



CITY of MEDINA

Board of Zoning Appeals

Board of Zoning Appeals

Meeting Date: April 14, 2016

Meeting Time: 6:00 pm

Present: Bert Humpal, Brandilyn Fry, Rob Henwood, Jonathan Mendel, (Community Development Director), Justin Benko (Associate Planner), Sandy Davis (Administrative Assistant)

Absent: Mark Williams

Minutes: Mr. Henwood made a motion to approve the minutes from the March 10, 2016 meeting as submitted. Mrs. Fry seconded the motion.

Vote:

Humpal	<u>Y</u>
Fry	<u>Y</u>
Henwood	<u>Y</u>
Approved	3-0

Mr. Humpal informed the applicants that there are only 3 board members present this evening and it takes a 3-0 vote to pass. Mr. Humpal informed the applicants that they may table the case if they wish until next month when a full board may be present.

The Court Reporter swore in everyone who will give testimony.

Old Business: None

New Business:

1. Z16-06 Ryan Rd. 028-19C-18-005 Ridgeline Homes VAR

Mr. Benko gave a brief overview of the case. Mr. Benko stated this is a variance request to Section 1121.05 of the Planning and Zoning Code to allow a new house to be constructed 5 feet from the side property line instead of the minimum 10 feet.

Mr. Benko stated the site is located on the east side of Ryan Road. Mr. Benko stated the property is bordered by Lafayette Township to the north, south, and west and properties fronting on Continental Drive to the east.

Mr. Benko stated the site is a .49 acre lot fronting Ryan Road. Mr. Benko stated the property was granted a variance in case Z14-01 to allow a lot width less than the 80 ft. required by code so the parcel can be sold as a buildable lot. Mr. Benko stated the current owner purchased the lot on July, 17, 2015 and has proposed a new home for the site. Mr. Benko stated there is a 20 feet wide sanitary sewer easement that runs through the northern portion of the parcel. Mr. Benko stated due to site constraints, the applicant is seeking a variance from section 1121.05 to allow of a side yard setback of 5 feet instead of the required 10 feet side yard setback.

Mr. Benko reviewed the following practical difficulties:

1. *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. Benko stated the property may not yield a reasonable return without the granting of a variance. Mr. Benko stated due to the easement, the width of the house would be limited to 28 feet which could potentially limit the marketability of the house.

2. *Whether the variance is substantial;*

Mr. Benko stated the variance may be substantial. The setback is 5 feet or 50% less than code requirements.

3. *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. Benko stated the essential character of the neighborhood may not be substantially altered. Mr. Benko stated the adjacent township lots average between ½ acre and 1 acre in size. Mr. Benko stated the distance between the proposed house and the neighbor to the south is approximately 48 feet which may appear visually consistent with the neighborhood. Mr. Benko stated home separation averages between 40 and 75 feet on this section of Ryan Road.

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

Mr. Benko stated the variance would not adversely affect the delivery of governmental services.

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

Mr. Benko stated the property transferred to the applicant on July 17, 2015. The applicant was aware of the zoning restrictions.

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

Mr. Benko stated due to the easement on the north side of the property, the owner's predicament could not feasibly be obviated without significant changes to the footprint of the house.

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

Mr. Benko stated the likely intent of the requirements is to provide a standard and predictable amount of development and site disturbance for a given parcel; to prevent excessive encroachment into side yards; and to provide minimum separation between buildings.

Mr. Benko stated the BZA must weigh the above seven factors for the requested variance and determine if a practical difficulty exists that would merit a variance from §1121.05.

Present for the case was Joseph Machovina, property owner. Mr. Machovina stated he currently lives in Elyria and is hoping to build on this lot in Medina. Mr. Machovina stated when he purchased the property, it was deemed as a buildable lot, which it is, however, the sewer pipe that is underneath the property was not disclosed. Mr. Machovina stated he thought he had at least 40 feet to build with. Mr. Machovina stated after purchasing the property he learned the pipe was there. Mr. Machovina stated he is trying to get five more feet to build a house.

Mr. Henwood asked Mr. Benko if the lot is substandard. Mr. Benko stated it is not. Mr. Benko stated there was a variance granted in 2014 which made the lot conforming. Mr. Benko stated the code requires 80 feet at the building line.

Mr. Humpal asked if the neighbors have been notified. Mr. Benko stated yes and there have been no responses.

Mr. Henwood asked if it is possible for the applicant to choose a different footprint for the house so it would not require a variance. Mr. Benko stated he could do that but it would be a very narrow house.

Mr. Machovina stated he was designing a house that is 40 feet wide and is now trying to make it fit by reducing the size. Mrs. Machovina stated the house would be mostly garage if it was narrowed any further.

Mr. Humpal stated there is a good separation between the houses so there he is not too concerned about the size of the home being too large.

Adjoining property owner Christopher Kolasinski, 5719 Ryan Road, asked the square footage of the home. Mr. Machovina stated 1,614 sq. ft. Mr. Kolasinski stated he is happy to see a house built on that lot if it is not too big. Mr. Mendel stated the minimum front yard setback for this lot is 40 ft.

Adjoining property owner Sean Kessler, 5737 Ryan Road, stated he is concerned about the flow of water. Mr. Kessler stated during a large rainfall, there is flooding. Mr. Kessler stated he would want to make sure that water is directed away from the other properties. Mr. Kessler stated he has no other issues with the proposal.

Mr. Mendel stated the water issues will be addressed by the Engineering Department as part of the plan review and is not pertinent to this discussion for the Board of Zoning Appeals.

Michael Petkovich, 5749 Ryan Road, stated he feels the water issue is pertinent to this conversation because it is currently not routed and goes onto his property. Mr. Petkovich stated he is not concerned about a house going there but once it is leveled the water may have no place to go.

Mr. Mendel stated he will express Mr. Petkovich's comments to the Engineering Department for when they review the plans. Mr. Petkovich asked how that will help if the variance is approved tonight. Mr. Humpal stated the variance is not based on the water conditions but solely on the city zoning code. Mr. Humpal stated the water is the Engineering Department's responsibility to make sure it flows correctly. Mr. Petkovich stated he feels that process is flawed.

Amy Petkovich, 5749 Ryan Road, suggested the house be built in line with the other homes as far as the setback. Ms. Petkovich stated she has lived in her house for 18 years and she gave a brief history of the water issues.

Ms. Petkovich stated when the development was put in, it covered up the dike and all the water comes over into the lake in the easement. Ms. Petkovich stated she has had the City Engineer out to the site in past years to view the water issues.

Mr. Henwood stated the storm water issues have no bearing on the application before the board.

Mrs. Fry made a motion to approve a variance to Section 1121.05 of the Planning and Zoning Code to allow a new house to be constructed 5 feet from the side property line instead of the minimum 10 feet.

The motion was seconded by Mr. Henwood.

Vote:

Humpal

Y

Fry

Y

is on the side of the house and 28 feet from the intersection which makes it difficult to pull out into the intersection of Homestead and Huntington.

Mr. Humpal asked if the adjoining property owners have been notified. Mr. Benko stated they have been notified and he has received no comments.

Mrs. Fry made a motion to approve a variance to Section 1145.10 of the Planning and Zoning Code to allow a driveway that is 26 feet wide at the right of way and 28 feet wide at the curb for the property located at 246 W. Homestead Street.

The motion was seconded by Mr. Henwood. Mr. Humpal stated the approval is based on the finding that there is a practical difficulty and the variance is not substantial.

Vote:

Humpal	<u>Y</u>
Fry	<u>Y</u>
Henwood	<u>Y</u>
Approved	3-0

3. Z16-08 245 N. State Road Martin Klein-Area Delivery VAR

Mr. Benko gave a brief overview of the case. Mr. Benko stated this is a variance request to Section 1113.05(L)(B)(2) of the Planning and Zoning Code to allow an accessory structure in the front yard.

Mr. Benko stated the subject site is located on the west side of N. State Road south of S. Progress Drive and north of W. Liberty Street.

Mr. Benko stated the applicant has submitted a building permit for a 1320 sq. ft. pole building style accessory structure for the front of the building to be used for storage, and due to site constraints, the building has been proposed for the front yard. Mr. Benko stated Code Section 1113.05(L)(B)(2) requires accessory structures to be located in the rear yard.

Mr. Benko cited the following practical difficulties:

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. Benko stated the site can continue to operate without the granting of a variance; however, the functionality of the site may be impeded.

B. Whether the variance is substantial;

Mr. Benko stated the variance may be substantial because it is a 100% variance from code requirements.

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. Benko stated the essential character of the neighborhood may not be altered. Mr. Benko stated the property is located in an industrial zoned area with varying building setbacks and styles.

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

Mr. Benko stated the variance may improve the delivery of governmental services because the proposed location of the storage building will assure adequate circulation remains at the site.

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

Mr. Benko stated the code requirements have been in effect for a significant period of time.

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

Mr. Benko stated the owner's predicament could not be obviated without a variance. Placing the storage building to the rear of the principle structure would prevent truck circulation at the site.

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

Mr. Benko stated the spirit and intent of the zoning requirement is to provide for a consistent look on any given street and to prevent indiscriminate placement of accessory structures.

Present for the case was property owner Martin Klein. Mr. Klein stated when the semi's run through the yard as a trucking company, he needs to have them circle the building so they do not need to back in off the road. Mr. Klein stated that is the reason behind the structure in the front. Mr. Klein stated half of the building will be behind a retaining wall that is in place.

Mr. Klein stated the building will be 30 x 44.

Mr. Henwood asked how the construction of the building will assure adequate circulation on the site and wouldn't that happen if he did not build the structure.

Mr. Benko stated in order for the structure to be built, it would need to be in the front. Mr. Henwood stated so the construction of the building will not insure that the circulation remains adequate but allows for adequate circulation with the construction on the site. Mr. Benko stated that is correct.

Mr. Klein stated the building meets all the other required setbacks. Mr. Henwood asked Mr. Klein if he was aware of the zoning requirements when he purchased the property. Mr. Klein stated probably not. Mr. Klein stated the existing building is back as far as it can go. Mr. Henwood stated he is not comfortable with approving this variance. Mr. Henwood stated the nature of the regulation is to preclude buildings in the front yard and we are permitting a building in the front yard which is 100% variance. Mr. Henwood stated the building can yield a reasonable return without the construction of the building.

Mr. Humpal asked Mr. Mendel to define the zoning district of the property. Mr. Mendel stated the subject property is in the I-1 Zoning District which is industrial. Mr. Mendel stated the proposed building is in the front of the existing building and is in the front yard but is not in the required front yard which is 50 feet in the I-1 zoning district. Mr. Mendel stated this equates to the greenspace in the front of the building. Mr. Mendel stated the I-1 District allows for multiple buildings and this is being classified as an accessory building. Mr. Mendel stated by code it should be in the rear of the building. Mr. Mendel stated if it was a more substantial building and had activity in it that would be considered a principal building and would have to meet the setback requirements of a principal building which would have to meet the front yard, side yard, and rear yard setbacks.

Mr. Mendel stated if this was a principal use to the operation of the business it could be in that location by right without a variance.

Mr. Mendel asked the threshold for something to be considered a "principal" building. Mr. Mendel asked Mr. Klein how the building will be used. Mr. Klein stated the building will have two garage doors and a designated area for office space in the future. Mrs. Fry asked if the use of the building will be primary to the use and functioning of the business. Mr. Klein stated yes. Mr. Klein stated the nature of the business is hauling stone, sand, gravel, and mulch. Mr. Klein stated it is a trucking company.

Mr. Henwood asked Mr. Mendel and Mr. Benko if it is reasonable to consider the proposed building as anything other than accessory given the nature of the use. Mr. Henwood stated it sounds like it is a major component of the business on the distribution side. Mr. Klein stated it will be a pole building fully enclosed on concrete.

Mr. Mendel stated it would be reasonable to consider it an additional principal building. Mr. Mendel read the definitions for principal vs accessory building. Mr. Klein stated the current building holds trucks and has his offices in the front of the building.

Mr. Mendel stated an accessory building use is defined as a subordinate building or use customarily incidental to and located upon the same lot occupied by the principal building or use.

Mr. Mendel stated a principal building or use is defined as a use which is permitted in a zoning district for which a zoning certificate may be issued in accordance with the rules and regulations of the code.

Mrs. Fry asked if it would be functioning the same as the back half of the existing building. Mr. Klein stated yes. Mr. Mendel stated he feels it is reasonable to consider this building a principal building.

Mr. Henwood stated he feels comfortable with the explanation of principal vs accessory.

Mr. Henwood made a motion to approve a variance to Section 1113.05 (L)(B)(2) of the Planning and Zoning Code to allow an accessory structure in the front yard at 245 N. State Road as submitted. Mr. Humpal added that the approval is based on the finding that the essential character of the neighborhood may not be altered and the proposal will have no impact to the delivery of public services.

The motion was seconded by Mrs. Fry.

Vote:

Humpal	<u>Y</u>
Fry	<u>Y</u>
Henwood	<u>Y</u>
Approved	3-0

4. Z16-09 129 W. Lafayette Tracey Diehl VAR

Mr. Benko gave a brief overview of the case. Mr. Benko stated this is a variance request to Section 1147.14(B) of the Planning and Zoning Code to allow a 12 feet tall ground sign which exceeds the 6 feet height limit at 129 W. Lafayette, Auto Zone. Mr. Benko stated the site is in the C-2 Central Business District and also the TCOV.

Mr. Benko stated the building is located on the north side of Lafayette Road west of S. Court street and east of S. Elmwood Avenue.

Mr. Benko state the apartment complex to the west recently installed a 6 foot tall privacy fence on the property line along the frontage which blocks eastbound visibility of the ground sign on Lafayette Road. Mr. Benko stated the applicant is seeking a variance to install a 12 foot tall ground sign for Auto Zone so the sign is visible above the fence. Mr. Benko stated the existing sign complies with code requirements.

Mr. Benko cited the following practical difficulties:

1. *Construction of a conforming sign would obstruct the vision of motorists or otherwise endanger public health.*

Mr. Benko stated construction of a conforming sign would not obstruct vision of motorists. Mr. Benko stated the current sign is conforming.

2. *A conforming sign would be blocked from the sight of passing motorists due to existing buildings, trees, or other obstructions.*

Mr. Benko stated the apartment complex to the west installed a 6 feet tall fence on the perimeter of the property that does impede the visibility of the current sign for eastbound traffic.

3. *Construction of a conforming sign would require removal or severe alteration to significant features on the site, such as removal of trees, alteration of the natural topography, obstruction of a natural drainage course, or alteration or demolition of significant historical features or site amenities.*

Mr. Benko stated the existing ground sign conforms to the sign code requirements. Mr. Benko stated the applicant may consider moving the ground sign a different site location.

4. *A sign that exceeds the allowable height or area standards of this Ordinance would be more appropriate in scale because of the large size or frontage of the premises or building.*

Mr. Benko stated a sign that exceeds the allowable height may not be more appropriate in scale. Mr. Benko stated the height of the proposed sign constitutes a 100% variance from code requirements. Mr. Benko stated a 12 foot tall ground sign would be the tallest sign within the TCOV.

5. *The exception shall not adversely impact the character or appearance of the building or lot or the neighborhood.*

Mr. Benko stated the property is located in the TCOV. Mr. Benko stated the TCOV sign guidelines state that "The size, style, and location of a proposed sign should be appropriate to the site and use with which the sign is associated" and that "A sign should complement the building with which it is associated, as well as adjacent buildings, by being designed and placed to enhance the architecture of the building." Mr. Benko stated a 12 foot tall ground sign may not be consistent with the TCOV guidelines or harmonious to the neighborhood.

6. *The variance sought is the minimum necessary to allow reasonable use, visibility, or readability of the sign.*

Mr. Benko stated the variance sought may not be the minimum necessary. Mr. Benko stated the existing sign complies with code requirements. Mr. Benko stated the sign could be relocated to another portion of the site to improve visibility.

7. *The variance will be consistent with the general spirit and intent of this Ordinance.*

Mr. Benko stated sign regulations are established in the Planning and Zoning Code to promote clarity in sign communications; to balance sign communications; to promote a harmonious relationship between sign types, sign locations and land uses; and to protect the public health, safety and welfare from the hazards resulting from indiscriminate placement.

Present for the case was Tracy Diehl, permit manager for Auto Zone, 6529 Hemmingford drive, Canal Winchester, Ohio 43110. Ms. Diehl stated the existing sign is conforming on a developed site. Ms. Diehl stated the parking lot layout is conducive to this sign being in this location. Ms. Diehl stated relocating the sign is impossible as it will not fit. Ms. Diehl stated the width of the sign will not fit anywhere else on the property. Ms. Diehl stated the grassy areas along the front of the property are too narrow and it would end up taking a parking space and creating another scenario where they would have to look at required parking spaces. Ms. Diehl stated if it was moved to the opposing end of the property, it would be blocking the existing Marathon sign and potentially have a separation factor that comes into play because it would be in front of the Marathon Station sign. Ms. Diehl stated being that the grassy area in the front is so narrow, the base of the sign would fit but the top portion of the sign would extend over into the parking lot and extend onto the sidewalk. Ms. Diehl to remove the sign and reconstruct a new sign would be approximately \$20,000 to \$30,000. Ms. Diehl stated to increase the height of the existing sign is approximately \$3,000. Ms. Diehl stated it is a substantial cost factor for Auto Zone. Ms. Diehl stated the sign is not visible when driving on Lafayette and is completely obstructed by the fence, even when walking.

Ms. Diehl stated the wall signs are also not visible because of the fence. Ms. Diehl stated a ten foot sign would probably be sufficient but Auto Zone has asked for a 12 foot sign.

Mr. Henwood asked if the new fence that was installed next door is compliant with zoning. Mr. Benko stated there was a variance granted for the fence this year. Mr. Henwood asked if the issue of visibility was considered when approving the fence. Mr. Benko stated it was not. Mr. Humpal stated it never came up in the discussion.

Mrs. Fry asked what the variance was for on the fence. Mr. Benko stated it was for height, a three foot high fence is allowed, a six foot fence was granted. Mr. Humpal stated the intent was to have a parking port behind the fence.

Mr. Henwood asked if it would be possible to split the difference in height between the two properties as it seems unfair for the Auto Zone to have to correct for the fence

installation. Ms. Diehl stated the fence extends the whole length of the property which is thousands of dollars of fencing that has already been installed. Ms. Diehl stated it is the whole side of the apartment building property. Ms. Diehl stated in their defense, asking them to reduce the height of a fence they already installed creates another financial burden for them as well.

Mr. Mendel stated there is a nexus of change happening in the zoning district. Mr. Mendel stated in the future, any new building being put up in this district must be at a zero setback. Mr. Mendel stated the apartment building fence went through the legal process for the fence.

Ms. Diehl stated Section 1107.08 of the Zoning Code which addresses variances specifically talks about how they affect adjacent properties. Ms. Diehl stated the variance approved for this fence is having an adverse effect on Auto Zone.

Mr. Humpal asked if the adjoining property owners were notified. Mr. Benko stated yes and there were no responses. Mr. Humpal asked for comments from the public. There were no comments from the public.

Mrs. Fry asked if this is a lit sign. Ms. Diehl stated the sign is lit and would be the exact sign but elevated. Ms. Diehl stated the sign turns off when the store closes at 8 or 9pm.

Mr. Mendel stated it appears that the existing parking lot has ample parking per the zoning code but it was not reviewed as part of the staff review.

Mr. Benko stated this request would be the tallest sign in the TCOV and the height would not be consistent with the TCOV guidelines but the sign itself would be consistent.

Mr. Henwood stated he disputes the inability to move the sign. Ms. Diehl stated it is possible but would be very costly and would require extensive planning. Ms. Diehl stated the sign across the street for the Lafayette Building is taller than the requested height.

Ms. Diehl asked if there is a separation requirement from other properties and signs in the zoning code. Mr. Mendel stated he will look it up but it is not relevant to the request before them. Mr. Henwood asked Mr. Mendel if in his opinion, there is room along the landscape strip for a new sign that would improve visibility and decrease the height of the sign necessary to be visible. Mr. Mendel stated yes.

Mr. Henwood made a motion to deny a request for a variance to Section 1147.14(B) of the Planning and Zoning Code to allow a 12 feet tall ground sign which exceeds the 6 feet height limit based on the finding that granting the variance would substantially and adversely impact the character and appearance of the neighborhood and the variance is not the minimum necessary to allow for a reasonable use, visibility, or readability of the sign and the variance would not be consistent with the general spirit and intent of the ordinance.

Mrs. Fry seconded the motion.

Vote:

Humpal	<u>Y</u>
Fry	<u>Y</u>
Henwood	<u>Y</u>
Approved	3-0

5. Z16-10 139 N. Court Dr. Loren Raymond VAR

Mr. Humpal stated for the past ten years he has been substantially familiar with this property. Mr. Humpal stated this property was previously owned by the Greater Medina Chamber of Commerce and he was one of two people that helped to facilitate the purchase of the property ten years ago. Mr. Humpal stated the Chamber may also become a tenant in this building. Mr. Humpal stated after speaking with Mr. Mendel, they agree there is no basis for a conflict of interest that would require him to recuse himself unless someone here this evening feels he should. Having no objections from the public or the other board members, the case moved forward with Mr. Humpal. Mr. Humpal stated he has no financial interest in the property at all.

Mr. Mendel gave a brief overview of the case. Mr. Mendel stated this is a variance request from Section 1135.06 to allow a new building with a 6,850 square foot building footprint instead of the maximum allowed 5,000 square feet.

Mr. Mendel stated the site is located at the southwest corner of N. Court St. and W. Friendship St. Mr. Mendel stated the site is currently the offices of the Medina Area Chamber of Commerce and is composed of three buildings of which two are unoccupied.

Mr. Mendel stated the applicant proposes the following project:

- Demolish the entire existing site including all building and pavement
- Construct a new 3-story mixed use building and associated rear property lot
 - Ground floor will consist of 6,850 sqft of flexible commercial space
 - 2nd and 3rd floors will have five ~1,100 sqft residential apartments each (total of 10 residential units)
 - A drive-thru land on the south side of the building for an anticipated bank tenant
 - A landscaped 19 space parking lot to the rear (west) of the proposed building

Mr. Mendel stated the proposed 6,850 square foot building footprint exceeds the maximum 5,000 square foot building footprint requirement in the Public Square area outlined in Section 1135.06 of the Planning and Zoning Code. Mr. Mendel stated the applicant requests a variance for the proposed building footprint size.

Mr. Mendel stated in addition to review by the Zoning Board of Appeals, this project has been reviewed by the Historic Preservation Board this evening for a certificate of

appropriateness for the demolition of the existing buildings and the construction of the proposed project. Mr. Mendel stated the Historic Preservation approved the request. Mr. Mendel stated the Planning Commission will review for site plan this evening for a conditional zoning certificate for a proposed Personal and Professional Services with Drive-Thru (drive-thru bank).

Mr. Mendel stated the request is subject to determination of a practical difficulty for the building footprint square footage variance. Mr. Mendel stated there are seven factors that the BZA should consider when evaluating whether or not a practical difficulty exists. Mr. Mendel stated these factors are outlined below, along with a discussion of how these factors apply to the application in question.

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 there can be beneficial use of the property without the variance. Mr. Mendel stated within the context of the proposed project, leasable space may be unnecessarily limited due the project programming and the access requirements of the building code.

B. Whether the variance is substantial;

Mr. Mendel stated the variance is 37% more than the maximum allowed 5,000 sq. ft. Mr. Mendel stated within the context of the project, it may not be substantial because the building's massing masks the difference.

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 existing buildings on the site total ~6,800 sq. ft. and existing building immediately across N. Court St. to the east is ~7,600 sq. ft.

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

Mr. Mendel stated the variance 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 property owner was aware of the zoning restriction.

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

Mr. Mendel stated the owner's predicament may not be obviated because the applicable building codes have minimum accessibility requirements which reduce the potential area and layout of the leasable space within the building.

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 regulation is to keep future development in scale with the increment and building rhythm of the existing downtown block frontages. Mr. Mendel stated this project would be consistent with the character of the downtown and the scale, increment and rhythm of the downtown built environment.

Present for the case was Ian Jones, Mann Architects representing Dr. Loren Raymond. Mr. Jones stated they did the initial site plan and the exterior elevations. Mr. Jones stated the 5,000 sq. ft. footprint requirement was in the spirit of making something that is not overly large compared to the scale of the other buildings on the square. Mr. Jones stated what they are proposing is larger than the 5,000 sq. ft. requirement but is massed by the different types of facades and is not any larger than the existing footprint on the property.

Mr. Jones stated he feels the project would complement the development in the square.

Mr. Humpal stated the property currently has three buildings on it to be demolished and on the new building, all the parking will be to the rear whereas as it exists now, all the parking is to the front of the building.

Mr. Henwood asked if the existing buildings on the site are a larger footprint than what is being proposed. Mr. Mendel stated they approximately the same size. Mr. Mendel stated the existing buildings do exceed the maximum building footprint requirement of the zoning district.

Mr. Henwood asked for an estimate of the number of buildings that would be permitted on the square if they had to adhere to the 5,000 sq. ft. requirement. Mr. Mendel stated in the C-2 Zoning District, and some of the properties on the square are not zoned C-2, UCC Church is approximately 9,800 sq. ft. with four or five additions, the Oddfellows building is over 5,000 sq. ft., the Phoenix Building is over 5,000 sq. ft., Castle Noel is over 5,000 sq. ft. Mr. Mendel stated they are spread around the district and there are individual buildings but they are all built together so they are continuous buildings that are over 5,000 sq. ft. with parting walls and such. Mr. Mendel stated it is the design and massing of a building that can determine if something is awkward.

Mr. Henwood stated if the applicant were made to adhere to the 5,000 sq. ft. requirement, they would not be able to recreate the character that exists on other buildings in the district and the historic nature of the neighborhoods where they exist. Mr. Mendel stated

it would probably still be in character but this particular project, in terms of its value to the vitality and continuing vitality of the downtown area would be constrained.

Mr. Jones stated if the applicant were made to adhere to the 5,000 sq. ft. requirement, the feasibility of the project in terms of rentable space and non-rentable space would be a much different ratio and would call in question the entire project.

Mr. Humpal asked for comments from the public.

Attorney Chris Weatherbee, Attorney for Clifford Properties spoke. Mr. Weatherbee stated Clifford Properties has owned 133 N. Court Street since about November of 1981. Mr. Weatherbee stated he is not here to contest the demolition of the existing properties however; the variance that is being requested will fundamentally change the character of the neighborhood and the make-up of this site. Mr. Weatherbee stated in looking at the site, by allowing the additional 37% variance, we create a more massive structure that is going to not necessarily be more occupied. Mr. Weatherbee stated as proposed, there are ten or eleven residential units as well as three leased spaces, all of which are being serviced by 19 parking spaces. Mr. Weatherbee stated that while they understand that Ordinance 2678 places this in parking district 1 and there is not a per se requirement that parking spaces be allocated, it does not mean the board cannot consider this as one factor. Mr. Weatherbee stated by placing the drive-thru at the south end of the property, for the last 35 years, that has been an alleyway that has been owned and used by his client for ingress and egress from his property. Mr. Weatherbee stated the existing structure is along, what they believe to be the property line. Mr. Weatherbee stated there may be some dispute over the property line but by placing that drive-thru, they are increasing traffic along the side of this building that does not exist right now which is a great concern in addition to the mess that is going to be created by this parking allocation.

Mr. Mendel showed an aerial view of the site and oriented the board on the location of the Clifford property and the subject property. Mr. Mendel stated there is an existing paved area from the south side of the existing building to a green area approximately five feet from the north side of Clifford's building. Mr. Mendel stated there is no survey of the Clifford property. Mr. Mendel stated the pavement goes up to the building onto the applicant's property and has always functioned that way as one continuous alleyway out to Court Street. Mr. Mendel stated this is an existing condition and not a typical situation. Mr. Mendel stated the proposed design would be taking up the entire south side of the property which constrains what has been used as a parallel parking space and thru drive aisle by adjacent property owners.

Mr. Mendel stated the proposed drive-thru requires a Conditional Zoning Certificate from the Planning Commission. Mr. Mendel stated by putting the drive-thru in place, it leaves the Clifford property with approximately 12 ft. of drive width or approximately one car space with no ability to move around that car as they do now.

Mr. Mendel stated parking is not regulated in response to Mr. Weatherbee's comments. Mr. Mendel stated he informed the applicant that they need to be very conscious of the parking for their site.

Gary Hetrick, owner of 133 N. Court commented. Mr. Hetrick stated he wants to make it clear that he realized the property was not flush against the existing building and the alley is in his drive. Mr. Hetrick stated he purchased the building in 1981. Mr. Hetrick stated the building contains offices with two or three regular employees and 7 or 8 people there each day. Mr. Hetrick stated those people have clients that visit every day. Mr. Hetrick stated there is no assigned parking and people come in from all directions and drive through the alley for many reasons, sometimes just to avoid traffic lights. Mr. Hetrick stated the site plan as designed puts him in a position where he has parking for only one car because if there was two cars, you could not get around one of them. Mr. Hetrick stated you would need to back onto Court Street. Mr. Hetrick stated the site plan as proposed would run him out of business. Mr. Hetrick stated if the entire building was moved eight feet north, he would be fine with it as it would allow the alley that has been used for 35 years and he has spent money to pave several times, plow, and clear the leaves to continue to be used. Mr. Hetrick stated he is the only one who has maintained that alley for 35 years.

Mr. Henwood asked if the site plan as shown would prevent the use of the drive that exists. Mr. Hetrick stated cars would be able to park there but could not get them in or out because of the drive-thru because you could not go around another car to get out.

Mr. Mendel stated the development proposal also shows a barrier curb to provide separation between the two properties. Mr. Mendel stated this is to prevent the public from parking on private property. Mr. Mendel stated it could be proposed as a stripe.

Mrs. Fry stated the position of the building on the site could be anywhere in any shape.

Mr. Henwood made a motion to approve a variance to Section 1135.06 of the Planning and Zoning Code to allow a new building with a 6,850 square foot building footprint at 139-145 N. Court Street as proposed.

The motion was seconded by Mrs. Fry.

Vote:

Humpal	<u>Y</u>
Fry	<u>Y</u>
Henwood	<u>Y</u>
Approved	3-0

6. Z16-11 795 Miner Drive Stuart Friedman VAR

Mr. Benko gave a brief overview of the case. Mr. Benko stated this is a variance request from Section 1147.12 (B) of the Planning and Zoning Code allow two ground signs to be 32 feet in area and 7.5 feet high which exceeds the code requirements of 20 square feet in area and 6 feet high.

Mr. Benko stated the property extends from the west side of Miner Drive south of Birch Hill Drive to the eastside of State Road. Mr. Benko stated the property is adjacent to R-4 zoning to the north, I-1 zoning to the west and south, and R-2 zoning to the east.

Mr. Benko stated there are currently 16 apartment buildings and 1 office building at the nearly 6 acre site. Mr. Benko stated the site has undergone significant upgrades over the past year that are nearing completion. Mr. Benko stated the applicant has submitted a variance to allow for 2 new ground signs that exceed the size and height code requirements that are consistent with the rebranding of the apartment complex.

Mr. Benko cited the following practical difficulties:

1. *Construction of a conforming sign would obstruct the vision of motorists or otherwise endanger public health.*

Mr. Benko stated construction of conforming signage would not obstruct vision of motorists.

2. *A conforming sign would be blocked from the sight of passing motorists due to existing buildings, trees, or other obstructions.*

Mr. Benko stated conforming signage would not be blocked from the sight of passing motorists due to existing trees or other obstructions.

3. *Construction of a conforming sign would require removal or severe alteration to significant features on the site, such as removal of trees, alteration of the natural topography, obstruction of a natural drainage course, or alteration or demolition of significant historical features or site amenities.*

Mr. Benko stated conforming signage would not require removal or severe alteration to any significant features on the site.

4. *A sign that exceeds the allowable height or area standards of this Ordinance would be more appropriate in scale because of the large size or frontage of the premises or building.*

Mr. Benko stated due to the size of the site, the larger signs may appear appropriate in scale. Mr. Benko stated the location of the State Road entrance sign is proposed at 15 feet off of the right of way and the Miner Drive entrance sign is proposed at 11 feet off of the right of way. Mr. Benko stated the proposed locations exceed the minimum required setbacks by more than 115%. Mr. Benko stated the increased setbacks may help the signs to appear more appropriate contextually with the site.

5. *The exception shall not adversely impact the character or appearance of the building or lot or the neighborhood.*

Mr. Benko stated the variance may not adversely affect the character of the neighborhood. Mr. Benko stated the sign for the Miner Drive entrance is proposed for 11 feet from the inside edge of the sidewalk.

Mr. Benko stated the property is zoned R-4 residential. R-4 zoning limits the sign area to 20 square feet. Mr. Benko stated the sign proposed for the State Road entrance is adjacent to I-1 properties to the west and south. Mr. Benko stated signs in the I-1 district are able to be 40 square feet in area; therefore, the sign may appear more consistent with the neighborhood.

6. *The variance sought is the minimum necessary to allow reasonable use, visibility, or readability of the sign.*

Mr. Benko stated the variance sought may not be the minimum necessary for the ground signs. Mr. Benko stated the brick posts could be reduced so that the sign meets the code height requirements.

7. *The variance will be consistent with the general spirit and intent of this Ordinance.*

Mr. Benko stated sign regulations are established in the Planning and Zoning Code to promote clarity in sign communications; to balance sign communications; to promote a harmonious relationship between sign types, sign locations and land uses; and to protect the public health, safety and welfare from the hazards resulting from indiscriminate placement.

Present for the case was Stuart Friedman, Sterling Development Consultants, representing Orlean Medina Property LLC, property owner. Mr. Friedman stated the property is a residential property with 192 apartment units that functions as a commercial property. Mr. Friedman stated it has two distinct characteristics at the eastern and western sides. Mr. Friedman stated State Road is very different than Miner Drive. Mr. Friedman stated the property was built in the 1970's and the existing signs go back to the 1970's. Mr. Friedman stated his client has invested over two million dollars to upgrade the apartments and the site. Mr. Friedman stated 2/3 of the property had been affordable housing with rental subsidies. Mr. Friedman stated the entire property is being re-branded to be called Huntington Woods. Mr. Friedman stated there is a new community building with a fitness and community room. Mr. Friedman stated the sign has a stone column which matches the stone on the community building. Mr. Friedman stated both signs are the same but the sign on Miner Road will be in the same location and the State Road sign will be moved closer to the road so it is visible. Mr. Friedman stated as approaching from the south on Miner Drive, you cannot see the sign until you go around the corner. Mr. Friedman stated they would greatly appreciate the variance to put the signs in.

Mr. Friedman stated the whole project should be complete by July. Mr. Friedman stated the renderings do not show a landscaped area around the signs but they will be landscaped.

Mr. Benko stated the site is zoned R-4 and is residential.

Linda Bednar, 622 Miner Drive, commented. Mrs. Bednar stated the applicant has been a wonderful neighbor and the site looks beautiful. Mrs. Bednar stated her only concern is that the sign will be illuminated. Mrs. Bednar stated she is currently working through issues with the lighting on the applicant's property shining into her windows. Mrs. Bednar stated the lighting from the complex is bright enough to land a plane on Miner Drive.

Mr. Friedman stated he is aware of the concerns from the neighbors due to the exterior lighting package on the site. Mr. Friedman stated Mrs. Bednar is correct about the lighting being excessive. Mr. Friedman stated they are aware of the concerns and are investigating it.

Mr. Friedman stated the existing ground sign across from Mrs. Bednar's house is currently lit with ground lighting and that is how the new sign will be lit. Mr. Friedman stated there will be ground spot lights pointing towards the sign. Mr. Friedman stated they will not add to the lighting on the street.

Mr. Humpal asked if there is a timing that can be put on the signage. Mr. Mendel stated these types of sites do not have time conditions typically.

Mr. Henwood asked if the signs were placed closer to the required setback line, would they need to be as large. Mr. Friedman stated the Miner Road sign is going in the same location because the electric is currently there. Mr. Friedman stated you cannot see the sign on State Road unless it is closer to the street but is well within the setback requirements.

Mrs. Fry made a motion to approve a variance request from Section 1147.12 (B) of the Planning and Zoning Code allow two ground signs to be 32 feet in area and 7.5 feet high which exceeds the code requirements of 20 square feet in area and 6 feet high at 795 Miner Drive based on the finding that the signage will not block the site of passing motorists and the larger size may be more appropriate in scale to the site, also it does not adversely affect the character of the neighborhood.

The motion was seconded by Mr. Henwood.

Vote:

Humpal

Y

Fry

Y

Henwood

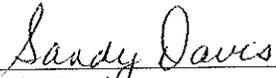
Y

Approved

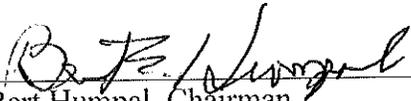
3-0

Having no further business, the meeting was adjourned.

Respectfully submitted,



Sandy Davis



Bert Humpal, Chairman