by Mr. Roszak.

Vote:

Humpal	<u>Y</u>
Williams	<u>Y</u>
Henwood	<u>Y</u>
Rozsak	<u>Y</u>
Approved	4-0

The Court Reporter swore in all attendees.

New Business:

1. Z19-06 1088 S. Court Trillium Creek LLC VAR

Mr. Mendel gave a brief overview of the case. Mr. Mendel stated the applicant is seeking a Land Use Variance request from Section 1125.02 to permit a Personal and Professional Services with Drive-Thru land use (bank ATM kiosk) on an R-3 zoned property where such land use is not permitted or conditionally permitted.

Mr. Mendel stated the subject site is located on the east side of the 1000 block of S. Court St. adjacent to the City of Medina corporate boundary.

Mr. Mendel stated the applicant proposes constructing a single bank ATM drive-through with an accessory circulation drive and a new/second driveway from the S. Court St. public right-of-way and the property is zoned R-3.

Mrs. Fry joining the meeting at 5:36pm.

Mr. Mendel stated since, the property is zoned R-3 and a bank ATM drive-through is not a permitted or conditionally permitted use, the applicant requests a Land Use Variance for the proposed use at this site.

Mr. Mendel stated this project also requires Site Plan approval and will be reviewed by the Planning Commission this evening. Mr. Mendel stated if the Board of Zoning Appeals did not approve the land use variance being requested, it does not negate the applicant continuing with the Planning Commission review. Mr. Mendel stated an approval from the Planning Commission would be good for 1 year which gives them time to look at other paths for the land use of the property. Mr. Mendel stated it is up to the applicant if they wish to proceed with the Planning Commission review this evening if they receive a denial from the Board of Zoning Appeals.

Mr. Mendel stated there are seven factors that the BZA should consider when evaluating whether or not an unnecessary hardship exists.

Mr. Mendel stated the Board shall weigh the following factors to determine whether an area variance should be granted:

A. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;

Mr. Mendel stated the property is located along a mixed zoned area of S. Court St. – C-3 and R-3 zoning. Mr. Mendel stated the subject site is one of the four R-3 zoned and commercially developed properties on the east side of the 1000 block of S. Court St. The other properties on the west side are zoned C-3 and commercially developed.

B. The hardship condition is not created by actions of the applicant;

Mr. Mendel stated this property has been zoned R-3 residential for an extended period of time

C. The granting of the variance will not adversely affect the rights of adjacent owners;

Mr. Mendel stated the property has been a contractor's office and storage in the past and currently used by the owner for personal storage.

Mr. Mendel stated the proposed land use is a commercial bank ATM drive-through which will generate additional traffic to and from the site not associated with the owner's existing personal use of the property.

D. The granting of the variance will not adversely affect the public health, safety or general welfare;

Mr. Mendel stated some of the conditionally permitted uses in the R-3 zoning district can have similar or greater traffic and off-site impacts as the proposed land use.

E. The variance will be consistent with the general spirit and intent of this Ordinance;

Mr. Mendel stated the proposed use is a medium intensity land use in the spectrum of the commercial land uses.

F. The variance sought is the minimum which will afford relief to the applicant; and

Mr. Mendel stated the proposed land use should mostly be used by the customers of the specific bank, which can have a natural limiting effect on the traffic volumes to and from the subject site.

G. There is no other economically viable use which is permitted in the zoning district.

Mr. Mendel stated there may be other economically feasible uses of the subject property. The subject property is designated 'Residential High Density' in the City of Medina 2007 Comprehensive Plan Future Land Use Map. Mr. Mendel stated this designation is equivalent to the R-4, Multi-Family Residential zoning district. Mr. Mendel stated if the property were rezoned to R-4, there would be more permitted and conditionally permitted uses available to the owner.

Mr. Mendel stated the BZA must weigh the above seven factors for the request and determine if an unnecessary hardship exists that would merit a use variance from Section 1125.02.

Present for the case was Justin Eddy, authorized representative from Tucker Ellis, LLP, 950 Main Avenue, Cleveland, Ohio. Also present was Eric Funk, CFO of Trillium Creek LLC, Medina, Ohio.

Mr. Eddy stated the applicant is seeking a Use Variance from the R-3 zoning classification which is currently applicable to the subject property for the installation of an ATM Kiosk on the basis that, at least as a foundational matter, we believe that this is consistent with the commercial nature of this corridor and in fact, the commercial nature of this corridor has rendered this property economically infeasible for any of the uses that are currently permitted under the code.

Mr. Eddy stated he will have Mr. Funk answer some questions for purposes of the record. Mr. Eddy asked Mr. Funk if he is familiar with the application and the addendum to the application that was brought on behalf of Trillium Creek. Mr. Funk responded yes he is. Mr. Eddy asked Mr. Funk if he agrees with the statements that are contained in that application. Mr. Funk stated yes. Mr. Eddy asked Mr. Funk if he has knowledge of the matters that are discussed in that application and addendum. Mr. Funk responded yes. Mr. Eddy asked Mr. Funk if it is his understanding that within the R-3 District the only principally permitted use is a single family dwelling. Mr. Funk responded yes.

Mr. Eddy asked Mr. Funk if there is a current commercial use on the property. Mr. Funk responded no, not on the property they are asking to have rezoned. Mr. Eddy stated when they purchased the property, was there a commercial use? Mr. Funk stated when they purchased the property there was. Mr. Eddy asked if the building is now used for personal storage. Mr. Funk asked if they have maintenance equipment and things along those lines. Mr. Funk responded yes. Mr. Eddy asked Mr. Funk, with respect to the viability of this property as a single family residence, do you believe that such a use is economically feasible. Mr. Funk responded no. Mr. Eddy asked Mr. Funk to give some description as to why that is. Mr. Funk stated he has been at Trillium Creek since 2006. Mr. Funk stated they used to have other homes south of the current location and did not find it feasible to have those given the conditions of the homes, the values of the homes, to insure them and the liability. Mr. Funk stated as such, they took it upon themselves to remove the homes from there. Mr. Funk stated, given the growth around that current area, everything has kind of gone commercial, in his opinion, he could not see someone wanting to put a home in the middle of a commercial area.

Mr. Eddy stated the zoning code lists other conditionally permitted uses within the R-3 District. Mr. Eddy asked in terms of the residential conditionally permitted uses, does what you just described apply equally to those uses as well. Mr. Funk stated yes. Mr. Eddy asked if it was Mr. Funk's opinion that those uses would also be economically feasible. Mr. Funk responded that is correct. Mr. Eddy asked if these characteristics are unique to the property in question, in terms of its location within a commercial district. Mr. Funk stated no. Mr. Eddy asked, with respect to this site, as it relates to the permitted uses and the conditions related to that economic infeasibility, is this something that the owner hasn't created that argument for this property. Mr. Funk stated they have not created the argument.

Mr. Eddy asked Mr. Funk if he would say that the requested variance is generally consistent with the surrounding commercial uses. Mr. Funk responded yes. Mr. Eddy added the character of the neighborhood. Mr. Funk responded yes. Mr. Eddy asked Mr. Funk if it is his opinion that due to the adjacent land uses being commercial, this would have any negative effect on the rights of adjacent owners. Mr. Funk responded no.

Mr. Eddy asked, just for clarify, Mr. Funk to describe what is behind the buildings where the landscaping buffering is located behind those buildings. Mr. Funk stated there are currently trees and then the Pinewood Development. Mr. Eddy asked if the trees and the other landscaping would act to shield light that may spill over from cars pulling in at night. Mr. Funk stated yes. Mr. Eddy asked if it is also his understanding that the site would be developed in a manner that would reduce those effects as well. Mr. Funk stated yes. Mr. Eddy asked, specifically, the lighting plan that KeyBank has provided has been designed to keep the light on site. Mr. Funk stated that is correct.

Mr. Eddy asked, in terms of traffic, what does he understand to be the nature of the site in terms of how its customers come to the site. Mr. Funk stated he believes KeyBank has estimated there would be 30 vehicles coming and going per day at that ATM. Mr. Eddy asked if it was designed to capture existing traffic on the thoroughfare. Mr. Funk stated,

potentially, but he believes these serve more as a marketing opportunity but he is not sure. Mr. Eddy stated in terms of marketing, he means that people drive-by and see the KeyBank ATM. Mr. Funk stated that is correct. Mr. Eddy asked if it is a significant traffic generator in and of itself. Mr. Funk stated no.

Mr. Eddy asked, what about the current traffic to and from the site, assuming this is not happening, through the existing drive to the north, can you describe how that is currently used. Mr. Funk stated currently that is used by the two maintenance employees. Mr. Funk stated typically they arrive around 5-5:30am, drive their personal vehicles back by the two storage barns, then get into the company trucks after loading them if needed, then pulling out. Mr. Funk stated until they leave at 5pm, they may, once or twice, need to go back to the barn for some reason but typically, they are pulling in and out anywhere from 4 to 8 times per day.

Mr. Eddy stated he has no further questions and he submits to the board that the current zoning classification results in an undo hardship due to the commercial nature of this corridor and the economic infeasibility of any of the permitted or conditionally permitted uses under the code. Mr. Eddy stated on behalf of the applicant, he respectfully requests that the board approve their request.

Mr. Mendel stated he has placed in front of each board member, a letter submitted by the Pinewood Condominium Association with some questions and concerns as well as comments. Mr. Mendel stated this is the association that is adjacent to the east and effectively to the north as well with their drive of the subject site.

Mr. Henwood stated the applicant made reference to homes on the site that were removed. Mr. Henwood asked where those were located. Mr. Mendel there were previously residential houses on the Trillium Creek site in Montville Township. Mr. Henwood stated it is the two residential structures that were on the actual Trillium Creek site which currently houses the Surgery Center and the Wellness Center. Mr. Funk stated the property yes, but the homes had no affiliation with the business. Mr. Henwood stated but they are associated with that particular property. Mr. Funk stated correct.

Mr. Henwood stated it shows in the aerial photo that there is a drive access out to Court Street through the property represented as part of the application but there is also another drive that seems to circle back out that crosses the city line and exits out onto Rt. 3 farther to the south also. Mr. Henwood asked if these structures are there for purposes of servicing that Trillium Creek property. Mr. Henwood stated he is not sure what that configuration indicates. Mr. Henwood stated it looks like they are exiting and entering on both parts of the property. Mr. Funk stated, to his knowledge, and he is not 100% certain, but that used to lead to a house that was there and the house was removed.

Mr. Henwood asked if the current use on the property is a conforming use or a legally non-conforming use. Mr. Mendel stated it is an existing non-conforming use of the land so it looks like it was configured as a house at one time and converted to a contractor's office in the Township. Mr. Mendel stated when it was annexed to the city it persisted

until the current owners purchased it. Mr. Mendel stated the light commercial use that they currently use it for would just be considered existing non-conforming.

Mr. Henwood stated it seems to him that if this is a current legally non-conforming use, the argument of no other viable use for the property given the zoning district is not true. Mr. Henwood stated it has a viable use on it now so making the argument that the board should consider the ATM, because there is no other viable use, is false. Mr. Henwood stated there is an existing use there, a legally non-conforming use that is viable. Mr. Henwood stated the site plan in front of him does not indicate that the existing non-conforming use is going to be removed. Mr. Henwood stated he does not see how the applicant makes the argument that there is no viable use if they are retaining the existing non-conforming use. Mr. Henwood stated it is viable whether there is an ATM on it or not.

Mr. Funk stated when the applicant purchased it, at that time, it was being operated as a commercial business. Mr. Funk stated since they acquired it, it no longer operates as a commercial business. Mr. Funk stated it is used for, basically, to service the Trillium Creek property. Mr. Funk stated they use it for storage and things along those line which are not economically, or generating any sort of rate of return with respect to the economic viability of that property specifically.

Mr. Henwood commented that the statement from the applicant that all the adjoining owners to the site are commercial uses and that is not true. Mr. Henwood stated the Pinewood development is a residential use so the adjoining property use to the east is residential. Mr. Henwood asked if that is correct. Mr. Funk stated that is correct, the surrounding uses, in terms of on the west side of Court Street, are zoned C-3 and to the north, within the city, as he understands it, are all commercial uses. Mr. Henwood asked if technically the drive entrance is part of the Pinewood condominium complex. Mr. Funk stated yes, excluding that. Mr. Henwood stated adjacent to the east is the condo development which is a residential use. Mr. Funk stated correct.

Mr. Roszak asked if two curb cuts are permitted on this property as it is currently zoned or if it was rezoned, would it be permitted to have two curb cuts to driveways. Mr. Mendel responded our general practice in the zoning code, and this is something that would be addressed by the site plan review by the Planning Commission, but the Planning Commission staff report states that staff recommends that the Planning Commission, under Site Plan Approval, consolidate curb cuts on this subject property with the proposed plan. Mr. Mendel stated he is proposing the southern curb cut. Mr. Mendel stated that is more of a site plan item. Mr. Mendel stated the Board of Zoning Appeals is to consider the land use regardless of the site configuration.

Mr. Williams stated the letter from the Pinewood Condominium Association has a reference to 250 homes being built. Mr. Williams stated, to clarify, the issue that this board is considering this evening is simply the land use variance to permit or not permit the ATM. Mr. Mendel stated that is correct.

Mr. Humpal asked for comments from the public.

Lee Ross, 57 Pinewood Drive, Medina, Ohio. Mr. Ross stated he is one of the Trustees on the Pinewood Condominium Association Board.

Mr. Ross stated their primary concern is safety, specifically the traffic and congestion in the 2/10ths of a mile going from Sturbridge south to the city line. Mr. Ross stated there are somewhere around a dozen access roads, driveways, into commercial properties that were originally R-3 or still R-3 with allowable commercial activity. Mr. Ross stated Trillium Creek is concerned about their return investment which he understands but we also should understand the potential reduction in property value that could come because of the traffic conditions in that strip, primarily in the city, that goes from Sturbridge down to the city line. Mr. Ross stated Montville Township has done a lot of development and part of that is Trillium Creek's medical facility. Mr. Ross stated he was a board member of Trillium Creek and supported the facility. Mr. Ross stated at the time, the alternative could have been a truck stop so we tucked behind Route 3 which are all commercial and most have their own access in and out which creates a traffic congestion problem which they feel can eventually effect their property value. Mr. Ross stated that is the financial issue. Mr. Ross stated the long range issue and concern, and in the 70's, when the north side of town was being developed, a lot of Medina Township property was turned into big commercial properties, the traffic and the roads were not changed to keep up with that and traffic became a real mess. Mr. Ross stated the property values did drop. Mr. Ross stated that is the basis of their concern, south of the city, Montville has widened Route 3, putting a lane in for the McDonalds. Mr. Ross stated a land was recently put on the west side, on the southbound side, it goes into a driveway which goes into a big property that the Albrecht Grocery people intend to put in a grocery store at some time. Mr. Ross stated there is an access lane that is put in last year for a right turn into that as you are southbound on Route 3. Mr. Ross stated based on the two lane highway with all the egress and access points, you spend a lot of time waiting in driveways to pull out. Mr. Ross stated the Pinewood Association feels that before any more commercial development is done in that stretch from the city line, north to Sturbridge, there should be a traffic study and possibly a different road configuration. Mr. Ross stated they would appeal to the board that they defer anything until the Planning Commission has had an opportunity to examine those items. Mr. Ross stated there is no existing traffic study in that stretch. Mr. Ross stated the information published for the intersection at Route 3 and Route 162, there are 9,000 vehicles a day on Route 3 in that area through the intersection, most of which are coming and going to Medina.

David Hoek, 28 Pinewood Drive, commented. Mr. Hoek stated it is a safety issue with the traffic and the number of driveways within the distance of a football field. Mr. Hoek stated there are 7 driveways or street accesses. Mr. Hoek stated the Pinewood driveway accommodates 64 units so in 1 day, there are several hundred vehicles going in and out of the driveway. Mr. Hoek stated the reference made by Mr. Funk of there being approximately 30 vehicles per day going in and out of the proposed ATM is in contrast to the report from Tucker & Ellis which talks about approximately 60 to 80 traffic trips per day. Mr. Hoek stated that is quite a significant increase to traffic already going in and out

of the area. Mr. Hoek stated the signage in front of the proposed property blocks their view when pulling out. Mr. Hoek stated tradesman, delivery people, and guests go in and out of the Pinewood driveway daily.

Mr. Humpal stated clearly Medina has a sign zoning code that will govern sign size, setback and illumination. Mr. Humpal stated it is not an issue for the zoning board but as part of the development, it will be an issue. Mr. Hoek asked if the existing driveway to the south of the Pinewood driveway which is used for access to the storage shed at about 8 trips per day, will that be continued. Mr. Humpal stated, as Mr. Mendel stated earlier, that is part of the Planning Commission's review and he has recommended consolidation of the driveway. Mr. Mendel stated the discussion of the driveways is for the Planning Commission. Mr. Hoek stated that driveway for the kiosk has a 36' apron and is 24' wide, he cannot tell if there will be two exits and one entrance. Mr. Hoek stated it is essentially 3 driveways. Mr. Mendel stated again it is a question for the Planning Commission to look at.

Pat Ryan, 1454 Sharon Copley Road, Montville commented. Ms. Ryan asked if this request is specific to the only use being considered is a bank kiosk. Mr. Mendel stated typically with land use variances, he does recommend a specific condition of approval. Mr. Mendel stated it is not in the staff report, but typically he would recommend a condition of approval that the use be for only this use or business user, a KeyBank drive-thru. Mr. Mendel stated if Keybank abandoned the land use, another bank would need to go through the land use review process.

Pat Ryan asked if this will affect the storage units in the back. Ms. Ryan asked if the use in those buildings changed and it went commercial, it would also need to come through this board. Mr. Mendel stated no, the reuse of those buildings under a commercial use would have to be reviewed under the non-conforming use Chapter of the zoning code. Mr. Mendel stated since it has been a continuous existing non-conforming commercial use, he would need to review the intensity of the existing use and how it fits with what is being proposed for re-use. Mr. Mendel stated some uses may fall under the administrative review section of the non-conforming use portion of the zoning code.

Ms. Ryan stated the proposed driveway width is proposed under the commercial use however, the underlying use of the property is still R-3, is that correct. Mr. Mendel stated yes, that would be part of the Planning Commission review but for the sake of the answering the question, it meets it as a commercial use. Mr. Mendel stated the zoning code does not talk about having to be a commercial use on a commercial property, just a commercial use of land must meet certain dimensional requirements which it does.

Mr. Henwood stated in some of the testimony, there was a claim that some of the property values will decline potentially as a result of the variance. Mr. Henwood stated he did not hear any evidence to support that claim. Mr. Henwood stated there was just a blanket claim that there would be a detrimental impact on property values but he has not heard any solid evidence to support this.

Mr. Henwood asked when it is appropriate to consider a use variance versus a rezoning request. Mr. Mendel stated those options are available to the applicant in the zoning code however there is not a mandatory requirement one way or the other. Mr. Mendel stated they can seek a land use variance under the code or they can seek a rezoning but there is not a requirement for either/or. Mr. Mendel stated since the city does allow for land use variances, which he believes under state law, townships are not afforded that type of variance. Mr. Mendel stated he believes in the township it must always be a rezoning. Mr. Mendel stated the city gives the option of a land use variance.

Mr. Humpal stated if the option were to be a rezoning, it is only a Planning Commission matter and not a Board of Zoning Appeals matter. Mr. Mendel stated that is correct.

Mr. Humpal stated if the Board of Zoning Appeals were to reject the application, the rezoning request may be an alternative for the applicant. Mr. Mendel stated they would still have the rezoning alternative review option ahead of them. Mr. Mendel stated that is why if they would like to continue with the site plan review this evening even if the Board of Zoning Appeals denied their request, it would afford the applicant a year for the site plan approval as they go through rezoning.

Mr. Williams on the southwest corner of the Pinewood property, it looks like there is a trail or path from Pinewood to the south Trillium in Montville. Mr. Mendel stated it looks like tracks from construction equipment. Mr. Funk stated that it exactly what it is. Mr. Funk stated it is a worn path from their equipment going over it.

Mr. Williams asked if there is some type of easement that would ease the Pinewood issue and combine all the drives into one. Mr. Mendel stated that would be getting into site plan review. Mr. Mendel stated the Board of Zoning Appeals is only looking at the 7 criteria for unnecessary hardship in front of the board for the proposed commercial use on this residentially zoned property.

Mr. Henwood stated he is not comfortable with the argument there is no other economically viable use for the property without granting a use variance. Mr. Henwood stated he understands the property owner isn't conducting a business as such and it is not generating a lot of return but it has a legally non-conforming use on the property that has had commercial operations in the past. Mr. Henwood stated he does not think a variance is the only way in which relief can be afforded to the applicant. Mr. Henwood stated there are some opportunities for rezoning and zoning districts that would be more applicable to what the applicant is wanting to do and there are some safeguards built into that process that would allow the community some additional say.

Mr. Williams asked Mr. Funk when Trillium Creek obtained the property. Mr. Funk stated he believes it was around 2003. Mr. Williams asked if the contractor's operation was there while Trillium Creek owned it. Mr. Funk stated he was not a part of that but he believes it was still there.

Mr. Humpal stated this is a difficult decision because it is an evolving transition area in the community and just like North Court Street 30 years ago, it is evolving now on the south side. Mr. Humpal stated in some circumstances he personally would not build a residence near that site with all the development that is going on in the area.

Mr. Humpal stated it requires looking at the neighborhood over 10 to 20 years and seeing how it will progress. Mr. Humpal stated he does not see it as a residential use.

Mr. Roszak stated he would agree but he also sees this as haphazard development in his opinion. Mr. Roszak stated it has a lack of long term goals for the type of development and what is the long term vision for the corridor and economic development. Mr. Roszak stated is it going to impact the city in a positive way. Mr. Roszak stated this seems like haphazard development.

Mr. Williams stated he agrees with Mr. Roszak and Mr. Humpal. Mr. Williams stated personally by making it a very pinpoint variance as Jonathan eluded to with the specific user would give this board, the Planning Commission and the community an opportunity to have another look at this if the ownership or use changes. Mr. Williams stated he is comfortable with the variance but he would like to see it very focused.

Mr. Williams asked Mr. Mendel if there have been traffic studies in the area recently. Mr. Mendel stated no, unless there was one as part of the large Pulte development to the south. Mr. Henwood stated there was no study there but there was some discussion about improvement requirements at the intersection of Wedgewood and State Route 3 but that would be imposed during the first phase of the development that will occur further south.

Mr. Mendel stated from Sturbridge to Wedgewood, he does not believe there has been a formal existing and projected traffic study.

Mr. Humpal stated there has not been a long term development study either. Mr. Mendel stated a build out scenario is usually done as part of a projected traffic study in close proximity to this area, and he does not think it has ever been done.

Mr. Williams made a motion to approve a variance as requested to Trillium Creek LLC for the use of a KeyBank ATM kiosk based on the finding that the granting of the variance will not adversely affect the public health, safety or general welfare.

Mr. Mendel stated if the board would like to put a specific condition of approval, just saying KeyBank in the motion is not sufficient and should be laser focused condition of approval such as “this land use variance shall apply only to KeyBank operation at this site and any future reuse or new bank use of this site will require land use variance review by the Board of Zoning Appeals”.

Mr. Williams amended his motion to include the verbiage that Mr. Mendel suggested.

Mr. Humpal asked if the site is being sold to KeyBank after the approval. Mr. Mendel stated his understanding is this is a land lease but the applicant can address the question. Mr. Funk stated that is correct, it is a land lease, the applicant will still own the property and they are leasing it to them. Mr. Humpal asked if that should be covered in the motion. Mr. Mendel explained that is not necessary. There was a discussion regarding having a change of ownership have to come back to the board. Mr. Humpal stated it may not be a bad idea. Mr. Mendel stated it would make it much more difficult for enforcement perspective. Mr. Williams stated he will keep his motion as amended.

Mr. Humpal seconded Mr. William's motion.

Vote:

Fry	<u>N</u>
Humpal	<u>Y</u>
Williams	<u>Y</u>
Henwood	<u>N</u>
Roszak	<u>N</u>
Denied	3-2

2. Z19-08 216, 222, 226 S. Jefferson Buckingham, Doolittle & Burroughs VAR

Mr. Mendel gave a brief overview of the case. Mr. Mendel stated this is a request for two variances for use of the proposed site at 216, 222 and 226 S. Jefferson. Mr. Mendel stated Anthony Vicanti is representing SDSS Properties, LLC. Mr. Mendel stated the variance requests are a Variance request from Section 1129.07(a) of the Planning and Zoning Code to permit parking spaces within the M-U District minimum 40 foot yard setback and a variance request from Section 1149.05(c)(4)(A) to permit the plantings to be placed inside the proposed fence instead of outside the fence as required.

Mr. Mendel stated the properties are currently zoned R-3 but at the Planning Commission meeting this evening, the applicant is requesting a rezoning to M-U. Mr. Mendel stated the subject site is three platted lots addressed 216, 222 and 226 S. Jefferson St. located on the east side of the 200 block of S. Jefferson St. and each lot has an existing single family detached residential structure.

Mr. Mendel stated as part of the development of the subject site for commercial use under the M-U zoning district, the applicant proposes a specific site development plan which will be reviewed by the Planning Commission for rezoning from R-3 to M-U and Site Plan approval this evening.

Mr. Mendel stated the applicant's proposed site development plan is mostly compliant with the applicable site development standards of the M-U district and the general site development zoning chapters except for the prohibition on parking in the front yard in Section 1129.07(a) and the planting location requirements of Section 1149.05(c)(4)(A).

Mr. Mendel explained the variance from 1129.07(a) is to allow 3 parking spaces to be within the minimum required 40 foot setback. Mr. Mendel stated the second variance is to allow the plantings on the inside of the fence rather than on the outside of the fence.

Mr. Mendel stated the request is subject to determination of a practical difficulty as an accessory use setback variance is requested. Mr. Mendel stated there are seven factors that the BZA should consider when evaluating whether or not a practical difficulty exists. Mr. Mendel stated the Board shall weigh the following factors to determine whether an area variance should be granted:

A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Mr. Mendel stated the properties could still be developed for commercial use with an accessory parking area with three fewer parking spaces and placing the screening landscaping outside the screening fence instead of inside the fence.

B. Whether the variance is substantial;

Mr. Mendel stated the variance for the three parking spaces in the required front yard could be considered substantial as the regulation is a complete prohibition on parking spaces in the required front yard.

Mr. Mendel stated the variance for screening landscaping placement could be considered substantial, but, due to the nature of the site and the neighborhood context, placing the plantings inside the fence can reduce the visual impact on the interior of the proposed parking area and reduce potential conflict between the subject site's management and the adjacent property owners when trying to maintain plantings so close to an adjacent property line.

C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

Mr. Mendel stated the proposed development is located within a mixed zoning stretch of S. Jefferson with a range of development history. Mr. Mendel stated the west side of the 200 block of S. Jefferson St. is zoned C-2 and has properties developed with parking in the front yards, but the C-2 zoning district has much different requirements for minimum front yards and location of parking spaces. Mr. Mendel stated the east side of this same block is mostly occupied single family houses with typical residential front yard parking improvements under the R-3 zoning district.

Mr. Mendel stated placing the screening plantings inside the screening fence should not be noticeably out of character within the varied nature of this area of the S.

Jefferson. If rezoned to M-U and developed as proposed, the location of the plantings versus as required by code would be an imperceptible difference.

D. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

Mr. Mendel stated the variances would not adversely affect the delivery of governmental services.

E. Whether the property owner purchased the property with knowledge of the zoning restrictions;

Mr. Mendel stated the applicant was made aware of the existence of the various applicable regulations approximately during the same period the applicant was purchasing two of the three properties comprising the subject site and well before the third property was purchased.

F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or

Mr. Mendel stated the proposed accessory parking area would be reduced from 26 spaces to 23 spaces to comply with the M-U district prohibition on parking in the required front yard.

Mr. Mendel stated with the proposed parking area layout, the screening fence could move slightly into the property to provide more area outside the fence adjacent to the neighboring property lines to place the plantings, but that would push the fence closer to most of the proposed parking spaces and drive aisles at the east and south side of the subject site. Mr. Mendel stated this could increase the potential for damage to the fencing by vehicles using the proposed parking area.

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

Mr. Mendel stated the intent of the M-U district prohibition on parking spaces in the required front yards was to maintain a predominantly residential character for an M-U district as the City's typical residential zoning districts have significant restrictions on the amount and extent of parking in required front yards.

Mr. Mendel stated the intent of requiring placing plantings between the screening fence and the adjacent residential property line is likely to minimize the visual impact of the required fence or wall on the adjacent residential zoned property.

Mr. Mendel stated the BZA must weigh the above seven factors to determine if a practical difficulty exists that would merit variances from Section 1129.07(a) and 1149.05(c)(4)(A).

Mr. Mendel stated since the proposed variances are part of a site development plan proposed under the regulatory framework of the M-U District and a request for rezoning of the subject site is still under consideration, Staff recommends the following conditions of approval be applied to any motion for approval:

1. Subject to City Council approving an ordinance to rezone 216, 222 & 226 S. Jefferson St. from R-3, High Density Urban Residential to M-U, Multi-Use and the ordinance taking effect.
2. Subject to Planning Commission Site Plan approval of the proposed development plan for 216, 222 & 226 S. Jefferson St.

Mr. Humpal asked if based on the number of spaces available, are there adequate parking spaces to meet our zoning code for the projected use of those three houses. Mr. Mendel stated he outlined in the staff report for the site plan review, they are in parking district #1 and they are exempt from all parking requirements. Mr. Mendel stated they actually don't have to provide any parking under our ordinance. Mr. Mendel stated the reduction from 26 to 23 spaces is immaterial to any code required number of parking spaces.

Present for the case was Tony Vicanti, Land Use Council from Buckingham, Doolittle & Burroughs, 1375 E. 9th Street, Cleveland, Ohio 44114. Also present was Dominic Carrino from SDSS Properties. Mr. Carrino stated his address at 2090 High Meadow Court, Medina, Ohio 44256.

Mr. Vicanti stated this property is located at 222 S. Jefferson Street and is currently zoned R-3. Mr. Vicanti stated for purposes of this presentation he asks that this board assume it is going to be zoned Mixed Use, M-U because they will be asking for a rezoning to M-U. Mr. Vicanti stated for purposes of analyzing the kinds of uses can go on this and be utilized with these variances, he asked the board to assume that the property is a mixed use property. Mr. Vicanti stated they are looking to develop the subject property as mixed use while maintaining the three residential structures on the property. Mr. Vicanti stated they are seeking the rezoning because the City's Comprehensive Plan identifies the properties as appropriate for mixed use. Mr. Vicanti stated mixed use includes some residential, office, convenience retail and is a mixture of uses and the testimony will show is what they are anticipating on utilizing. Mr. Vicanti stated the reason for the request is they are suffering some practical difficulties in being able to utilize these properties for mixed use. Mr. Vicanti stated he will note to the board, practical difficulties is a lesser standard than unnecessary hardship because they are seeking area variances. Mr. Vicanti stated there are the 7 factors Mr. Mendel reviewed. Mr. Vicanti stated he will run through the factors. Mr. Vicanti stated the board is to weight the factors and they can lose on several factors but win on others. Mr. Vicanti stated it is about weighing the equities of whether granting the variances will allow a reasonable use of the property. Mr. Vicanti stated that is the general standard the factors are referring to.

Mr. Vicanti reviewed all the standards after distributing a packet to the board members. Mr. Vicanti oriented the board to the contents of the packet which has been entered into the minutes as Exhibit A.

Mr. Carrino stated he started working at Carrino's Pizza located at 221 S. Jefferson Street with his parents when he was 12 years old and worked there until he turned 18. Mr. Carrino stated he went into the Service and during that time his parents sold the restaurant. Mr. Carrino stated he came out of the Service and went into construction. Mr. Carrino stated in 1987 he took over the pizza restaurant that his parents sold. Mr. Carrino stated in 1989 there was a bar where JoJo's is now located and he opened a Sports Bar. Mr. Carrino stated he purchased the building where Stop N Go was located and put the Italian Restaurant there since 1987.

Mr. Carrino stated he also owns 225 N. Jefferson, his home, a property on Pearl Road and Lake Road and Ryan Road. Mr. Carrino stated he feels he is knowledgeable in property and real estate and business.

Mr. Carrino stated right now the site is mixed use on 222 and 216 and 226 there is a Dentist Office. Mr. Carrino stated the other side of the street has Dominic's Pizza and a Hair Salon as well as an Attorney's office.

Mr. Carrino stated parking has always been limited. Mr. Carrino stated the Library never had enough parking so many of their customers use his lot. Mr. Carrino stated with their construction, they have lost a lot of their spots and now he is losing even more parking every day. Mr. Carrino stated he witnesses 5 to 6 cars using his lot at a time per day.

Mr. Carrino stated when 216 went up for sale, the owner could not sell it. Mr. Carrino stated he met with Jonathan Mendel and Kimberly Marshall regarding the site and they stated it was in the Comprehensive Plan to have this be zoned M-U. Mr. Carrino stated he purchased 216, 222, and 226 after learning of the Comprehensive Plan. Mr. Carrino stated his thought was to have in 216 a bakery, coffee, etc. and the two others houses could be a Title Agency or Attorney Office or a similar use.

Mr. Vacanti asked Mr. Carrino if without those 3 parking spaces there would be a sufficient amount of parking. Mr. Carrino stated when people find out there is parking there, people from all over will use it. Mr. Carrino stated he was told he had to put shrubbery on the other side of his fence which he couldn't believe because he would need to go through his neighbor's yard to maintain it or put the fence 10 feet on his property. Mr. Carrino stated if he put the fence 10' in he would lose all the parking on the east side and the exit on the south side as well. Mr. Carrino stated his intention is to maintain the shrubbery at the fence line.

Mr. Carrino stated he does not think the variances will alter the character of the area.

Mr. Vacanti stated if the board weighs the 7 Duncan Factors, they will find a practical difficulty exists to allow the reasonable use of this subject properties as mixed-use, to

provide parking for patrons which is already needed in the area, or still maintain the screening to protect the residential properties. Mr. Vacanti thanked the board for their time.

Mr. Williams stated the applicant is stating that 3 parking spaces are critical and as a business he gets it, there are times when every spot matters however, the site is across the street from a parking deck. Mr. Carrino asked why the patrons are not using the parking deck now instead of using his lot. Mr. Carrino stated if he was to lease or sell that house with the 3 spots, it is more attractive with the 3 extra spots.

Mr. Henwood stated they are hearing a variance request prior to the rezoning request and he wonders if we are not putting the cart before the horse. Mr. Henwood stated it seems to him if the Board of Zoning Appeals makes a decision on the variance prior to the consideration of the zoning change, it could have a significant impact on the consideration for the rezoning. Mr. Henwood stated he wonders about past practice and if the city often hears rezoning requests and variances for a district for a piece of property that is currently not in that district yet. Mr. Humpal stated they have done that once or twice. Mr. Mendel stated they have done it so applicants do not have to go through extra steps and extra meetings in separate months. Mr. Mendel stated they cross conditional the two entities to say that BZA may approve subject to Site Plan Approval and rezoning to function. Mr. Mendel stated it is fine but it is incumbent upon him to make sure he has those cross conditions happening in the Planning Commission and recommended to the Board of Zoning Appeals. Mr. Mendel stated if the property is not rezoned, it is immaterial. Mr. Mendel stated even without the conditions, it does not mean they would be able to build this even if the Board of Zoning Appeals approved it. Mr. Mendel stated he is making sure he is crossing those T's and dotting those I's.

Mr. Henwood stated he agrees with that but are you concerned that the BZA decision on a variance could impact the Zoning Commission's decision on the rezoning in advance of that actually occurring. Mr. Mendel stated he does not believe so. Mr. Mendel stated ideally you rezone the property and then come with a development later.

Mr. Vacanti stated the reason they are doing it this way is they want to be respectful of the Board's time and obviously be efficient on their end as well. Mr. Vacanti stated the Planning Commission is going to see the Site Plan and the rezoning at the same time so they are submitting the site plan which triggered the need for the variances so they are on that track. Mr. Vacanti stated there are two different standards. Mr. Vacanti stated you are applying the Duncan Factors, any rezoning must comply with the Ohio Constitution and has to substantially advance a legitimate government purpose. Mr. Vacanti stated it is a lot broader and it is legislative. Mr. Vacanti stated the BZA is administrative.

Mr. Humpal asked Mr. Carrino to describe the appearance of the fence being proposed. Mr. Carrino stated it will be a board on board wood fence. Mr. Humpal asked if that means it is solid. Mr. Carrino stated essentially yes.

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APPEARANCES:

City of Medina Board of Zoning Appeals,
Bert Humpal, Chairman,
Mark Williams, Member,
Rob Henwood, Member,
Paul Roszak, Member,
Brandilyn Fry, Member.

City of Medina Planning and Community
Development Department,
Jonathan Mendel, Community Development Director,
Sandy Davis, Administrative Assistant.

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STATE OF OHIO,)
)
COUNTY OF MEDINA.)

CITY OF MEDINA BOARD OF ZONING APPEALS
MEETING MINUTES FOR CASE NUMBER Z19-08
April 11, 2019

- - -

Transcript of the partial minutes of the
City of Medina Board of Zoning Appeals, as taken
before Timothy R. Peters, Notary Public within and for
the State of Ohio, on Thursday, the 11th day of April,
2019, at the Medina City Hall, 132 North Elmwood
Avenue, Medina, Ohio 44308.

- - -

MEDINA COURT REPORTERS, INC.
209 North Broadway Street
Medina, Ohio 44256
(330) 723-2482
MCRmedina@msn.com

CONTINUATION OF CASE NUMBER Z19-08

- - -

1
2
3 MR. ROSZAK: Correct. And
4 really giving some thought not only to the
5 types of plants selected, but the design of it.
6 Like, again, a lollipop tree, does that fit in
7 the residential character of these properties
8 along there? You know, I --

9 MR. CARRINO: I don't know
10 what a lollipop tree is.

11 MR. ROSZAK: Well, it is,
12 and you have it next to parking spaces, too.
13 But anyways --

14 MR. VACANTI: The type and
15 design of the landscaping shrubbery, we're
16 willing to work and solve with the City to do
17 that as a condition of approval, certainly.

18 MR. HENWOOD: I would concur
19 with Mr. Mendel. I think that in your staff
20 summary, you suggested that the rationale for
21 the plantings on the adjoining property side of
22 the fence was to soften the effect of the
23 fencing for adjoining property users. I think,
24 essentially, that the way that's being proposed
25 here with the plantings on the inside of the

1 fence, they're actually not serving the purpose
2 that they were intended.

3 MR. VACANTI: And I would
4 also posit, though, if they were on the other
5 side, we wouldn't be able to maintain them.
6 That's the practical --

7 MR. HENWOOD: I understand
8 your difficulty, but I think that your client's
9 investment in landscaping could be better
10 served by a reconfiguration.

11 MR. ROSZAK: And I would
12 also -- I look at that one island at the end of
13 the angled parking in the interior, it's almost
14 like, do you really need that? I'd rather see
15 you get rid of that and shift all the parking
16 up a little bit. You wouldn't lose any parking
17 spaces.

18 MR. VACANTI: I'm sorry,
19 which island is it, just so I --

20 MR. MENDEL: (Indicating.)

21 MR. ROSZAK: That one right
22 there, yes.

23 MR. VACANTI: Okay.

24 MR. ROSZAK: I don't even
25 see a need for that if you shifted all the

1 parking up.

2 MR. HUMPAL: Along that
3 line of discussion, I'm concerned, Jonathan,
4 the first lot closest to the sidewalk, does a
5 car backing out of that create a safety issue
6 across the sidewalk? Will a car have to extend
7 across the sidewalk?

8 MR. MENDEL: It would
9 likely have to make a turning radius into the
10 sidewalk, into the public right-of-way, to be
11 able to turn into the drive aisle to go
12 eastbound through the circulation pattern of
13 the parking lot.

14 THE CHAIRMAN: I have an
15 issue with that first space, just a safety
16 issue.

17 Other thoughts from the Board?

18 (No response.)

19 THE CHAIRMAN: Let me go to
20 the public for comment then so we keep moving
21 along here.

22 Anyone wishing to speak from the audience?

23 MS. BARNES: You betcha.

24 THE CHAIRMAN: Please
25 introduce yourself, name and address.

1 MS. BARNES: Good evening.
2 My name is Amy Barnes. I am -- I live and
3 maintain the Col. H.G. Blake House on the
4 corner of Washington and Jefferson. The
5 address is 314 East Washington Street, Medina,
6 Ohio.

7 I have lived in and maintained the
8 Col. H.G. Blake House twenty years, conducting
9 numerous tours for schoolchildren and groups.
10 I am the publisher of *Joy of Medina County*
11 magazine and the owner of the Col. H.G. Blake
12 House, which is on the National Register of
13 Historic Places for being a part of the
14 Underground Railroad, and is located at the
15 corner of East Washington and South Jefferson
16 in Medina. I am here tonight representing
17 forty-four people.

18 I am going to focus only on the variances
19 before the Board and save the rest for the
20 Planning Commission.

21 We are requesting that you deny the
22 variance request for the property situated at
23 216, 222, and 226 South Jefferson Street.

24 The Petitioner claims to have not had
25 knowledge of restrictions on the properties of

1 South Jefferson but still admits to owning and
2 having expertise in owning numerous properties
3 around the city. The properties in question
4 can yield a reasonable return without any
5 additional parking at all, and the requested
6 variance is substantial due to the fact of how
7 much parking currently exists in the area.

8 The Petitioner not only has his own
9 parking lot around his restaurant and bar, but
10 has full and easy access to the courthouse
11 parking, which is empty at night, and the
12 three-hundred-fifty-space parking deck across
13 the street from his business. In addition,
14 Petitioner made the choice several years ago to
15 eliminate several of his available parking
16 spots by installing a patio.

17 To allow for additional parking to be built
18 would further deplete the amount of green space
19 that exists in the neighborhood. The requested
20 variances do not honor the spirit and intent of
21 the zoning requirement, which is to maintain a
22 residential feel and look to the properties.
23 If the zoning variances are approved, it will
24 cause the neighborhood to become an overpaid
25 eyesore, causing properties in the neighborhood

1 to drop in value.

2 In addition, because the three properties
3 in question butt up against the historic
4 Col. H.G. Blake House property and adjoin
5 another privately owned home, and the owners of
6 both of those homes have faced harassment and
7 interference with their lives since the
8 purchase of the South Jefferson property by
9 Petitioner and/or by those under the employ of
10 Petitioner, we are requesting that instead of
11 the six-foot fence stated in Petitioner's site
12 plan, instead, a ten-foot-tall, soundproof,
13 solid barrier be required to be built around
14 216, 222, and 226 South Jefferson and that
15 said barrier be extended to -- as close to the
16 sidewalk as is permitted, at the expense of
17 Petitioner.

18 The zoning restrictions were put in place
19 to avoid such instances as this, where it is
20 unacceptable to add additional planned parking
21 areas where there are so many available,
22 including the three hundred and fifty spaces in
23 the parking deck alone across the street from
24 Petitioner's business.

25 Thank you for your time.

1 THE CHAIRMAN: Thank you.

2 MR. VACANTI: Mr. Chair, I
3 just have a couple very brief questions for
4 Ms. Barnes.

5 THE CHAIRMAN: All right.

6 MR. VACANTI: For purposes
7 of the record, with all due respect,
8 Ms. Barnes, I understand you indicated you
9 represent forty people. Are you --

10 MS. BARNES: Forty-four
11 people.

12 MR. VACANTI: Are you an
13 attorney at law?

14 MS. BARNES: No, I am not.

15 MR. VACANTI: In what
16 capacity are you representing those people?

17 MS. BARNES: I am
18 representing these people by the petition that
19 they signed, that I only had two weeks to
20 circulate or there would have been a lot more.

21 MR. VACANTI: I would just
22 like to object for the record. Ms. Barnes is
23 not an attorney at law, those people are not
24 here testifying so I can ask questions and we
25 can identify, so that's hearsay. Just for the

1 record, I'd like to object.

2 THE CHAIRMAN: I understand.

3 MR. VACANTI: Ms. Barnes,
4 you mentioned some parking that was
5 installed -- or taken away by Mr. Carrino to
6 install a patio. That's property across the
7 street, not the subject property, correct?

8 MS. BARNES: Correct.

9 MR. VACANTI: And you
10 mentioned that the surrounding property is
11 going to suffer a decrease in value, correct?

12 MS. BARNES: Correct.

13 MR. VACANTI: Are you an
14 appraiser?

15 MS. BARNES: No, I am not.

16 MR. VACANTI: Okay. Thank
17 you.

18 That's all, Mr. Chair.

19 THE CHAIRMAN: Thank you.

20 Other comments from the public?

21 MR. SCHWINN: Can I speak
22 from here?

23 THE CHAIRMAN: Yes, you may.
24 Please introduce yourself.

25 MR. SCHWINN: My name is

1 Mike Schwinn. I live at 230 South Jefferson,
2 which is the property right to the south of 216
3 or 226, whatever house it is.

4 My objection is, number one, I'm
5 going to have to stare at a blank fence that
6 won't be maintained on the outside for the
7 rest of my time I live there. I've been there
8 twenty years and, you know, I've had
9 on-again/off-again issues with employees from
10 the restaurant, but this is a new height.

11 There's some people living in that house
12 next to me right now. They're out playing
13 music. I had the window open in my house that
14 night - it was warm - I'm listening to their
15 music and their vulgar language. They're
16 sitting out on their front porch. If you come
17 over there and look at the sidewalk where the
18 driveway is, it's all rutted up because they're
19 pulling over it and they're driving on it.

20 You know, they're putting three cars in a
21 driveway that's meant for one or two, and
22 they're parking by the side so the driveway is
23 constantly blocked. The driveway is constantly
24 blocked by the residents there, not during the
25 day when they're gone but at night. If I want

1 to go for a walk, I can't because I can't cross
2 that drive and I don't have the legs to go out
3 and around in the grass and out over the curb
4 and into the space back around again. It's a
5 detriment.

6 The landscaping inside the fence is great
7 for them. For me, it's a blank fence that will
8 fall apart and weather and rot over time.

9 I don't know why -- I know that what --
10 his intent is to maintain his bushes on the
11 inside of the fence. The outside of the
12 fence, what's he going to do? Leave it go? Is
13 it going to be painted? Is it going to be
14 maintained? You know, I have to live there and
15 look at it. I've lived there longer than he's
16 owned those houses.

17 If you come to my house and look at the
18 backyard, it's a war zone back there, what he
19 did to the yards. When he bought them, he cut
20 down all the bushes, all the trees are gone.
21 It's a mess, and he's left it that way since
22 winter. What's to make me think he's going to
23 do any different with the fence?

24 I just don't -- I don't want it there
25 because I have to live there, Amy has to live

1 there, the people on the east side of the fence
2 have to live there. We have to put up with it.
3 We have to put up with the motorcycles, we
4 have to put up with the loud noise at night
5 when they start up and leave. When they close
6 the bar, I mean, you should hear it. You
7 should hear it when they're doing the pressure
8 washing or they're doing the grease traps or
9 emptying the trash cans and the glass is
10 breaking in the dump truck.

11 I mean, it's -- living there with a
12 commercial restaurant across the street is bad
13 enough. Now you're moving it onto my side of
14 the street, which I bought a residential house
15 in a residential neighborhood, and I don't know
16 why that has to change because somebody has
17 more money than I do.

18 I don't know what else I can say but I live
19 there. I don't want it.

20 THE CHAIRMAN: I appreciate
21 it. Thank you.

22 Anyone else?

23 MS. MILLER: Good evening.
24 My name is Pamela Miller, 450 Woodland Drive,
25 Medina.

1 I'm a former business owner in the historic
2 district, so I'm well aware of any perceived
3 parking issues that are there. I'm a former
4 member of the Planning Commission, former
5 member of the Historic Preservation Board, and
6 former council member.

7 (Whereupon, Pamela Miller then read a
8 prepared statement into the record.)

9 MS. MILLER: In any event,
10 I think the Board of Zoning Appeals should deny
11 this request for variances.

12 Thank you.

13 THE CHAIRMAN: Thank you.

14 MR. VACANTI: Mr. Chair,
15 just briefly, I think it's important for this
16 Board. These objections seem to be based
17 on the proposed use and rezoning, which is
18 identified in the Comprehensive Plan. I just
19 want to remind this board the focus should be
20 on the requested variances. I know this board
21 is aware of that.

22 Also, there seems to be a lot of focus on
23 the C-2 district and the properties in the
24 different zoning districts across the street.
25 Again, the focus should be on the subject

1 properties.

2 I'll be quiet now.

3 THE CHAIRMAN: Thank you.

4 Let's go back to the Board for --

5 MR. SMALLEY: (Indicating.)

6 Thank you, Mr. Chairman.

7 Roger Smalley, 426 Westpark Boulevard,
8 Medina.

9 I can't say it much better than Pamela did.
10 That's why she was council president and I
11 wasn't.

12 Just a few things. When the City brought
13 this to my attention, a few things did jump out
14 to me, and I do have some concerns I would like
15 to share briefly with the Board and, it turns
16 out, the Planning Commission.

17 Mr. Mendel has stated that the regulation
18 is complete prohibition of parking spaces in
19 the required front yard. Are there exceptions
20 to that? Are there examples where that hasn't
21 happened, many of which are grandfathered in?
22 Certainly. But we've held the line, I believe,
23 in this city for a long time about trying to
24 not add additional parking in front yards, and
25 it's a constant battle, and I would hope that

1 this Board would see fit not to grant that
2 variance in particular.

3 My other comments go to the Board's
4 concern, and part of its purpose, to address
5 public, health, safety, and general welfare.

6 One of your factors is whether the
7 essential character of the neighborhood would
8 be substantially altered. We've already heard
9 from a resident that it is already being
10 altered, and it comes down to the definition
11 of what you think of as the neighborhood. If
12 you're just looking at Jefferson Street, as was
13 pretty much part of your review, then there
14 are, you know, factors that weigh in at that
15 point.

16 But if you really look at what we think of
17 when we talk about neighborhoods, I think in
18 this case we at least have to address the fact
19 that there is a block behind this area as well
20 over to East Street, north to Washington, and
21 south to Smith. That is a block -- that is
22 a neighborhood, and the people in that
23 neighborhood live in homes; they are residents.

24 So what we're really looking at doing here
25 is, at least it appears to me in my opinion --

1 I'm not a lawyer from Cleveland, but it appears
2 what we're doing is trying to move commercial
3 zoning regulations into a residential area or
4 potentially even an MU, things that we would
5 not do in any other -- under any other
6 circumstances.

7 The impact on the neighborhood primarily,
8 for those that don't live directly near this
9 location, is going to be noise. Mrs. Miller
10 identified the hours for the restaurant.
11 According to their website, JoJo's is open
12 until 2:30 in the morning from Sunday through
13 Saturday. Think about living on East Street,
14 and just a few -- maybe a hundred feet behind
15 your house on a summer night, the windows are
16 open, and at 2:30 in the morning you have
17 people going out to their cars - who perhaps
18 shouldn't be driving, but they are - and you
19 have cars that have alarms. If you've ever
20 been to an Indians game, you know very well
21 that a thousand feet from the parking lot after
22 the fireworks go off, you can hear the car
23 alarms, so imagine that in a residential
24 neighborhood, which is essentially what this
25 neighborhood is and I would think will be for a

1 long time. So I would ask your consideration
2 from the standpoint of health and welfare in
3 that regard.

4 The other thing is safety. Pamela
5 mentioned that we're talking about jaywalking.
6 We know what's going to happen, we know people
7 are not going to go to the corners and cross
8 responsibly. But we're looking at this street.
9 And I don't have any origin and destination
10 studies, I don't have any evidence that would
11 be current, but this street appears to me to be
12 one of the busiest truck traffic streets in the
13 city. People come off of 18 and use that
14 street to go to Smith Road, and the other way
15 around.

16 In addition, many residents in the city
17 know that that's probably the best shortcut
18 to get around the Medina Square, to go either
19 up onto Broadway - North Broadway - or to go
20 east on Liberty Street to the high school,
21 Reagan Park, 71.

22 So this is a busy traffic street, and now
23 we're going to have families, elderly people,
24 and perhaps people later on in the evenings
25 that are impaired going across that very busy

1 street. That, to me, seems to speak to one of
2 the considerations that this Board does look
3 at, as well as the Planning Commission, and
4 that is the condition of safety.

5 So thank you.

6 THE CHAIRMAN: Thank you.

7 Anyone else from the public wishing to
8 comment?

9 MS. SCHWINN: (Indicating.)

10 THE CHAIRMAN: Yes. Please
11 introduce yourself.

12 MR. SCHWINN: Virginia
13 Schwinn, 230 South Jefferson Street, so I'm
14 with Mike right next door.

15 In regards to the easement -- or for the
16 three spaces in the forty-foot, I don't know
17 all the laws and words, but he's talking about
18 the dentist, which is the only other business
19 on our block. If you're looking at the block
20 of South Jefferson, Smith, East, and
21 Washington, that's the only other business. He
22 has one spot that is hardly ever used. It's a
23 handicapped spot for the accessibility. Most
24 people drop off their family member and park in
25 the back. I watch from my kitchen window all

1 the time. It's hardly ever parked in, and if
2 it is, it's during the day, like they said,
3 that it's only during daytime hours.

4 And my bedroom would be right by the
5 driveway, and I get up at 4:00 in the morning
6 to go to work, so I certainly wouldn't
7 appreciate lots of traffic. We've already
8 talked about the noise from across the street.
9 I just wouldn't want it right next to my house.

10 THE CHAIRMAN: Thank you.

11 MS. SCHWINN: Hm-hm.

12 THE CHAIRMAN: Any others
13 from the audience?

14 We'll do one more here and I think we'll
15 proceed after you finish.

16 MR. BARON: I was -- I'm
17 Skip Baron, 536 North Broadway Street.

18 I'm a relatively new resident here. Many
19 of the people around here know me. I don't
20 know you folks yet. I probably will be getting
21 to know you.

22 My wife and I retired a few years back, and
23 we could have moved anywhere in the country to
24 live, and we chose Medina. We taught in North
25 Canton, Ohio and we moved here. Our daughter

1 lives in Seattle, our son in Chicago. We could
2 have moved with them, but we chose Medina. And
3 the reason we chose Medina was what Medina
4 stands for, and that's reverence for what's
5 here now and what's been preserved.

6 In North Canton, there's one little, tiny
7 building that's the historic society with a
8 few records. In Medina - are you kidding
9 me? - this whole town is historic and should be
10 revered, and that's what we moved here for.

11 And again, we're relatively new owners
12 here. We bought a house on North Broadway that
13 originally sat by the courthouse. It was built
14 by Lathrop Seymour, one of the founders of
15 Medina, and we're so proud to own that house
16 and be a part of the history and bringing that
17 to people.

18 We, and many of the people who live on
19 North Broadway, which is now Founders Way
20 North, which is one of the five historic
21 neighborhoods -- and we're very involved, my
22 wife and I, with the historic societies and
23 other organizations, including the CDC and Art
24 League.

25 And the neighborhoods, many of the people

1 that I've spoken to since we've moved here and
2 have moved into our neighborhood, they've moved
3 to our town because of what I'm saying here,
4 that this is a great place to live, a great
5 place to raise your kids. And again, it's
6 because of the reverence for history, and by
7 allowing this to go through, we would be
8 thwarting that.

9 I have nothing against the business owner.
10 I was in business for ten years before I
11 started teaching and I was involved in many
12 issues like that, but in this situation, I
13 think it's not necessary. There's plenty of
14 parking, again, across the street. I don't
15 know how we get people to go across there.
16 Maybe some signs at the restaurant or whatever
17 to say, "Hey, there's parking over there,"
18 whatever. I'm not sure the best way to do
19 that. But there's certainly plenty of parking
20 in town; we don't need more.

21 If I lived near those houses, I would be
22 very upset. It's just -- it's almost -- I
23 can't even comprehend the concept of having to
24 put the bushes on the inside to decorate the
25 parking area instead of on the outside where

1 they're meant to be, to help -- you know, in
2 anyplace to cushion the blow of the fence. I
3 just can't even comprehend. You know, I'm
4 sorry that you can't have as many parking spots
5 if you do that, but that's the way it should be
6 if there was any thought of doing that, and
7 lose the parking spots.

8 I heard a comment about he bought the
9 house because nobody would buy it because it
10 was across the street from a bar. What's it
11 going to be like for the people who live around
12 the parking lots that are created? Nobody is
13 going to want to buy those houses because --
14 again, I'm not an appraiser, but going along
15 with what I heard, I would assume that the
16 value of those properties would decrease as
17 well.

18 And again, to kind of finish up, I guess
19 I'm generally concerned about creeping of
20 businesses and other things that don't belong
21 there into the historic neighborhood, which is
22 right there. Amy Barnes lives in a wonderful
23 old house, and there are plenty of other
24 beautiful houses nearby that will be affected
25 by moving that direction. I think we need to

1 stay in the nine-block area on the -- in this
2 case, the west side of the street. And so I --
3 I recommend that we don't approve anything
4 related to putting parking there.

5 One last question, I guess. If that goes
6 through and the houses are there now, would the
7 owner be able to tear those down at some point
8 and make that a big, huge parking lot?

9 MR. MENDEL: If the
10 property was rezoned to MU, no. The MU
11 zoning district specifically says you have
12 to basically maintain the existing converted
13 houses that are there. It would be similar to
14 the development pattern and reuse occupancy
15 that's happened on the 400 Block of North Court
16 Street. There's several houses that have been
17 converted to office uses where they have a
18 parking lot in the back but it keeps the
19 residential character of the property with the
20 home.

21 MR. BARON: Okay. But
22 could the person at some point request changes
23 in zoning to tear down those houses?

24 MR. MENDEL: They could
25 seek a rezoning to a different district, which

1 may open up the potential for demolition of the
2 structures, but under the MU zoning district,
3 it pretty much would require a variance from
4 the Board of Zoning Appeals to demolish those
5 houses.

6 MR. BARON: Well, thank
7 you very much for your time.

8 THE CHAIRMAN: Thank you.
9 Let's go back to the Board.

10 May I suggest that we separate the parking
11 lots from the fence and talk one -- it can
12 all end up being one resolution; but for
13 discussion, let's just separate it for the
14 moment.

15 Parking first. Thoughts? Comments?

16 MR. HENWOOD: I think
17 granting a variance to allow the planting of
18 the shrubbery that's required on the inside of
19 the fence is pointless. It completely
20 eliminates the intent of the ordinance. The
21 intent was to buffer the fence face from the
22 adjoining property owner. I don't think that
23 variance makes any sense at all.

24 THE CHAIRMAN: Other
25 comments?

1 MR. ROSZAK: I agree.

2 MS. FRY: Same here.

3 MR. WILLIAMS: And I would
4 say, actually, much the same for the parking
5 based on, one, your comment on the safety,
6 which was a great observation on the angular
7 nature of the motion there of that first car.
8 But overall, I mean, twenty-three, twenty-six
9 parking spots being added, plus the -- you
10 know, the existing -- the fact that there's
11 zero parking lot requirement to begin with,
12 I can't grant that. I can't vote for that.

13 THE CHAIRMAN: Other
14 thoughts?

15 MR. HENWOOD: Are we talking
16 parking now?

17 THE CHAIRMAN: Yes.

18 MR. HENWOOD: I understand
19 that the Board of Zoning Appeals has
20 discussed variances prior to rezoning. I
21 am extraordinarily uncomfortable rendering a
22 decision about a variance in advance of that
23 zoning ordinance being effective. I am
24 concerned that our action could have an impact
25 on the way in which that rezoning request is

1 being heard, and I think it's inappropriate
2 for us to consider that variance in advance
3 of the actual rezoning hearing.

4 THE CHAIRMAN: I'm not
5 troubled by that so much as I am the need for
6 the three added spaces. I'm not sure that
7 exists per se.

8 Other Board thoughts?

9 MR. HENWOOD: With regards
10 to -- actually, to both the parking and the
11 planting, I am uncomfortable because I believe
12 that the variances in both instances are
13 substantial. I'm also concerned that the
14 neighborhood character will substantially
15 change, and I think that there are some
16 opportunities for the property owner to, if
17 not completely eliminate at least the parking
18 variance, to significantly alter the request
19 so that significantly less of a variance is
20 required.

21 THE CHAIRMAN: Paul?

22 MR. ROSZAK: So I'm hearing
23 comments about this parking. When I look at
24 this, I thought the intent of this parking was
25 for redevelopment of these three buildings, and

1 I'm hearing comments about this is for overflow
2 from Dominic's and JoJo's.

3 So what is the timeline for your
4 reinvestment in these properties?

5 MR. CARRINO: Well, I've
6 already put in thirty thousand into one home
7 to redo it. I purchased those homes for about
8 three hundred and fifty thousand dollars. I
9 cleaned it up a lot to what it was. It was
10 overgrown shrubs and trees that were dying,
11 and I've taken down three old sheds that were a
12 fire hazard. I've done that in the last few
13 months, so it's substantial.

14 THE CHAIRMAN: Jonathan.

15 MR. MENDEL: Chairman, if I
16 can just add, the zoning code doesn't make a
17 difference between the time that a use of the
18 building comes in. It's -- this is a
19 development pattern that's mostly permitted --
20 the site development plan that's mostly
21 permitted by -- if it was under -- under the
22 presumption of our MU zoning district, so --
23 and we also don't enforce, and can't really
24 enforce, who parks where functionally on a --
25 you know, on a -- in reality. So it's pretty

1 much this is a development -- a site
2 improvement plan that is permitted under the
3 MU zoning district, and the timing on when it
4 occupies for small office or continues as the
5 residential uses, those are all permitted uses
6 within the MU zoning district, so it's not
7 really a factor in terms of the request there
8 in front of you.

9 THE CHAIRMAN: Are we close
10 to a motion at this point? Anyone?

11 MR. WILLIAMS: Are you asking
12 for one or two?

13 THE CHAIRMAN: We can do two
14 separate. Do the three parking spaces first.

15 MR. WILLIAMS: I feel strong
16 enough to make a motion on the parking spaces.

17 THE CHAIRMAN: Go ahead.

18 MR. WILLIAMS: I make a
19 motion that we deny the request for a variance
20 for the three parking spaces for a number of
21 reasons. I just want to make sure I'm clear on
22 this. One, that the -- I believe the essential
23 character of the neighborhood will be
24 substantially altered by having three parking
25 spaces in the forward area; and the spirit --

1 as stated in the staff report, the spirit and
2 intent behind the zoning requirement would be
3 violated.

4 THE CHAIRMAN: Is there a
5 second?

6 MR. HENWOOD: Second.

7 THE CHAIRMAN: You may call
8 the roll on that motion, please.

9 MS. DAVIS: Roszak.

10 MR. ROSZAK: Yes.

11 MS. DAVIS: Fry.

12 MS. FRY: Yes.

13 MS. DAVIS: Humpal.

14 THE CHAIRMAN: Yes.

15 MS. DAVIS: Henwood.

16 MR. HENWOOD: Yes.

17 MS. DAVIS: Williams.

18 MR. WILLIAMS: Yes.

19 MS. DAVIS: Motion to deny
20 approved, five-zero.

21 THE CHAIRMAN: Thank you.

22 Let's go on to the second piece then, the
23 landscaping around the fence.

24 Either a motion or other thoughts and
25 comments?

1 MR. HENWOOD: I would
2 propose that we deny the request for the
3 variance for the plantings on the outside of
4 the fence on the grounds that the variance is
5 substantial and it will substantially impact
6 the character of the surrounding properties.

7 THE CHAIRMAN: Let me back
8 up.

9 I think you misstated. You said you
10 opposed outside the fence, and I think you mean
11 inside the fence.

12 MR. HENWOOD: Oh, correct.
13 I actually said it the wrong way around. My
14 apologies.

15 I amend it to -- the variance to allow
16 the planting on the inside of the fence. My
17 apologies.

18 THE CHAIRMAN: And a second?

19 MR. ROSZAK: So a motion
20 to allow the plantings on the inside?

21 MR. HENWOOD: No. It's to
22 deny the variance requested, that they be
23 planted inside.

24 THE CHAIRMAN: Did I hear a
25 second?

1 MS. FRY: I'll second.

2 THE CHAIRMAN: And, Sandy,
3 you may call.

4 MS. DAVIS: Fry.

5 MS. FRY: Yes.

6 MS. DAVIS: Humpal.

7 THE CHAIRMAN: Yes.

8 MS. DAVIS: Henwood.

9 MR. HENWOOD: Yes.

10 MS. DAVIS: Williams.

11 MR. WILLIAMS: No.

12 MS. DAVIS: Roszak.

13 MR. ROSZAK: No.

14 THE CHAIRMAN: Motion to deny
15 approved, three yeas, two nays.

16 THE CHAIRMAN: Thank you.

17 Any further business, Jonathan?

18 MR. MENDEL: No. Other
19 than, again, just to reinforce, April 24th --
20 April 25th, a special meeting for -- there will
21 be one variance request for the new parking
22 garage for the -- next to City Hall, and there
23 will also be something in relation to --
24 another project in addition to that related
25 to the land swap that the city school districts

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were doing.

THE CHAIRMAN: You say there
will be a second case?

MR. MENDEL: There will be
a second case. Because if we're going to have
the meeting, let's -- we can add one more.

THE CHAIRMAN: And maybe we
skip the next month or something else entirely?

MR. MENDEL: No. Everybody
has the -- no.

That's it.

THE CHAIRMAN: We are
adjourned. Thank you all.

(Case Number Z19-08 concluded.)

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STATE OF OHIO)
) ss:
COUNTY OF MEDINA.)

CERTIFICATE

I, Timothy R. Peters, Assistant Official Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, hereby certify that before the giving of their testimony, all witnesses were first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the case aforesaid and that the testimony was taken by me by means of stenotype in the presence of said witnesses.

I further certify that said hearing was held at the time and place specified in the above caption and was concluded on the 11th day of April, 2019.

Further, I certify that I am not a relative, counsel, or attorney at law for any party to this case, nor am I interested in the event of same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Medina, Ohio this 2nd day of May, 2019.

trp

Timothy R. Peters,
Assistant Official Court Reporter
and Notary Public within and for
the State of Ohio.
My commission expires 01/25/20.

Bert Humpal
Bert Humpal, Chairperson

Mr. Mendel stated the proposed fence complies with the screening requirements under the Site Plan Review process.

Mr. Roszak asked if the city requires the landscaping to be prepared and stamped by a registered landscape architect. Mr. Mendel stated the city does not require a landscape architect to provide a plan as long as it meets the code requirements. Mr. Roszak stated in this case, with the landscaping being inside the fence, is it required that there are shrubs and plantings there or can it be grass. Mr. Mendel stated it specifically says if you are doing this scenario you do a fence and you must have plantings, shrubs between the fence and the property line to soften the visual impact of the fence. Mr. Humpal asked the height of the fence. Mr. Mendel stated he believes it is 6 feet tall.

Mr. Roszak stated he generally does not have a problem with this at all but his problem is the landscape plan which he feels is really inappropriate. Mr. Roszak stated it was prepared by someone who does not have a knowledge of plants for this type of situation. Mr. Carrino stated he does not know who did it, he thinks his architect did it. Mr. Vacanti asked if there are particular concerns that makes it inappropriate that the applicant may be able to address.

Mr. Roszak stated iris are water loving plants that need constant moisture, lollipop trees that are not so appropriate for a residential district. Mr. Roszak stated he would like to see the plan prepared and stamped by a registered landscape architect but it is not within the prevue of this board. Mr. Carrino stated JTS does all his landscaping and he is sure they would not put a tree in that will die. Mr. Roszak stated in this case it is almost more appropriate to spend the money and put grass there and put the plantings concentrated in areas with a density that is going to have an impact with plants that are going to survive. Mr. Vacanti stated they would be willing to work with the city to identify appropriate types of plantings. Mr. Mendel stated Mr. Roszak is suggesting maybe not have any plantings adjacent to the fence but maybe allocate it throughout the site in a better configuration that provides greenery in the site above grade but is not necessarily next to the fence.

Mr. Roszak stated they need to give some thought not only to the types of plants

Having no further business, the meeting was adjourned.

Respectfully submitted,



Sandy Davis



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