

MINUTES

REYNOLDSBURG BOARD OF ZONING AND BUILDING APPEAL NOVEMBER 20, 2008 6:30 P.M.

A. CALL TO ORDER

1. ROLL CALL

Members Present:	Mr. Lucas Haire Mr. Duane White Mr. Chris Long Mr. Norman Brusk Mr. Patrick Feeney
Others Present:	Mr. Aaron Domini, Planning Administrator

2. APPROVAL OF MINUTES

Chairman Feeney: Okay. We'll go on to our Item A2 which is approval of the minutes. Are there any changes, additions, deletions to the minutes? (No response.) Hearing none, they'll stand approved.

3. APPROVAL OF AGENDA

Mr. Feeney: Are there any changes to the agenda tonight?

Mr. Domini: No changes tonight.

Mr. Feeney: No changes. Great. The agenda is approved as stands.

4. SWEARING IN OF SPEAKERS (Mr. Long administers oath.)

5. PUBLIC COMMENT

Mr. Feeney: Is there any public comment for tonight other than what's going to be on the agenda? (No response.) Seeing none and hearing none, we'll move on to Unfinished Business, which there is none listed so we'll move to the first New Business Item C1.

B. UNFINISHED BUSINESS – None

C. NEW BUSINESS

1. SPECIAL EXCEPTION APPLICATION, 1636 GRAHAM ROAD, REYNOLDSBURG, OHIO; PRESENT ZONING, S-1; PRESENT OWNER, REYNOLDSBURG UNITED METHODIST CHURCH; EXISTING USE, CHURCH; PROPOSED USE, ASHES CEMETERY IN A PRAYER GARDEN. CONTACT: REVEREND KEVIN M. KELLOGG (18-SE).

Mr. Feeney: Thank you. Is there anyone here to speak on this?

Rev. Kevin Kellogg: Yes, sir. I'm Kevin Kellogg.

Mr. Feeney: If you'll come and-- did you sign in? If you--

Rev. Kellogg: I did.

Mr. Feeney: Okay, thank you.

Mr. Domini: Typically what happens is I'll go through the application, everything that you've turned in, explain it to the Board, and then if they have any questions, they'll ask you some questions following that.

Rev. Kellogg: Very well.

Mr. Domini: As noted, the Special Exception here is for a columbarium. Cemeteries are an approved Special Exception in the S-1 District or an Ashes Garden, which is what the applicant refers to. And the applicant's proposing to construct this within an existing Prayer Garden on site, which I'll show you here in a moment. The Prayer Garden is a central courtyard area which is surrounded by the church on all sides, so it's totally enclosed. The ashes or remains would be buried in the existing Prayer Garden individually in a one square foot area and 30" deep as noted in the application by the applicant. It is a very complete application and it appeared the applicant has done extensive research on this topic. It is noted in their application that in addition to this Special Exception that they would need to obtain a cemetery registration permit from the State and a Person Authorized to Sell permit from the State of Ohio. These are two images I grabbed from our GIS server. The right image is aerial of the site of the building. The one on the left is kind of a zoomed in picture of that Prayer Garden. As you can see, it's enclosed on all sides. It's a triangular shape. This is a proposed site plan that was submitted by the applicant for the columbarium just showing different features on the site, landscaping and such. And that was all that I had in terms of this application and presentation to the Board.

Mr. Brusk: Could you go back a couple of slides where you have the overheads?

Mr. Domini: These two?

Mr. Brusk: Yeah. What is it to the left of that – that paved area? Is that the driveway?

Mr. Domini: No, no, that's the rooftop. You can see the air conditioning units up there.

Mr. Brusk: Oh, yeah. Oh, okay. Yeah, I couldn't— Oh, so that's pretty close to the original building?

Mr. Domini: Yeah.

Mr. Brusk: Okay, now I get it.

Mr. Haire: What is the surface of this? Is this going to be a grassed surface?

Rev. Kellogg: It's actually -- the space that we intend to use for the ashes is landscaping, currently landscaping. The intent is to put these holes where the ashes go in and around the landscaping, the bushes that already exist.

Mr. Haire: Okay. I guess I'm just trying to determine-- Could you go back to the other slide, Aaron, that shows the plan? I see all these lined areas that are, I assume, are pavers or brick?

Rev. Kellogg: They are. And those are--

Mr. Haire: And then the areas in between, are those grassed areas, are those gravel, or what?

Rev. Kellogg: It's all pavers. The—

Mr. Haire: It's all pavers.

Rev. Kellogg: --the square lines is a paver of a different color that is just inlaid.

Mr. Haire: Okay. And then, where does this drain to?

Rev. Kellogg: The drain is underneath.

Mr. Haire: I see an under-drain on there but where, I guess, where does it go? Does it go underneath the building?

Rev. Kellogg: Yes.

Mr. Haire: Okay.

Rev. Kellogg: To the south.

Mr. Haire: Okay.

Rev. Kellogg: To the parking lot.

Mr. Eller: That's existing drainage?

Rev. Kellogg: Yes, sir.

Mr. White: You indicated in your proposal here as a part of your application that it's non-contained crematory remains, so what do you mean by non-contained?

Rev. Kellogg: Non-contained meaning not in an urn, not in a fixture. In other words, a hole drilled in the ground by an auger with just the ashes poured in, no container and then the dirt filled back in.

Mr. White: I guess one of the questions I have in addition to that is that, I guess it's been resolved since this is inside of a building structure.

Rev. Kellogg: It's enclosed on all four sides, that's correct.

Mr. White: Well, I guess, before that was resolved, I wonder about the drainage and whether there will be any problem with the ashes being drained into the – our water system in any way.

Rev. Kellogg: Yeah, the existing drain is deeper than that.

Mr. White: Okay. Another question I have is that since this is a cemetery, in some respects, do you, in your plan to deposit remains there, do you have any intent to establish a crematory?

Rev. Kellogg: Establish a crematory?

Mr. White: Yes.

Rev. Kellogg: In other words, to create the ashes?

Mr. White: Yes.

Rev. Kellogg: No, sir.

Mr. Brusk: Is there such a facility in the Columbus area now, because I have never—

Rev. Kellogg: I think there are, and I should first say, "I don't know." Secondly, the folks that actually did the research of much of which is contained in this submittal did

visit a number of other church sites where there are columbarium fixtures. Typically, columbarium is a structure like a – some are marble, some are, you know, which are housed openings, doored openings where you put the actual urns in.

Mr. Brusk: Yes.

Rev. Kellogg: Our congregation, over much discussion as you can imagine, didn't care for that idea and this was a compromise.

Mr. Brusk: And the State allows this type of—

Rev. Kellogg: Yeah, actually the note in the application that Mr. Domini mentioned that we'd have to apply for the State, has been done and completed and received.

Mr. Brusk: Very good. I'm just kind of surprised by this whole thing.

Rev. Kellogg: Yeah, it's different.

Mr. Brusk: Yeah, I have no problems with it.

Mr. Domini: I will note that I did not get any comments from the City Engineer on this. There weren't any questions about the ground water or anything like that.

Mr. White: I have another question. I think I saw in your proposal somewhere that indicated it was going to be a limited number of members that will be interred there.

Rev. Kellogg: That's correct.

Mr. White: Okay. If there were a need to increase the size, what would you do at that point if you—

Rev. Kellogg: We would not. It's going to be a fixed number.

Mr. Long: It was mentioned earlier that you were going to have to adhere to some practices or whatever you want to call it in the aspects of the cemetery. Are there rules and things that you have to abide by in this type of interment basically, the non-contained environment?

Rev. Kellogg: Only that we make the State aware of what we've done.

Mr. Long: Okay.

Rev. Kellogg: And keep record of where they are and who purchased that piece and keep those records forever.

Mr. Long: So it's nothing as far as other people have expressed ground water containment and things of that sort?

Rev. Kellogg: No, sir.

Mr. Long: Okay.

Mr. White: Is it not true that you would have to maintain the cemetery in—

Rev. Kellogg: Yes.

Mr. Eller: --in proper form and follow the rules and regulations?

Rev. Kellogg: That's correct, which, you know, obviously being a Prayer Garden and part of the structure that we want to keep beautiful for people to use, that's a part of our normal operations anyway.

Mr. Long: I have no further questions.

Mr. Feeney: I didn't -- I think all my questions were answered. It's just a little bit different. But you say that you've reviewed this with the State officials and gotten their approvals?

Rev. Kellogg: That's correct.

Mr. Domini: What we look at typically with this Special Exception is compatibility with surrounding land uses and that's why these are labeled as Special Exceptions. And I think, in this case, I can't think of any nuisance or problem that we'd be creating for adjoining properties.

Mr. Feeney: No. I have no problem. Is there any other questions from the Board?

Mr. White: Just one more question along that line in regards to the requirements. One of those is that the noise control measure. Is there going to be any -- when you do the interment is there going to be any kind of unusual noise of any sort?

Rev. Kellogg: None.

Mr. White: I have nothing further.

Mr. Feeney: Is there any public comment, any questions? (No response.) Okay. If not, I'll entertain a motion.

Mr. Brusk: I move that we accept Special Exception application on C1 (18-SE).

Mr. Long: I second.

Mr. Feeney: May I hear the roll, please?

(Mr. Domini called the roll. Mr. Feeney voted “yes.” Mr. Brusk voted “yes.” Mr. Long voted “yes.” Mr. White voted “yes.” Mr. Haire voted “yes.”)

Mr. Feeney: Thank you very much. Okay, could you read Item C2, please?

2. VARIANCE APPLICATION, 2363 TAYLOR PARK DRIVE, REYNOLDSBURG, OHIO; REQUESTING A VARIANCE FROM SECTION 1181.03 (C)1 OF THE REYNOLDSBURG ZONING CODE TO ALLOW SIGNS ON WALLS NOT PARALLEL TO A STREET. CONTACT: BONNIE BROCK (39-ZV).

Mr. Domini: This is the Lifeway Christian Bookstore which is down off Taylor Park Drive adjoining HH Gregg and we’ve already issued a sign permit for the front of this building. I’m sure many of you have driven by and seen that. And, at that time, the applicants submitted an application for the south side as well, at which point it was denied because it was my determination at that time that it did not parallel the street. I have worked with Ms. Brock on this application and helped her complete the application and turn it in. It is quite complete and they have given us a description of the hardship and then their interpretation of the Code as you will see in your packet. I think the primary point that the applicant has made is that they’re stating that their property is on a corner and thus should be allowed two wall signs. It was my determination when I reviewed the application that this is not a corner property and two walls signs permitted per the Code is not intended for an end cap unit with one side facing a parking area, which is what I observed this to be, which you will be looking at tonight. This is an excerpt from the Code actually, 1181.03c which indicates “a wall sign may be erected on the one wall of a building which most nearly parallels a street, parking lot or service drive as determined by the Zoning Officer. Where a building is located on a corner lot, wall signs may be permitted on both walls which parallel the intersection of the streets.” I just wanted to make we’re clear on what that language was. Staples does have a wall sign on the north elevation. I believe the applicants turned in a picture of that building with that wall sign. That wall sign was permitted as this would be a private drive on the north side of the property and the reason that I’ve determined this is a private drive is because it is the primary access to an existing vacant parcel that’s there, which is that parcel between Staples and Wesley Ridge. Up here off my cursor, this is the vacant parcel and this will be – this drive here will be the access to this parcel and that’s been in the plans now for quite sometime as Taylor Park Drive was extended. Down here is the Lifeway Christian Bookstore.

Mr. Brusk: Go back to that picture once more, please.

Mr. Domini: This is somewhat dated as you can tell.

Mr. Brusk: Is this a road that goes along here? It's about -- of the south side of the picture, the lower side of the picture.

Mr. Domini: Down here.

Mr. Brusk: Yeah, keep going. Yeah, that part right there.

Mr. Domini: This is the fire station.

Mr. Brusk: Okay.

Mr. Domini: And what happens now is that there is a cut-through that goes here. See the Target parking lot?

Mr. Brusk: Right.

Mr. White: Going to that same location, what makes this a non-service drive if, in fact, vehicles coming from Lowe's, HH Gregg, drive down along that strip and eventually turn to your -- back towards, what is it, Taylor Park into the driveway where Target is?

Mr. Domini: Right here?

Mr. White: Yeah. What prohibits that from being a service drive?

Mr. Domini: Well, the difference that I've -- the determination that I've made here is that this is the sole access and drive for this parcel, as where this is the parking area and this is just the connector between the two parking areas. This drive is not intended to service Target. Target has an existing access right here off of Taylor Park Drive which comes into their parking area.

Mr. White: But there's nothing to prohibit or prevent cars from coming to the east to other proprietorships.

Mr. Brusk: Can they drive along the backside of the building?

Mr. Domini: If you wanted to. I mean, that's for deliveries and loading.

Mr. Brusk: But that is a driveway, right?

Mr. Domini: This is a driveway, yes.

Mr. Brusk: Paved and it goes all the way around, correct.

Mr. Domini: Right.

Mr. Brusk: Well, I don't know, I think it's beyond my scope to make the definition of what is and what isn't a driveway. That's problematic, but then I think that's-- I, you know, I have my ideas but we shouldn't be making that decision.

Mr. Haire: This is Lucas Haire speaking. I think that we make that decision every time we have this request come up.

Mr. Domini: Sure.

Mr. Haire: Any sign is adjacent to a parking lot. That's part of any sign and, I mean, buildings are typically surrounded on four sides by driveways or parking lots, so that's a determination that we make in any application we consider of this nature.

Mr. Domini: If I may, the definition in our Code of a driveway is "a paved area providing access for vehicles between a public street and parts of a lot," which is what I think we have here. I'm just going to keep going forward and then we'll--

Mr. Feeney: Yeah, okay.

Mr. Domini: --continue the discussion with the applicant. This was a site plan turned in by the applicant. Should all be pretty familiar with looking at the site. The existing signage on the front of the building and then you have the existing and proposed signage for the bookstore. These are a series of photos turned in by the applicant. The top one is taken from, I guess, it would be a Taylor Park Drive perspective, looking east. A view from the side of Lifeway, building facing southwest on the bottom which would be towards the Target. Same perspective on top. The one on the bottom is looking from the bookstore towards 256. There's the Staples and then the signage on the Staples, the side elevation. The top picture is actually looking from the Target parking lot and the quality of the photo is not that great, but you can see, it's kind of whited-out, you can see the bookstore back there and you can see where the trees have been cut out. That's where the two parking lots connect.

Since I've been here, this is the first sign variance I've seen of this type and in reading the Code I didn't interpret the intent of the Code to permit signs that face parking areas, which is what I determined this to be. I was not here when the Staples sign went up, but I do consider that to be more of a private drive because it's the sole access to that parcel and that's why I believe that was granted. I believe that was back in 2006 for the Staples. So this is just strictly my interpretation of the Code and that's why it's before you today, to either -- to verify that or to find another -- to make another finding. But I just didn't see a hardship in this case, because this bookstore came in after -- and no Code changes have occurred since the Bookstore went in. So they were operating based on this sign Code, and that's all I have.

Mr. Long: I took a drive around the City of Reynoldsburg into some of the areas to where we've had, what I would consider, relatively recent construction going on, particularly up on the Broad Street area, and we do currently have businesses up there

who do both have signs that are facing the street and are on opposing sides as well. What was the consideration when those businesses—

Mr. Haire: When you speak of Broad Street, which businesses in particular? Because we've granted—

Mr. Long: The Aldi.

Mr. Haire: The Aldi's is a service-- there's a actual corner lot, the Aldi's is, so it's permitted on both sides. The National City Bank has a sign on the side also that was granted a variance by this Board.

Mr. Long: It was?

Mr. Haire: Yes.

Mr. Long: And for the Burger King, as well?

Mr. Haire: The Burger King is also on a corner lot. So is the Chase Bank. With the traffic – the signalized intersection – there being the corner lot and a frontage on Broad and on Meijer Drive and on whatever the entrance drive is called. I don't recall what that – is called Cedarcliff or— So corner lots, you'd be permitted on both frontages.

Mr. Long: Well, actually if I take a look at this and with the access road coming around and the access into the Target parking lot, that almost theoretically makes this a corner lot.

Mr. Brusk: Looking at it, I might feel that way, I might not. But I don't believe that this Board should make that determination. I think that the Staff has the definitions and that they are the ones who should make the determination. I don't want to override their definition.

Mr. Eller: Well they're asking for a variance.

Mr. Domini: That's why—

Mr. Brusk: The variance, though, would not be granted on the basis that it's on a lot that looks like a corner lot. The variance would be based on the fact that it's a hardship. Am I correct on that?

Mr. Domini: Right. And, you know, we're here because I already made that determination. I guess the variance is, too.

Mr. Brusk: Right. But I don't want to overrule the variance, or the, your definition of what a corner lot is. That's the point I guess I'm making.

Mr. Domini: Right. But part of your title is Board of Zoning and Building Appeals, so—

Mr. Brusik: Right. But we should be considering this, not from the standpoint that it looks like it's on the corner lot, but on the basis of, is this a hardship? Am I correct on that?

Mr. Domini: That is correct.

Mr. White: I also took a tour of various locations in Reynoldsburg to try to get an idea of how this sat with other locations and I – the question in my mind is what justifies the signage on Olive Garden which faces 70? What justifies the signage on the exit ramp at Big -- excuse me, Home Depot, which has no parking lot in front of it. It faces the 70 – Highway 70. Also, we're looking at a hardship here and it seems to me that all these businesses, if you look along that strip, even the hotel further down, faces the 70 highway and it has signage on the front of it. Even Target's has a sign facing that location. All these businesses, if they have signs that faces a recognized _____, the advantage of having their signage facing the highway and this one business here is going to be excluded from that. I think that that is a hardship that's not imposed by a property, but imposed by our strict interpretation of what is the hardship in this case. And I would think, you know, that this business clearly is facing a unique situation. The parking lot, the sign is facing what is virtually a parking lot. It's at a location where cars will travel right by and to say that this business will not be entitled to a variance because that business is technically not located on the nearest side street, I think it would be very inappropriate in this case.

Mr. Feeney: You're standing there—we're all talking. Would you like to comment?

Ms. Bonnie Brock: Well, I think Lifeway feels their hardship is the fact that they're a small specialty shop and in this economic times things are tough and the most exposure that they can get by ingressing and egressing traffic into the Target parking lot is only going to help their business. You know, they're not a Target where they can put up a big pylon or a, you know, major Wal-Mart. They are a small specialty store and they feel this would be a big advantage for them, especially sitting back off of 256 behind Logan's. You know, it is – look, their sign, I drove by there, drove through there and their sign is noticeable, but it does sit back off the main thoroughfare where it will miss a lot of traffic, people going up and down 256 at 35, 40, 45 miles an hour and they are just asking for this sign just to get that visibility from all the hundreds of cars that'll go into Target everyday.

Mr. Long: Can you go forward, Aaron? I believe it's this picture here from the Target parking lot. There we go. We can see here in this top picture that what she has mentioned is in a specialty environment like that, the exposure that they would receive

from people in the Target parking lot would be incredible. I think in my mind to deny that would, in itself, create a hardship.

Mr. Feeney: Is that -- in that same picture there, is that the drive that goes right past, going from that parking lot over to the Target parking lot now that they cut in?

Mr. Domini: Yes.

Mr. Feeney: Is that what we're seeing?

Mr. Domini: Yes.

Mr. Feeney: So it does go right along the side there?

Mr. Domini: Right here is where--

Mr. Feeney: Yeah. So that's the driveway entrance from the -- their area which is the parking area.

Ms. Brock: I do want to make a comment, too. I don't know if anybody noticed on that building. In our drawings it shows the awnings as being blue. Those have been changed to red to match the signs, so it's very aesthetic to the eyes.

Mr. Feeney: Okay. So they're staying red?

Ms. Brock: Yeah. Oh, yes.

Mr. White: I guess I want to make for the record my distinction regarding we had previously come to consider a signage issue on Main Street and we decided that, at that point, that we denied the application because of, at that point I think, you know, consistently throughout that Main Street location there were no signs except for maybe one that was really way back early established that were actually perpendicular to Main Street. And I think in this area we have numerous businesses that have signs, at least as far as I can see, that apparently are not necessarily following strict compliance with necessarily -- as I say, there's a sign on the Target's building that's facing the highway. There's a sign on Home Depot that's facing the highway and on this particular location it's not only facing the highway, but it's right there and basically facing the parking lot. I think it's pretty much -- and it has a roadway that's right by it. I think those kind of factors distinguish this from the situation that we dealt with in another Main Street issue, at least in my mind.

Mr. Domini: The only difference on those two examples is that those businesses front the highway so they actually, you know, they do -- they are allowed to have that signage, because they intersect with the front highway. When we talk about the hardship, and this is beyond I guess this application, I think we need to be clear on what a hardship is and what a self-created hardship is, because our Code has not

changed and this business came here. And while you could perceive this as a hardship, in my interpretation this is something that is self-created and we didn't place the hardship on this applicant or this business. Our Code has existed prior to the application.

Ms. Brock: I want to add to that. They were -- Lifeway Christian Store was under the impression, and I don't know if it was via their landlord or who. I can't say that and be truthful about it. But when they leased that spot and they were shown the plans for that sign being down the side, they were under the impression that they were allowed that side sign, knowing that Target was being built there. And I think that is one of the reasons they chose that location. I don't know who misled them into believing that. So that's why they're pursuing this variance, is because when they went into this business they were under the impression that they were going to be allowed that sign on that side of that building. And there is, if you go down -- if you go north on 256 across the street, on the other side of the street there's a complex there, there's a T-Mobile store there that's in the middle of the complex but it appears to be, I don't know if it's like a service. There's a building on one side and a building on the other and there's a T-Mobile that's in a corner store and it does have two wall signs there also and that is the same complex and I don't know if that's a walkway between the two buildings separated. Do you know where the T-Mobile is right down the street?

Mr. Feeney: I think I know. You're on the other side, the east side of 256 in that strip just north of Kingsley.

Ms. Brock: Correct. They do have two signs there.

Mr. Long: At Farmsbury, yeah.

Mr. Feeney: I know there was a building up there that we denied for a side signage.

Mr. Brusk: Yeah.

Mr. Feeney: A couple times.

Mr. Brusk: It was Gamerz.

Mr. Feeney: Yeah. Gamerz was the last one.

Mr. Haire: We denied another building that was there, too.

Mr. Feeney: Yeah.

Mr. Domini: From my perspective, I would just look to the Board on some of that history because I don't have a lot of what you've been looking at over the years in terms

of what you have granted variances for and what you haven't. I think it's probably just important that whatever avenue we choose to go down, that we be consistent on that.

Mr. Brusk: Yeah, basically, one of the biggest concerns we have is precedence. We just can't have a situation where we grant it here and don't grant it here where they're fairly comparable.

Ms. Brock: Right. But if—

Mr. Brusk: Without causing major—

Ms. Brock: If you're saying the Staples sign is on a private drive and that's why it was allowed. Is that what you're saying?

Mr. Domini: That's my interpretation. Again, I wasn't here when that was granted.

Ms. Brock: Well, why is then that entrance into the Target on the side of the Lifeway not-- That's a private drive—

Mr. Domini: That not their primary access. That's not the private street in which they access. They access off Taylor Park Drive which is the primary access.

Mr. White: When we speak of hardship and try to assign some definition to it, my view is that it really is that specific, is it not. I mean, you cannot-- maybe you can in some way create a standard, I suppose, and say that it will be consistent. But if the property itself is a unique sort of arrangement, and we've done this before and many times we speak to the issues regarding setbacks and whether there should be a variance allowing that situation. We have to look at the individual property and decide is there some way to accommodate this in the parameters of the ordinance. And I think what I see, what I sense out of that is that we are basically looking to the individual fact specific case we are presented with, with some hope of trying to come to some standard. But nevertheless, looking to the facts of each individual case and seeing whether there is a hardship created by the property itself, not necessarily by the individual, but by the property itself. And, obviously in this situation, we have property that wasn't existing – did not exist, say two years ago, that was created over time and the uniqueness of it doesn't give us, you know, this situation a hardship for that business not having signage that faces the parking lot some distance away from it. That's the question I think we have.

Mr. Feeney: Is there any other comments? Any public comment?

Mr. Domini: If you like, I can read you from the Code what it – how it refers to a hardship.

Mr. Feeney: That would be very good, thanks.

Mr. Domini: Sure. This is 1147.05(d) and it states, "There is proof of hardship or practical difficulty created by the strict application of this Code beyond simply showing that greater profit will result if the variance is granted. Economic hardship is not grounds for the variance. Furthermore, the hardship complained of is not self-created nor is it established on this basis by one who purchased with or without knowledge of the restrictions. The hardship results from the application of this Code and is suffered directly by the property in question."

Mr. Brusk: Aaron, can I ask you a question in the hypothetical?

Mr. Domini: Um-um

Mr. Brusk: That stream wasn't there and they had a road that led to Target, that would be considered to be a road, right?

Mr. Domini: Yes, and depending on how it was recorded.

Mr. Brusk: The big problem here is that you have a stream that's in the middle of this whole thing and, as I recall, we were trying to get Target to kind of change their route on their access and we just couldn't get them to make any changes. They were pretty firm on that, if I recall. Theoretically, and that I don't know, consider to be a hardship or not be a hardship, but it is an impediment to having the access done exactly the way that would meet Code, yet in practices, doing exactly the same thing.

Mr. Long: The driveway on the north, is that a public road or is that just a — is that a dedicated right-of-way?

Mr. Domini: It would be a private drive.

Mr. Long: It's a private drive?

Mr. Brusk: And it's not going to go over to Target?

Mr. Long: No.

Mr. Domini: It's just a private street which gives access to the vacant parcel.

Mr. Long: You know, I think I would have to say if I went out there to rent that piece of property and I looked at the building and I saw the HH Gregg signs on the north, then I would assume I would be able to put signs on the south side, too.

Mr. Domini: And then maybe that—

Mr. Long: Especially the way the building is constructed.

Mr. Brusk: And I think we wouldn't be totally out of line saying that the hardship here is the fact that the property has that stream in the middle of it which made it – which changed what would have been, which theoretically makes sense. And that would have been considered to be facing a road then.

Mr. Domini: Yeah, but that stream's always been there.

Mr. Brusk: Oh, I understand that but I'm just saying that—

Mr. Domini: And prior to that--

Mr. Brusk: But as far as looks, aesthetics of how the sign – what the intent of-- I think we might be able to make a case that way. That would be my feeling, that the only difference is that there is a stream there. Otherwise, we wouldn't have any objection. They wouldn't have any claim against it.

Mr. Domini: Um-um.

Mr. Brusk: That's where I'm coming from on that. And I think that falls in the definition of hardship because of the configuration of the property, that it's—

Mr. Domini: It's definitely a unique situation.

Mr. Brusk: Yes.

Mr. Domini: Especially with the private drive to the north, accessing that parcel—

Mr. Long: And not be able to have an access drive as large on the south side.

Mr. Domini: Right.

Mr. Brusk: On the—

Mr. Domini: I mean, in terms of visibility, I can understand why the applicant would want a sign there—

Mr. Long: Sure.

Mr. Domini: --but everybody going to and from Target is coming down Taylor Park Drive and there is a sign on the front of the building. And I personally don't have a problem with the sign. I think it looks fine. It complements what's already there. I just – the reason we're looking at this—

Mr. Long: Yeah.

Mr. Domini: --is because I didn't believe that was the intent of the Code and I would be looking to the Board to give direction on this issue, because I'm sure I'll be getting more applications like this.

Mr. White: I personally believe that-- I think we serve two functions. I think your -- I envision your function is to enforce the Code as you see it and if you feel that the parameters are beyond what you think they are to be, you should enforce it that way. I think our function is to review that decision and make our determination as to what we think is a hardship or not and, you know, if there should be a parameter there. So I think we're not, you know -- when you ask for a, you know, a standard I think you have a standard maybe is slightly different from ours and I think that, you know, we're trying to work together, but I think you have the function of enforcing. We have a function of trying to see if there's a variation to that decision you have made and I think that's what we're doing.

Mr. Brusk: Yeah. We have to rationalize, I believe, on the basis of, is this a hardship and how do we define a hardship—

Mr. White: Yeah.

Mr. Brusk: --and what is a hardship.

Mr. White: And I'm suggesting a hardship would be impossible to actually straightforward say this is the hardship, you know, every time.

Mr. Brusk: Oh, I understand that. This is on a case-by-case obviously.

Mr. Long: And each property is separate.

Mr. Brusk: Oh, absolutely. But is there enough here to give us that justification we need to call it a hardship and is that a hardship when you say that the hardship really is the lay of the land. It's a piece of property that's there. The stream was there. You have to work around that stream. By working around that stream, you cut off their ability to have a road that would have been logically put there and it has all -- everything else is exactly the same. If that road were there, nobody would complain. Nobody -- it's not that we're trying to stop it because it's going to cause a problem. The only thing is we have to be able to rationalize it and state that that is because of something, they couldn't put the sign up.

Mr. White: I guess what I have concern with is when you're using that kind of parameters of defining what is a hardship, you're basically trying to say let's fit it within this pigeonhole, namely is a side street. Where is the street, where is whatever?

Mr. Brusk: We can't-- that should be—

Mr. White: And I think that—

Mr. Brusk: --establish defining that. They already defined it as not being a street. My feeling is that we can say it's a hardship because, why they can't put a street there. It was – and that's impossibility. Otherwise, everything else falls the same.

Mr. White: But I think if you're using that street analogy again, you're still stuck on, is it a side street. You're not, I think, addressing the issue of whether or not this building is on land that prohibits them to comply completely with the requirements of the Code, and I think that really is what our issue is, not whether it's a side street or not.

Mr. Brusk: I think we're in agreement on that.

Mr. Feeney: You guys are saying the same thing. I'm hearing the same thing in both ears. Well, is there any other comments from the gallery or the Board?

Mr. Feeney: I'll accept a motion.

Mr. Long: I'll make a motion for C2 application for variance, 39-ZV.

Mr. Feeney: Let me hear the roll – oh, I'll second. And can we hear the roll, please.

(Mr. Domini called the roll. Mr. Long voted "yes." Mr. Brusk ("Can I pass?" I think we have enough evidence to say that it's a hardship due to its layout and the impossibility of meaning what would have logically been, so I think I will say, "yes.")

Mr. Domini: That was a long "yes" Mr. Brusk.

Mr. Brusk: I know.

(Mr. Domini continues to call the roll. Mr. Feeney voted "yes." Mr. Haire voted "No, based on I believe that the variance itself created in this case and that the applicant's explanation was an economic hardship, which is not ground for a variance." Mr. White voted "yes.")

Mr. Feeney: Motion passes. Thank you very much.

Ms. Brock: Thank you.

D. OTHER BUSINESS

Mr. Feeney: Okay. I see no other business. Are there any other items that you would like to bring up?

Mr. White: I have one question. Did we approve the minutes or did we not do it?

Mr. Feeney: Yes.

Mr. White: We did. Okay.

Mr. Feeney: Yes.

Mr. Brusk: This is the last meeting of the year, is it not?

Mr. Haire: It is.

E. ADJOURNMENT

Mr. Feeney: We'll adjourn the meeting.

The meeting was adjourned at _____ p.m.

Patrick Feeney, Chair

Aaron Domini, Planning Administrator

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