

MINUTES

REYNOLDSBURG BOARD OF ZONING AND BUILDING APPEALS NOVEMBER 19, 2009 6:30 PM

A. CALL TO ORDER

1. ROLL CALL

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

2. APPROVAL OF MINUTES OF OCTOBER 15TH MEETING

Chairman Long: Are there any additions or deletions?

Mr. Domini: No changes tonight.

Mr. Long: Hearing none, they'll stand.

3. APPROVAL OF AGENDA

Mr. Long: Are there any additions or deletions?

Mr. Domini: No changes.

Mr. Long: Then they will stand.

4. SWEARING IN OF SPEAKERS

(Mr. Long administers the oath.)

5. PUBLIC COMMENT

Mr. Long: Is there anybody here to night that is not on specifically for the agenda, but to speak from the public to anything that we might have on the agenda? (No response.)

B. UNFINISHED BUSINESS

1. COMPREHENSIVE SIGN PLAN APPLICATION, 8263 KAITLIN WAY, REYNOLDSBURG, OHIO; BUSINESS NAME, THE GLEN AT TAYLOR SQUARE; TOTAL NUMBER OF SIGNS, ONE (1); TOTAL SQUARE FOOTAGE OF SIGNS, 28.7 S.F. OWNER, KELCLAR LTD. CONTACT: CRAIG MURDICK (388-ZS).

Mr. Long: Good evening, sir.

Mr. Craig Murdick: Good evening. My apologies for cutting it close. The traffic was stopped on 70. I brought with me in that memo some of the information you were asking for last time and that is the sign material and whether or not there are any other permanent signs on the building that would fall under the Comprehensive Sign Plan application. I talked to the sign fabricator and he said it is a standard MDO plywood and you can see there, I pulled from the American Plywood Association and the _____ Wood Association the definition of the MDO and it's the common material used for signage and I understand it was even – they came up with it to create highway signs years ago. So it is used for that intended purpose. And there was a picture there of the temporary business office for the leasing and, again, there are no permanent signs on the building. It would fall under the Comprehensive Sign Plan application.

Mr. Long: Aaron, I believe this is the only issue that we had, is that there was no description in the original sign design as to what the material was, correct?

Mr. Domini: There's no other question about the design. We were actually looking at the material and if there were any other permanent signs on the property. I'll note all the other temporary signage has been removed at the request of both myself and the Code Enforcement Team. There might be one outstanding issue with regards to a maintenance agreement that's needed for the subdivision sign per Item 1181.03. Mr. Murdick, are you aware of any maintenance agreement with the Homeowners' Association--

Mr. Murdick: No, I'm not.

Mr. Domini: --part of the agency there?

Mr. Murdick: I am not.

Mr. Haire: Do they have a Homeowners' Association here? Is that who this--

Mr. Murdick: They are—

Mr. Haire: --that's who it typically would fall under in a condominium community.

Mr. Murdick: I know that I've had contact with the condominium attorney in the drafting of condominium documents. I don't believe they've filed the final application

because I have not provided the signed documents. My documents have been prepared and they're ready to be signed, so I would image that there is no Association under operation at this time, but that's speculation.

Mr. Brusk: It's my understanding that the Condo Association would not pass to the homeowners. You usually stay with the developer or builder until such time as the – that the builder had finished doing whatever work he was going to be doing and has moved out. Seeing that this is under leases now, that should probably take a lot longer. So I would assume that it's the builder that would have current responsibility and would be then passed on to the Homeowners' Association when the Homeowners' Association would be given the rights to it. Is that—

Mr. Murdick: I can't speak to that kind of thing.

Mr. Haire: Our Code requires a perpetual maintenance agreement that's approved by the City Attorney and that's typically the Condominium Association documents that get turned in on who is going to maintain this. I guess I would like to see that before we approved any sign permit for the sign. We don't necessarily need to deny the sign permit, but I would at least like to see the condition on there that they don't receive a zoning certificate for the signage until those condominium docs, or until some type of perpetual maintenance agreement is applied.

(Someone speaking off mic.)

Mr. Haire: Right. Once we approve this, Aaron still needs to issue a sign permit, which has not been done.

Mr. Domini: I'm comfortable that the Board wants to make that condition, I'll be sure that I get that agreement prior to issuing the sign permit.

Mr. Long: Any other questions from the Board? (No response.) I'll then entertain a motion for approval of 388-ZS with the condition that Aaron has the opportunity to review the approved maintenance contract for the sign prior to issuing the sign approval. Can I have a second?

Mr. Brusk: I second.

(Mr. Domini call the roll. Mr. Haire voted "yes." Mr. White voted "yes." Mr. Long voted "yes." Mr. Brusk voted "yes.")

Mr. Long: Thank you, sir.

Mr. Domini: Yes, it's good. Mr. Murdick, I do need to follow-up with you tomorrow or Monday to get a signed permit. (inaudible)

C. NEW BUSINESS

1. COMPREHENSIVE SIGN PLAN APPLICATION, 2225 TAYLOR PARK DRIVE, REYNOLDSBURG, OHIO; BUSINESS NAME, WESLEY RIDGE; TOTAL NUMBER OF SIGNS, ONE (1); TOTAL SQUARE FOOTAGE OF SIGNS, 36 S.F. OWNER, KATHY MILLER. CONTACT: MARK BORDEN (409-ZS).

Mr. Domini: I'll go— Is there somebody to speak to this?

Mr. Long: Anybody here to speak on that? (No response.)

Mr. Domini: I'll go over this quickly. This is the Wesley Ridge complex and currently they do have a ground sign, but they are permitted more than one and they have street frontage on 256 and Taylor Park Drive. It is kind of like a flag lot, if you will, so they are permitted one additional ground sign which is what they're proposing here. I did note in the staff report that the sign that you are looking at exceeded the height requirement of 5 feet and I asked the applicant to submit a new drawing showing that sign at 5 feet, which is what is here in the Power Point. So he does meet the requirements for a sign height. Sign area is to be determined by the Board. After reviewing the last application, I would note that we'd probably need a maintenance agreement for this sign as well. The applicant has done a nice job landscaping. It's to be ground lit, as you can see the lighting here, ground lit facing up towards the sign and the proposed landscaping for the sign as well. That's all I have.

Mr. Brusk: Aaron, where are those signs located, the one that is current and where the new one will be?

Mr. Domini: This – can you see my cursor on the screen?

Mr. Brusk: Yeah.

Mr. Domini: Okay. This is Taylor Park Drive, this is the proposed sign here, this is the driveway going back to Wesley Ridge. The other sign is a small monument sign out on 256.

Mr. Brusk: All the way to 256. That's what I thought.

Mr. Long: Are you here to speak on this, sir?

Mr. Mark Borden: (speaking of mic.)

Mr. Long: Could I get you to sign here, please?

(Mr. Long administers the oath.)

Mr. Brusk: I'm very pleased with the design and the concept and I don't have any problems one way or the other. I'm certainly not against it. I very much favor something that looks like that.

Mr. Haire: I have no doubt Wesley Ridge will take great care of the landscaping and all that. They do a wonderful job. It's a top-notch facility.

Mr. White: I agree, too. I looked at the sign and it's very pleasing and well presented, so I have no objection.

Mr. Long: I will accept a motion for approval on Item C-1.

Mr. Brusk: I move that we accept Item C-1 Comprehensive Sign Plan Application 409-ZS with the stipulation that appropriate paperwork for showing perpetual maintenance of the sign be submitted to the – what department would that be?

Mr. Haire: Zoning.

Mr. Brusk: Um? Oh, it would be zoning ? I wasn't quite sure.

Mr. Long: Do I have a second?

Mr. Haire: I'll second.

(Mr. Domini called the roll. Mr. White voted "yes." Mr. Brusk voted "yes." Mr. Long voted "yes." Mr. Haire voted "yes.")

Mr. Domini: Stand approved. Mark, we need to get the sign permit filed and then we need a maintenance agreement that the City Attorney needs to review. I do want to talk to you about that tomorrow.

Mr. Borden: All right.

2. VARIANCE APPLICATION, 8145 REYNOLDSWOOD DRIVE, REYNOLDSBURG, OHIO; REQUESTING A VARIANCE FROM TABLE 1175.03 TO ALLOW A STRUCTURE TO ENCROACH INTO THE REQUIRED REAR YARD SETBACK. CONTACT: AARON BUEHRER (62-ZV).

Mr. Aaron Buehrer: Hello.

Mr. Long: Good evening.

Mr. Domini: Board, this property is zoned R3, has a single-family dwelling on it. The existing dwelling is, as typical, was built to the rear property setback line which was 30 feet. The applicant is proposing to build a deck on the rear of the property which will

extend approximately 11 feet 7 inches into the setback, making the primary structure approximately 18 feet from the rear property line. The rear of the property – the property to the rear is owned by the City of Reynoldsburg, which I'll show you here in a minute, and has a retention basin on it. Thus, this applicant – this deck would not be encroaching into any other neighboring properties, but you may want to consider any other impacts it may have. Also it's heavily wooded, which would minimize the impact of the proposed deck. Here's 8145 on the left. This is not a flood plain waterway. I believe it's an intermittent stream. I did check that with the GIS before the meeting. The image on the right shows the detention – a retention basin off of Rodebaugh so, again, here is 8145 where my cursor is. The deck's proposed to go here, encroaching into the rear setback. And I wanted to note that this was City owned and there are no other houses back here. And the other image I have – here's the side. There is this existing deck. The other deck's going to go off the other side of the house which would be, I guess, the north side. The front of the house – this bottom left picture was taken from Rodebaugh looking back through the rear yards. If you look right in here, this is where that house is, 8145. And then the bottom right image is an image that I took from the side of the house that the deck's proposed on, which you see basically right in here. That's all I have.

Mr. Long: I'm assuming that with the retention pond in the rear, there is no possibility of that ever being developed.

Mr. Domini: Not that I can see.

Mr. Haire: Aaron, what's the setback on the existing deck? I don't see the deck on the aerial photo, so is that fairly new?

Mr. Buehrer: That deck was built, I want to say, I think July. I was actually, not me personally, but a contractor who I had subbed it out to had built it for me, actually the same one that's going to do the addition.

Mr. Haire: Were there permits for that deck?

Mr. Buehrer: Yes, there were.

Mr. Haire: So it's set back 30 feet, the existing deck?

Mr. Buehrer: The home where that deck is built – it's kind of hard to see it on that picture, but right where your cursor is you can see how the actual house actually goes in about roughly 5 to 10 feet or so, so the deck started from that point out and the addition is actually going to be from the part of the house that sticks out farther towards the setback and I think that's why there was this encroachment that had come up.

Mr. Haire: And what was your name, sir, just for the record?

Mr. Buehrer: Aaron Buehrer.

Mr. Haire: Thank you.

Mr. Buehrer: And I did not – I submitted the permit on that – the existing deck and it was approved and I did actually take a large tape measure to the property line because there were some stakes back in the woods. And as far as I can tell, it didn't seem like it was encroaching.

Mr. Haire: Yeah.

Mr. White: I have a question in regard to the configuration for the deck itself. I notice, if the diagram on the back of the application is correct, that the greater part of the protrusion of the deck is on the part of the building which actually protrudes closer to the property line and the other existing deck actually is – it's smaller. I'm wondering why that configuration as opposed to the larger, where the existing deck is and maybe smaller where it would protrude less into the setback area.

Mr. Buehrer: I'm sorry, could you say your question again? I don't fully understand.

Mr. White: Okay. If you look at the picture there, I see – it's like a "L" and I'm wondering why would the "L" not be closer to the door as opposed to – into the setback area.

Mr. Haire: So the area where your existing deck is, why doesn't that go out further rather than building a new deck?

Mr. Buehrer: Because the current owners who had purchased the home from me, that's just how they wanted it. They wanted the deck to be extended from north to south as opposed to going farther out. That's what they preferred, so that's how I had these plans put together and that's how we were going to do the proposed section of the deck.

Mr. Haire: So you're the contractor for this deck?

Mr. Long: Yeah. I was just going to ask the same thing. So you're not the homeowner then?

Mr. Buehrer: I am not the homeowner, no.

Mr. Long: Okay.

Mr. Domini: I will note that I did work with Mr. Buehrer, that the homeowner has signed the application and he is not the official applicant. He's an agent.

Mr. Haire: What's the zoning on this letter? Is it PD?

Mr. Domini: I believe it's R3.

Mr. Haire: So they've already received a variance to the lot line – it's way too close to the lot line. So when they built the home, they received a variance and then—

Mr. Domini: For what? The side yard?

Mr. Haire: The side yard. They're not 8 feet.

Mr. Domini: Well, it looks like they're extending over the line, so I'm guessing that—

Mr. Haire: Well, that's just the way the photo was taken, so they're probably two feet off the lot line.

Mr. Buehrer: When I looked on the Auditor's web page, the map shows that there is an encroachment, that the neighboring property is encroaching on this property, 8145 Reynoldswood Drive. And I don't know if that's an accurate map from the Auditor or not, but I did notice that so I brought it to the neighbor's attention but I don't think anything came of that.

Mr. Haire: Do we have survey with this?

Mr. Domini: No.

Mr. Haire: So we don't really know how close to the lot line they're going to be?

Mr. Brusk: You have that same situation at 8147 don't you?

Mr. Haire: That's just the way they're shifted, the perspective they take the photo from. How much further than the existing deck would the new deck come out?

Mr. Buehrer: I'd say it'd roughly be about 5 to 6 feet. I'm looking at the dimension plan here and there's not really dimensions that you can get that accurate measurement with but, however, the far left shows 12 feet and when I'm looking at that, it looks like the home – the corner of the house there, is roughly about 5 to 6 feet coming out, so I would say it's probably about half-way, so it's got to be about a 5 to 6 feet roughly father out, I would say.

(Discussion inaudible)

Mr. Buehrer: Yeah. I was looking at it backwards so, yes.

Mr. Brusk: It's not too far off _____ 6 feet, 5 feet, _____

Mr. White: Aaron?

Mr. Domini: Yes.

Mr. White: What's that blue line across.

Mr. Domini: That's an intermittent stream.

Mr. Haire: I personally don't like the variance in this case. They already have a deck that meets the code. They want to expand beyond that. I don't see any hardship. It's not like we're refusing them the right to have the deck there. They already have one that meets the requirements.

Mr. Long: And then they could technically could go the length of the property or the building, but only come out to where they wouldn't be encroaching and still be able to go and expand the deck area.

Mr. Haire: I don't know. They way the lot line slopes, I don't know if that would be the case or not the way it's situated, but I don't see any hardship in this case.

Mr. Brusk: I tend to agree. If that were the only place for a deck, fine, but that's not a small deck that's there already. It's a reasonably good size—

Mr. Buehrer: With the addition it is a pretty large deck.

Mr. Brusk: With it, it's a huge deck.

Mr. Buehrer: It is a very big deck. I thought it was big enough, to be honest, and they said, "We want more."

Mr. Brusk: Yeah. I guess my feeling would be, I would agree with Mr. Haire.

Mr. Haire: Nothing prohibits them from building a patio there. We just don't allow a deck. So if they wanted more space, they could do a patio area.

Mr. Long: They could do a step-down off of the deck that's existing now to a concrete patio or a stone patio or something of that sort.

Mr. Haire: Pavers—

Mr. Long: Yeah.

Mr. White: How wide is the current deck?

Mr. Long: Looks like about 19 feet?

Mr. Buehrer: Right. It's roughly about 250 square feet, the current deck.

Mr. White: The depth, what I'm thinking is from the house – how far does it extend out?

Mr. Domini: 12 feet.

Mr. Long: 12 feet.

Mr. Haire: 12 or 10, I guess.

Mr. Buehrer: Yes, 12 feet.

Mr. Haire: (inaudible)

Mr. Buehrer: I will say the – it's somewhat hard to see it on the picture up there but where this deck is actually – would be built, it's not very noticeable. It's in a relatively secluded area so as far as, I guess, sticking out or being just too much, too accented for the home, it's definitely not – it would not do that. I'm trying to speak in behalf of the owners, because I know that they really would like to have the deck installed. And, so, I guess, if there's – if this size of deck isn't acceptable, if there's any way that we could maybe shorten it one way or another, or if there's anything we can do to make it work, I'm willing to do that.

Mr. Brusk: I think the problem is not the way it looks on this particular property, but it's a precedent that gets set to allow a deck to be put up where it's not a hardship. You see, this would allow this family to have something that other people – we would reject under similar circumstances if their property were more visible, for instance.

Mr. Buehrer: So the issue is the fact that we have an encroachment?

Mr. Brusk: The issue is the encroachment and that to grant a variance into this encroachment requires some sort of a rationale that they need it, that it's a hardship if they didn't get it. If there were no other place to put a similar type of – or a deck, we might very well grant it.

Mr. White: I guess I'm not so opposed to a deck extending into the setback area because we've done it before. What I'm concerned with is that the infringement be as minimal as possible. And what I see in the configuration I pointed out before is that they chose to extend out where the house extends into the setback area some distance and then they want to extend it further. That caused me concern. I think they can modify their extension by putting it closer where the existing deck is and come out from a reasonable part of the – into the setback and it would satisfy me as long as it – and the question would be how far to go into the setback. Right now, apparently, you're asking for an extension of 11 feet into the setback and I don't know how far the current deck goes in the setback, but—

Mr. Buehrer: I don't believe it goes into the setback. It is not encroaching, because I went out there and I measured it myself, physically measured, and there is no encroachment on that existing deck. Now, could I have been off on my measurement? I could have been. But as far as I could see, when I measured that deck from where the farthest point of that existing deck is, there was no encroachment. And I think when you look at the property, it's somewhat of an odd shape so the full extent of the proposed deck is only encroaching in certain areas. It's closer towards the center of the home. I don't even know if there is an encroachment, because as you go farther to the south, I believe that the property actually extends to the east towards the retention pond. I believe that's how the property is set up, if I remember correctly, because the owners of the property, they own at least a certain portion on the other side of that stream. That's part of their property, on the southeast side, more so than the northeast side of the property.

Mr. Long: Aaron, do we know per what he is saying there if the house is angled as such on the property that only, let's say the lower right-hand corner of this drawing is what's into the setback? So if they were to narrow this back by, say 2 or 3 feet--

Mr. Domini: I'm going to pull it up right now and we can measure it.

Mr. Haire: Do you have a mortgage survey of the property?

Mr. Buehrer: I did not actually have a surveyor come out when I owned the property, so I do not have an actual survey.

Mr. Haire: Do the applicants have a mortgage on the property?

Mr. Buehrer: Actually they paid cash so they do not have—

Mr. Haire: They didn't get a mortgage survey?

Mr. Buehrer: No.

Mr. Haire: I'm just looking at these aerial photos, the lines are way off. You can tell just from looking where people mow the grass.

Mr. Buehrer: Right. Well, like I said, the northern most neighbor, he – if you look at the County Auditor's web page it clearly shows that there is an encroachment.

Mr. Haire: These parcel lines are off is what I'm saying. It's not accurate. If you went out there and looked at where the pins are – I'm sure the people mow grass to where their pins are. These houses are new enough so that – for some reason the parcel lines on the system are showing up not accurate.

Mr. Buehrer: Well, again, I did measure it myself and as you can see, the southern most part of that property line is the longest point of the property. So, therefore, the existing deck, if there is an encroachment issue, it didn't seem to me like there was when I measured it. Now, obviously, if we were to go ahead with the proposed deck, you can see that the northern most half of that property line is the shortest. Therefore, on the northern most half of the proposed deck, there probably is somewhat of an encroachment. The farther north you go, the more the encroachment.

Mr. Long: That was kind of my point, that if we were to take, let's say, maintain the same depth – we're not – maintaining the same depth, we're not encroaching on the property because we're into the widest part of the property; but if we were to cut that deck in half, we've eliminated the section of the deck that they would be encroaching into the setback if, as we're mentioning here, this is correct. But, as Mr. Haire is pointing out, we don't know that it is correct.

Mr. Haire: That's fine. I would just like more information before we make a decision. I'd be inclined to vote no tonight. If we had more information, maybe that would change my opinion. But without knowing what kind of encroachment we're looking at -- we know it's an encroachment, but we don't know how much or where.

Mr. White: Right.

Mr. Long: Right. Yeah. With the accurate information we may be looking at only 10, maybe 15% of this deck is actually encroaching as opposed to the entire 310 square feet of it.

Mr. White: And, again, I think you started out indicating that the homeowner's desire to have it and figured it the way you have it configured. And I think what we're concerned with and I think one of the Board members has pointed out, it's a hardship that we have to look at and whether the property has created a hardship. It's not to please the homeowner, but to comply with the code but _____ the property itself, has it caused a hardship in its configuration. I'm thinking if they can configure it in a way to meet the code, or at least be a very minimal encroachment upon the area, I think that would give us a better play to address the issue.

Mr. Haire: So you would have the option to asking us to table this until our January meeting which will be our next meeting, or we could take a vote on it this evening.

Mr. Buehrer: Well, obviously, your vote's going be no, so—

Mr. Long: And then you would have an option of taking it, I believe, to Council, correct? The Council would file an appeal.

Mr. Buehrer: I guess—

Mr. Domini: Not for variances.

Mr. Buehrer: --so my options—

(discussion inaudible)

Mr. Haire: So you would like us to table? Is that what you're—

Mr. Buehrer: I guess if that's the best option. I wish that I would have had a — my indication was that this was not going to be an issue. I understand the issue with the hardship and you don't want to bend the rule because then everyone else is going to come in here and expect the same. So I just wish that I had the owners present, because I didn't see that this was going to be a major issue. If anything, this is a positive for the City of Reynoldsburg. This is going to increase the value of the home, it's going to bring home values up in the Park at Waggoner. So it's really a positive across the Board and that's the way I view it, so it's not a negative. But, nonetheless, I understand your issue and I respect that and I guess I would like to table it, because I would like to have the owner have an opportunity to come in or if there is any way we can appeal this to try to go ahead. I don't know if that's an option or not, if I can still somehow possibly have an appeal and maybe get the deck built. I don't want to speak for the owner I guess is what I'm saying, because it's not my decision to have us vote on it tonight or—

Mr. Haire: If we vote on it tonight and we decline the variance, you can't apply again for six months.

Mr. Buehrer: Okay. So I definitely do not want to do that. I would much rather just table the—

Mr. Domini: Did you indicate you did not have a survey?

Mr. Buehrer: I did not pay for a survey, no.

Mr. Haire: So Aaron will be happy to work with you and the homeowners to try to figure out the property line and do that in the meantime. You would like — he's asked us to table, so I'll make a motion that we table the item until our January meeting.

Mr. Long: I'll second.

(Mr. Domini called the roll. Mr. White voted "yes." Mr. Brusk voted "yes." Mr. Long voted "yes." Mr. Haire voted "yes.")

3. VARIANCE APPLICATION, 8069 ARTISIAN WAY, REYNOLDSBURG, OHIO;
REQUESTING A VARIANCE FROM SECTION 1171.05 TO ALLOW A FENCE TO BE
CONSTRUCTED CLOSER TO A RIGHT-OF-WAY OF A STREET THAN THE
SETBACK FOR THE BUILDING. CONTACT: MARYJO M. CHULVICK (63-ZV).

Mr. Domini: This is a rather unique request and I don't think we've ever seen this before, but what we have here is the Taylor Square Condo Association is proposing to install a gate. That's classified, I believe, this is a fence as classified by our code. We don't distinguish between gates and fences. We simply talk about barriers and height and feet so it was interpretation that this was, in fact, a fence as per our code. It does fall within the required 40-foot setback from the primary street. This is a – this is not a minor residential street, it is a major arterial as classified by our thoroughfare plan and so the setback is 40 feet. Our code states that we are not – we don't permit accessory structures or fences to be constructed within the front setback from the building. This is the proposal from the applicant on the left. You can see how this matches with the island here. I will note that the right-of-way starts right about here, so how and when this is constructed, part of this island is constructed in the right-of-way. From this point to this point it measures about 20 feet. And what this applicant is proposing is two gates, 5 feet high by 12 feet wide at the exit lane and entry lane.

Mr. Brusk: Are these electrical operated fences, gates?

Mr. Domini: I'll let the applicant answer that question. What we do permit is decorative fencing less than 36 inches in height, which this is not. So that's why I wanted this to come to the Board, because I did not feel it complied with the code, strict interpretation of the code.

Ms. Maryjo Chulvick: My name is Maryjo. I'm here on behalf of the Taylor Square Condominium Association and, yes, the gates will be automated on both the – going into the complex and out of the complex as well.

Mr. Brusk: What's the primary purpose of this?

Ms. Chulvick: For the gates? We're in – we have increased traffic flow throughout our development. We're surrounded by rental properties and because of the increased traffic we're incurring additional costs related to street maintenance. Every other year we're having to re-seal. We're having safety issues. We've had some paintball damage done to our properties. We're just looking to install the gates to make it safer for our residents and also to reduce our cost for our street maintenance.

Mr. Haire: And where would the gates – would they line up with where the brick walls are located there?

Ms. Chulvick: Exactly.

Mr. Haire: Okay.

Mr. Domini: This right here.

Mr. Haire: I don't have an issue with it and you've already got fences or walls that are located there.

Mr. Long: Where – you say that you have thru traffic coming through. Where does this exit out onto on the other end?

Ms. Chulvick: This is the entrance and the exit is at the front of Taylor Road. There is no other outlet.

Mr. Long: Okay. So it's not like you are actually experiencing any additional thru traffic, it's just that—

Ms. Chulvick: We're getting people and they're thinking they can go back to the rental properties behind us so we get a lot of that traffic, of residents that don't belong in our development.

Mr. Long: Okay.

Mr. Haire: They're attempting to cut through and there is an emergency access and I image you will have some type of key or something—

Ms. Chulvick: Yes.

Mr. Haire: --for the emergency services?

Mr. Chulvick: Yes, we will. I guess we're going to have a _____ box system installed on the gate.

Mr. Haire: Great.

Mr. White: I wonder whether Council has actually addressed this by specifically stating, "No fence shall be erected closer than the right-of-way." Basically it's not as if we have the discretion, it seems to me to, you know—

Mr. Haire: The entire Taylor Road, as it was built, has a fence down on both sides at the right-of-way line. The City paid for the road to be installed and the fence in 1999, 2000, as part of the T.I.F.

Mr. White: Well, my question is, is if that is the case, then this language to be – is it useless at this point? Is it – should it be modified or does it have any purpose?

Mr. Haire: I don't believe so. I just think this is a unique case. There's already fences and walls located right where they want to put another fence.

Mr. Long: And all they're doing it—

Mr. Brusk: Are we going to be on the wrong side of the right-of-way, though?

Mr. Haire: It'll be out of the right-of-way.

Mr. Domini: Here's the right-of-way, this reddish-brown line, and they're proposing to come flush off the edge of these walls like this.

Mr. Brusk: Is that going to be – would that present any special problem for the City or for anything?

Mr. Domini: She's indicated there's going to be some type of box or key for EMS so—

Mr. Brusk: I'm actually very much in favor of this type of situation. You mentioned the magic word that I wanted to hear and that was safety and I believe that these type of entry gates are very useful for that purpose and very helpful for that purpose, so I have no problem with it. I just want to make sure that because of the location that we don't have – that we haven't opened up some sort of door that we shouldn't be opening.

Mr. Domini: Well, the way the code's written, you really couldn't put a gate in any community without it, coming to this Board for a variance.

Mr. Brusk: Right.

Mr. Domini: Unless you are set way back, which kind of defeats the purpose of the gate.

Mr. Brusk: Exactly.

Mr. Domini: So that's maybe something next year or so we want to look into allowing something like that--

Mr. White: That's exactly and precisely what raises concern for me, is the language itself is very, very, very strict and specific as to what can and cannot be done.

Mr. Brusk: Right. But it's a variance, is that correct?

Mr. Haire: Yes.

Mr. Long: Yes, it is.

Mr. Brusk: Which means that we can approve a variance if there's a hardship and I think that safety meets that requirement fairly well, so I don't have any problem with that. I just wanted to make sure we just weren't on the wrong side of it.

Mr. White: And might come back on that variance with regard to the variances we do pass in previous cases is that the language has not been so specific. We have some degree of interpretation but when the Council has actually stated this shall not be this way, I kind of question whether we can go further and that's my concern.

Mr. Brusk: Well, they've put up the fences.

Mr. Haire: How many condominium units are in the development?

Ms. Chulvick: Just 24 units, so 6 buildings of 4 units in each building, so it's a fairly small complex.

Mr. Haire: So you don't have a lot of traffic. There wouldn't be any reason for someone stacked up more than two cars waiting to get in the gate while the gate swings open or swings up?

Ms. Chulvick: No, not at all.

Mr. Haire: Is it going to swing open or up?

Ms. Chulvick: Going in, it'll swing in and coming out, it'll swing out towards Taylor Road and the posts will be mounted in that center island in the picture.

Mr. Long: I personally have no problem with it. Any other questions?

Mr. White: No, I guess not.

Mr. Long: I'll entertain a motion then for Item C3.

Mr. Brusk: I move that we accept Item C3 variance application on Artisian Way, 63-ZV.

Mr. Long: Can I have a second?

(Second inaudible.)

(Mr. Domini called the roll. Mr. Haire voted "yes." Mr. White stated, "I abstain." Mr. Long voted "yes." Mr. Brusk stated, "Mine is the key vote isn't it? "Yes.")

Mr. Domini: Motion passes. Maryjo, the next step would be to submit a fence permit to me and you can do that in the next week. All right? You call me and I'll get you that paperwork.

4. SPECIAL EXCEPTION APPLICATION, 6529 E. LIVINGSTON AVE., REYNOLDSBURG, OHIO; PRESENT ZONING, COMMUNITY COMMERCE (CC); PRESENT OWNER'S NAME, WENDY L. HERNANDEZ; EXISTING USE, LATIN

MARKET AND TAQUERIA; PROPOSED USE, EATING AND DRINKING ESTABLISHMENT, CONTACT: OMAR ORTIZ OR LAURA DE LA TORRE (28-SE).

Mr. Domini: This property is in the Blacklick Plaza Shopping Center. It's currently a Mexican grocery known as La Jalisciense, being operated at this location. The applicant is proposing to expand the existing market into tenant space to the east and operate an eating and drinking establishment. They're proposing six tables which, as shown in their drawing, which would seat 42 people. Currently the market cooks food for take-out inside the grocery. So I believe what the applicant is trying to do is provide an opportunity for people to get fresh food made there and then dine in if they choose to do so. These are just simply the images showing you what the exterior looks like. I have spoken to the current operator regarding the window signage. They are aware that they are not to cover more than 25% of the window with signage. So they're going to address the advertising, then the brown paper is going to come down after they finish construction. That's what I was told by the operator. This is the existing and proposed floor plan. So where my cursor is here is where you come into the store. Then there's a doorway that was cut open here where my cursor is, which goes into the eating and drinking establishment which is proposed to be here. Currently where I'm showing right here is where there is an open grill where they cook food. So basically you'll get your food here and come back around and dine in here. I will let the applicant present any other information or answer any questions that the Board may have.

Mr. Haire: Do you have a liquor license there?

Ms. Wendy Hernandez: Yes, we do.

Mr. Haire: Do you plan on having people drink in this establishment, or will it be take-out only?

Ms. Hernandez: Well, we're trying to make more like a family place, you know, but if some people want to take drink or something they can have it. But, I mean, we almost had like five years with the place already, and we always had like drinking, so we always tried to have like a really nice place. That's why we're trying to get the dining, so families can come and stay there. But, about the drink, you know, yes, we serve some drinks, but always by our, you know, not like somebody drink and drink, you know, we don't want that.

Mr. Haire: So you have a liquor license for on-premises consumption currently?

Ms. Hernandez: What was your question again?

Mr. Haire: To drink there. You have a license that allows – the type of license that allows you to drink there currently?

Ms. Hernandez: Yes, five years already.

Mr. Haire: So this is just basically expanding a restaurant to another space. They already have a grill and they already have drinking on the premises.

Mr. Domini: They've never been given a special exception to operate as an eating and drinking establishment. Currently there are no tables and chairs in there.

Mr. Brusk: Have you seen the liquor license?

Mr. Domini: I have not personally seen the liquor license, no.

Mr. Brusk: Do you know what type it is, what it does allow, what it doesn't allow?

Mr. Domini: No.

Mr. White: Do you know the type of license you have? Is it C, or is it D?

Ms. Hernandez: I'm trying to think. I don't remember, but it's easy to figure out.

Mr. Domini: Do you sell liquor and spirits, or beer and wine?

Ms. Hernandez: No, just beer. We have just beer.

Mr. Brusk: Do people currently drink on the premises now? Do they open bottles of beer and drink beer on the premises now currently?

Ms. Hernandez: Yes. They order to us. I mean they order to us and we serve them beer, but mostly it's just—

Mr. Brusk: Where do they drink it?

Ms. Hernandez: Oh, it's like a bar. You know where the kitchen is, it's a bar. We dine in. We still dine in, we just don't have the big spot, you know?

Mr. Domini: At some point in time, bar stools were erected around the open grill.

Ms. Hernandez: Uh-huh.

Mr. Domini: Not with any type of Special Exception to operate that way. So I don't know at what point in time that happened. When I went to the premise to speak with the application, cause what happened was plans came into the Building Department which I reviewed, and I said, "Wait a minute, they need a Special Exception to be doing this." Then I went and talked to the owner/operator and that's when I discovered basically what was happening in this grocery store, which, from the outside, looked like a grocery store. When you walk in it looks like a grocery store. Where my cursor is right here, there's basically like an open grill. Like if you went into Penn

Station, you'd see the open grill. There's probably 3-5 bar stools that sit around the grill with a small eating space.

Mr. Brusk: And they've never had a permit to do that, that you know of?

Mr. Domini: No, they don't have a Special Exception.

Mr. Brusk: And our ordinances do require such a Special Exception?

Mr. Domini: Yes.

Mr. Long: So we're asking to approve an exception for an establishment that may already be in violation of our ordinances to begin with.

Mr. Domini: Depending on what this applicant tells us is happening.

Mr. Long: Well, I think basically, from what we've already been told, that we can determine right now that they're in violation of our ordinance.

Mr. Haire: Well, I think they're here to try to correct that.

Mr. Long: I understand that.

Mr. Domini: And when I went in there, nobody was dining in there. I don't know if people sit there and wait and get their food and eat it at the counter, or leave. I don't know. Those are the questions that the applicant's going to have to answer.

Mr. Haire: How long have you had the food there? Or how long have you been there?

Ms. Hernandez: Well, because first of all when we started it was just a grocery and market. You know, like five years ago. So after that, I think like three years after – one year after, we built a kitchen and got the permits and everything. We passed the fire department, health department, all that, you know, when we built the kitchen, because there was no kitchen there. I mean everything was fine, you know? All departments pass, you know?

Mr. Haire: You got permits from the City to do that?

Ms. Hernandez: We had a contractor.

Mr. Haire: It wasn't when I was here, so it was before that.

Mr. White: When you started your business, did you get your liquor license then?

Ms. Hernandez: First of all, like, I can't tell you exactly the years. I started the business in 2001, something like that.

Mr. White: Did you apply for the liquor license at that time?

Ms. Hernandez: Not at that time. I applied for the liquor license when I'm start to have the kitchen. When we built the kitchen, we get a lawyer and everything.

Mr. White: So you submitted the liquor license permit request with the proposal that you were going to have a kitchen when you made the application?

Ms. Hernandez: I don't remember how it was. I'm trying to remember what was first. I'm sorry. Actually, no. We do that before, before we want to sell beer to take out and lawyer she get a permit in case if we want, you know, in the future we get the kitchen, because I have it always on my mind that I want that. So she said you can have a beer, you know, like drink in, but it's just beer and take out.

Mr. Brusk: I'd certainly like to get verification of that.

Mr. Long: Yeah, I think I'd like to see it myself. I can understand alcohol, you know, beer and wine for retail, but isn't there a difference in the way the State – whether it's consumed on the premises—

Mr. Haire: D's dine in and C's take-out.

Mr. Domini: We reviewed similar permits as of recent where there is a kitchen installed and a hood, but it's take-out only. So I don't know what happened in the past. Perhaps whoever was in my position or in the Building Department thought it was take-out and that certainly could have been the case at some point, and now it's kind of transitioning over into a dining in which, under my interpretation, then becomes an eating and drinking establishment.

Mr. Haire: I mean that's within our rights for the Special Exception to have eating and drinking establishments and that's what they're applying for. So I guess the discussion needs to really center on if we think that's an appropriate use there and that'll be up to them to get their liquor permit if we feel it's appropriate to be an eating and drinking establishment.

Mr. White: But do we want to know they have the liquor permit to actually proceed?

Mr. Haire: I'm going to assume that they do, because that's what they tell us.

Mr. White: Well, they're telling us they've got a liquor permit—

Mr. Haire: We'll make sure that the Ohio Board of Liquor Control knows as well.

Mr. Long: I understand what Mr. Haire is saying and the fact that they're here to apply for a special exception as an eating and drinking establishment and that in and of itself is the extent of our responsibility and not to determine if they have a viable and legal liquor permit, whether it happens to be C or D for consumption of alcohol on the premises. That isn't the Board's responsibility to determine.

Mr. Haire: We'll ensure that they do.

Mr. Long: That we will, yes.

Mr. White: With that being said, what are the other stores in that strip?

Mr. Domini: A barber shop, a day care, income tax processing agency, a clothing store, a pizza place, a Chinese restaurant, a carryout—

Mr. Brusk: Does the carryout also have a liquor permit? And the Chinese restaurant has it also if I'm not mistaken. So this would not be unusual for that neighborhood, I wouldn't say.

Mr. Haire: I wouldn't say so. I mean I'd much rather see this type of restaurant with the liquor license than a bar, which we've kind of chased off the bars in the past who wanted to go into this center.

Mr. Domini: How do we distinguish here between a restaurant and a bar when all we're approving is an eating and drinking establishment? So at some point if we make an approval for an eating and drinking establishment and they choose to change in their brand from food service to a bar, they don't need to come back and reapply, unless they change or deviate from what is in this application, then they would be amending the special exception approval.

Mr. Long: No. It would just go from an eating and a drinking to a drinking and an eating, just based-- You're smiling, but I'm serious. It flip-flops based upon the percentage of the sales. Let's say they're now 80% grocery and eating, 20% alcohol, but two years down the road they determine to go ahead and "Well, we're going to go move," and now, all of a sudden, they're 60-65% alcohol and 35%--

Mr. Brusk: You can't be much of a bar, though, with just beer and wine.

Mr. Haire: And with that small of an area dedicated to the bar. And we've got hours of operation in here-- Do you close at 10:00 p.m.?

Ms. Hernandez: Yes. And actually the proposal of this expansion is just for having a better space. It's not just for to sell beer. It's not like we want to-- Like Aaron says, we have many older persons in the building like the barber shop and they just want to eat something at lunch time. They don't drink much. I think one person likes to

drink just one beer with the food – just to have a place where people can have their lunch, have a seat and go away.

Mr. White: Do you have people beer and take it away?

Ms. Hernandez: Yes.

Mr. Domini: The primary function right now is a grocery store.

Mr. Haire: With the Special Exception application we can set the conditions on the hours, which they've set forth, with 10:00 p.m. being their closing time. And they've shown us this site plan. It doesn't show a bar anywhere. And if they put a bar in, they have to get permits for that. So we'll see those, so they just can't change from this layout. So with the specific layout they have and with the specific hours they have, I'm okay with the eating and drinking establishment being approved. To me it's one less liquor license that's out there. We have three available, and it's one less bar we can put in the city.

Mr. Brusk: But they already have it.

Mr. Haire: That's true. Well, we have two or three available.

Mr. Long: Any other questions? (No response.) I will entertain a motion for Item 4, Special Exception application, 6529 E. Livingston Avenue, Reynoldsburg, Ohio.

Mr. Haire: I think the restrictions are set forth in the application. I don't know that we need to put additional—

Mr. Long: No, I don't think there's anything additional on it myself.

Mr. Haire: The conditions are set forth in here.

Mr. White: I'll move that we approve Special Exception application 28-SE as set forth in the application.

Mr. Brusk: I second.

(Mr. Domini called the roll. Mr. Haire voted "yes." Mr. White voted "yes." Mr. Brusk voted "yes." Mr. Long voted "yes.")

5. SPECIAL EXCEPTION APPLICATION, 1713 BRICE ROAD, REYNOLDSBURG, OHIO; PRESENT ZONING, COMMUNITY COMMERCE (CC); PRESENT OWNER'S NAME, NEW DELHI LAND ILLC; EXISTING USE, VACANT; PROPOSED USE, STATE LICENSED DAYCARE FACILITY. CONTACT: SABRINA WOODFORD (29-SE).

Mr. Domini: This application is for a state licensed daycare facility. The applicant is proposing before and after school programs, but our code would classify this as a state licensed daycare facility. This property is located at the corner of Brice Road and Astor Avenue, just north of the Brice Center or the old Astor Center. They're proposing to occupy approximately 1,000 square feet of this building. And this building. In this building the other tenants are Just Plus, which is a clothing store, and a dentist, which is the owner of the building. The applicant is proposing to open the state licensed daycare facility, providing childcare services for up to 29 children from 6-12 years of age. Hours of operation as proposed are from 6:30 a.m. to 9:00 a.m. and from 3:30 p.m. to 6:30 p.m. This is the building in question. Up in the forefront here is Astor Avenue, this area of the building is the clothing store and they're proposing to go in the back half of the building which, looking – I believe this is looking from the rear of the building. I think this would be the entrance to the said proposed business going in here. This was shot through the window. This is looking into the back parking lot. Again, this in front is Astor Avenue here looking into the back parking lot. These windows here are where the proposed daycare is going to operate. So this shot on the left was taken through those windows.

Mr. Brusk: There's no outside play area, I assume:

Ms. Sabrina Woodford: No, it's not mandatory that you have an outdoor play area.

Mr. Haire: What was your name, ma'am?

Ms. Woodford: Sabrina Woodford.

Mr. Haire: Thank you. You'll just be operating five days a week, then?

Ms. Woodford: Five days a week, yes, sir.

Mr. Haire: What about the summer time?

Ms. Woodford: Summertime, yes.

Mr. Haire: So different hours or—

Ms. Woodford: Summertime would be all day.

Mr. Haire: The same thing with spring breaks and winter breaks?

Ms. Woodford: Yes.

Mr. Haire: And that wouldn't be – because of the age of the children, they're not required to have the outdoor play area?

Ms. Woodford: No, that's a state law that you don't have to have an outdoor play area, but if you have a park, like Blacklick was close, a library and a recreation center – if you have some close facilities that the kids can go play, it's okay, according to the State of Ohio.

Mr. Haire: And what's your idea of what's close to you?

Ms. Woodford: Blacklick, the recreation center—

Mr. Haire: So you'd be taking the kids to that location?

Ms. Woodford: The kids – it won't be like 29 kids at one time. It would be like 10 kids at a time.

Mr. Haire: They bring them by in this big bus they push down through here all the time. I don't know which daycare does it, but I see them a couple of times a week. The red pushcarts.

Ms. Woodford: That's usually Infants and Toddlers.

Mr. White: What mode of transportation would you use?

Ms. Woodford: It would be a 14-16 passenger DMC.

Mr. Long: So if you're transporting a dozen kids over to Blacklick for a couple of hours, based on the number of administrators and teachers that you have here, you would then only have a single individual supervising 15-18 kids?

Ms. Woodford: It's only 29 kids, so it would only be 10 kids going at a time, so that would be one teacher and probably the administrator.

Mr. Long: So now you only have one individual both handling administration and supervising the kids.

Ms. Woodford: Well, according to the law of Ohio, the administrator doesn't have to be on-site.

Mr. Long: No, I'm aware of that, but my point is is that if you have 10 kids going from your location over to Blacklick Woods and your administrator and one of those teachers goes with them, that leaves you one individual left at your location who's supervising the remaining 19 kids.

Ms. Woodford: Well, if that happens, there would be an extra employee on site for that.

Mr. Haire: She's just giving us what she's starting with.

Mr. Long: I understand that.

Mr. White: What kind of restroom facilities do you have there?

Ms. Woodford: It's one ADA restroom facility there.

Mr. White: Will that be enough for 29 kids?

Ms. Woodford: Yeah, according to the State of Ohio it is. I've checked.

Mr. Haire: I think that's right. It's like a school and there's about 29 kids in a classroom.

Mr. Long: Usually a bathroom with 8-10 stalls in it as well.

Mr. Haire: Yeah, but you've got 20 classrooms, too. I don't know. The state regulates all that. I don't know if it's our place to look into that. It's just our place to look whether this is an appropriate location for that type of use. I don't see anything wrong with that type of use going in that space.

Mr. Domini: I did look into the parking. There's approximately 24-25 spaces. We don't have a specific requirement for childcare facilities in our code. We do for schools and I think it states "as required by BZBA." The dentist office is 1-200. I believe they're probably about 2000 square feet in there, so it would be about 10 spaces. And the retail portion is 1-200 and I'm guessing they're required about 5 for that amount of retail.

Mr. Haire: You said the dentist owns the building?

Mr. Domini: The dentist does own the building.

Mr. Haire: I'm sure they're okay with this tenant going in.

Mr. Domini: Is that correct, Ms. Woodford?

Ms. Woodford: Yes, correct.

Mr. Haire: The 29 children are just based on the space that you have?

Ms. Woodford: The square footage, yes.

Mr. Haire: That would be the maximum?

Ms. Woodford: Yes.

Mr. Haire: To me it meets the requirements for a Special Exception. It's in harmony with the area. I don't see that it adversely affects other surrounding properties. I don't think the health, safety and issues of a daycare would upset too many people. I think it meets the intent of our code. I don't have any issue with the daycare going in.

Mr. Long: The county and the state would maintain determining whether or not they were operating properly and so forth?

Mr. Haire: Yes.

Mr. Brusk: I don't think it will impose traffic impact.

Mr. Haire: We looked at this in the building just to the south of here and approved it in the past. The only concern we had was the outdoor play area and if they're not going to have one on-site here—

Mr. White: I think we've approved a couple, not just one, but we have two at least in this area.

Mr. Domini: One up in the K-Mart Plaza and then one at the old State Farm place which is off Rygate, which never opened up and neither did the one in K-Mart.

Mr. Brusk: The only thing is there's a safety issue at C, "shall not adversely affect the health, safety, morals and welfare of the area," and that is that you meet state requirements. I think that covers it adequately. But, you know, if you're not meeting state requirements, that has to be kept up and that we would have – the City would have some means of saying you've got to meet them.

Mr. Haire: They're heavily regulated. I'm sure you can vouch for that.

Ms. Woodford: Yes, I can. I've been in this field for over 30 years.

Mr. Brusk: I tend to agree.

Mr. Long: So you have been operating a daycare center?

Ms. Woodford: On Nelson Road across from Sutherland Lumber. I had that center for 10 years.

Mr. Brusk: You never got in any trouble there?

Ms. Woodford: Trouble? No. I have a very big interest in children and children's safety.

Mr. Brusk: Great. Thank you.

Mr. Long: Any other questions? (No response.) Then I'll entertain a motion on C-5.

Mr. Haire: I move that we approve application C-5, number 29-SE.

Mr. White: I second.

(Mr. Domini called the roll. Mr. Long voted "yes." Mr. Brusk voted "yes." Mr. Haire voted "yes." Mr. White voted "yes.")

D. OTHER BUSINESS

E. ADJOURNMENT

The meeting adjourned at _____ 7:40 _____ o'clock, p.m.

Chris Long, Vice Chair

Aaron Domini, Planning Administrator

This document was transcribed by:
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