

**ZONING BOARD OF APPEALS  
MEETING MINUTES  
Mayfield Village  
April 17, 2012**

The Board of Appeals met in regular session on Tues, April 17, 2012 at 7:35 p.m. at the Mayfield Village Civic Center, Main Conference Room. Chairman ProTem Fikaris presided.

**ROLL CALL**

**Present:** Mr. Paul Fikaris Chairman ProTem  
Mrs. Shirley Shatten  
Mr. Pat Caticchio  
Mr. William Russ

**Absent:** Mr. Joseph Prcela Chairman

**Also Present:** Ms. Diane Calta Law Department  
Mr. John Marrelli Building Commissioner  
Ms. Deborah Garbo Secretary  
Mr. David Hartt Planning Director

**CONSIDERATION OF MEETING MINUTES:** **March 20, 2012**

Mr. Russ, seconded by Mrs. Shatten made a motion to approve the minutes of March 20, 2012.

**ROLL CALL**

Ayes: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

Nays: None

**Motion Carried**

**Minutes Approved as written.**

**CONSIDERATION OF CASE NUMBER: #2012-01 (Follow-up from March 20th meeting)**

**Applicant:** East Commons, Ltd  
Architect: Cawrse & Assoc, Inc.

**Location:** New East Commons Development  
PP # 831-05-007  
PP # 831-05-015

1. A request for a 90' building setback variance from Section 1173.05 (a) for the north property line provided that if the building is over 160' long then the building setback from the north property line will be 42'.

2. A request for a 10' building setback variance from Section 1173.05 (a) for the south property line provided that if the building is over 160' long then the building setback from the south property line will be 42'. Note that for BZA-1-Phase II; at least 10% of the total parking length along the south property line shall be dedicated to landscape islands extending 20' into the parking area.
3. A request for a 50' building setback variance from Section 1173.05 (a) from the north property line. Note that for BZA-1-Phase II; at least 10% of the total parking length along the north property line shall be dedicated to landscape islands extending 20' into the parking area.
4. A request for a 30' parking and building setback variance from Section 1173.05 (a) from North Commons Boulevard Right-of-Way.
5. A request for a 43' building setback variance from Section 1173.05 (a) from the east property line.
6. A request for a 40' parking setback variance from Section 1173.05 (a) from the east property line.

**Abutting Property Owners:**

North Commons Blvd

Progressive Ins Co. 300 NCB  
Governors Village 280 NCB  
Altercare Rehab 290 NCB

SOM Ctr Rd

294 SOM Ctr Rd.

**OPEN PORTION**

Chairman ProTem Fikaris called the meeting to order. Tonight is consideration of Case No. 2012-01 which is a continuous of the March 20<sup>th</sup> meeting.

**Determination - swath of property residential or commercially zoned?**

Ms. Calta said in the Court Journalization of Settlement Agreement, there's an indication subject property be zoned Office/Laboratory. At that time, I believe it was likely thought the residential zoned line corresponded to the residential property line, when in fact it does not, it proceeds another 100' west. It's 250' from the center line of the roadway. It was thought when that Judgment Entry Settlement was put into effect, that that corresponded with the property line for the two residents properties. It does not.

The line leaves you a swath of property that has been questioned as to whether that was rezoned as Office/Lab or remains residential. The question came up at the Planning Commission. At that time I said I'd take a look at it more closely. I don't want to sound too much like a lawyer to say that it could be interpreted both ways but I think that there is an argument to say that it can be interpreted both ways.

What I said at Planning Commission is that the Journal Entry talks about permanent parcel numbers. It identifies the residential as the residential permanent parcel number and it identifies

the rezoned parcel as being all of the Midvale properties and under that permanent parcel number.

Given how it's described, the determination was that all of the Midvale property was rezoned pursuant to that Judgment Entry as Office/lab. The residential property which abuts on SOM remains residential as is to be retained as green space. There was a question about the retention basin being in the green space. That would be permitted, although it's going to be a structure for stormwater.

Having said that, there was also discussion about the possible need at some point to go back to the Court to have that Judgment Entry clarified on that point, if necessary.

### **Variances tied to the Project**

Mr. Caticchio requests clarification on the point John read at the last meeting regarding the affect of the Boards decision attached to the land. If the pending deal doesn't go through, the Boards decisions remain as affecting the land.

Mr. Marrelli confirms. There's no limit to a zoning variance. Once a variance is granted, it stays with the land forever.

Mr. Caticchio said this situation is questionable because the people before us tonight do not own the property.

Mr. Hartt said that question always comes up. I think you can make a strong case that you are tying the variance to the land but related to the facts of the information & plans that are before you. If the current owner, say they don't exercise their option and they come back to you and represent they're going to do what these guys say they're going to do and it's consistent with the plans and facts before you, then I think you're right, it goes with the land. But if they're coming in with a clean slate, I don't think you can make the same claim that the variances go with the land.

Mr. Caticchio said as a lawyer I can see a law case looming in the background. Therefore, we would put a condition in our decision that states in the event these gentlemen do not go forward, that terminates our decision, wipes it clean and the land is back to zero.

Ms. Calta thinks that would be a wise addition. Legally, I don't think it's a requirement, but I think it would be a good point to make and clarify so the developer understands this isn't something that they can buy the land, toss to somebody else and have them come in with different ideas. It's very much tied to what they're presenting.

Mr. Hartt gives an example. If you're giving a 10' sideyard setback to a residential property for a sunroom that's 1-story, 20' long, 5' from the property line, it's unrealistic to say that variance is a 5' setback for any length of building regardless of its height. The variance has been granted for the facts of that particular case.

Ms. Calta said in this case, we started with the framework of the Planning Commission and come to the BZA. The concept is it will go back to P & Z for more definition. It's not contemplated to come back to the Board of Zoning Appeals. Given that, it's tied to this development and this development only.

Mr. Hartt said I made a little different judgment and suggestion to the applicants and Planning Commission compared to the way Mayfield Village does it. Normally variances are minor relative to the influence on the overall development plan. Quite often, P & Z will say we approve the concept subject to variances being granted. Since the variances being requested are so numerous and fairly significant, they are not 'incidental' to the development plan, they're 'fundamental' to the development plan. I suggested P & Z not approve the development plan until the variances are in place. Based on the variances, P & Z will finalize the preliminary development plan, then it goes to Council with a development agreement, and then I suggest taking it to the Court and clarify once and for all the zoning.

Chairman ProTem Fikaris asked if we move forward under the assumption the Court will determine the residential portion.

Mr. Marrelli replied yes, we'll assume it's commercial until told otherwise.

### **Abutting Property Owner Concerns**

Chairman ProTem Fikaris said another thing on our list was that the Applicants were to speak to the property owners to work on some issues.

### **OATH**

**Chairman ProTem Fikaris stated that anyone wishing to speak must be sworn in; he administered the oath to the Board Members, Applicants, & Appellants and asked anyone wishing to speak to state their name and address for the record.**

Sam Canatta, representing East Commons. I have with me Michael Gatto. Mr. Gatto met with the representative from Progressive who was with us last month. He also corresponded with the woman from Governors Village. We tried to coordinate a meeting with Mr. Kinnaird, but Mr. Kinnaird was busy with work.

Michael Gatto, party of East Commons. I had a meeting with Progressive. Their biggest concern is more of a natural surface and aesthetic look on the fronts of the two buildings on East Commons. They were going to give the Village their opinion on that. I'll assume they did.

Mr. Marrelli has not received any word.

Michael Gatto said they had no issues. That was a personal meeting at Panera's. I also corresponded via e-mail with Governor's Village. They had no issues. They were more interested in what we're doing and more concerned with aesthetics and appearance. They had no issues.

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Mr. Marrelli asked Michael who he met with from PRG.

Michael Gatto replied the gentleman with us last month. It was Kevin McGrath.

Mr. Marrelli asked, no documentation?

Michael Gatto said he was going to correspond with the Village.

Mr. Marrelli said he did not.

Michael Gatto said he was going to take that upon himself. He said PRG had no issues as long as it was a professional appearance and more of a natural surface on East Commons.

Mr. Marrelli asked what a natural surface means.

Michael Gatto replied stone & brick, façade of the two buildings.

Ms. Calta asked, you're not talking about the actual landscape?

Michael Gatto said no.

Mr. Hartt said I think this got back to Ted. That's the way Ted conveyed it to me.

Michael Gatto added that they'll have a say moving forward when we come in with plans on those two buildings architecturally.

Mr. Hartt said if that's the issue and the Village hasn't heard anything else, that issue is really not related to what's before this Board of Appeals.

Michael Gatto said we went back and forth with Mr. Kinnaird and due to his work schedule we were not able to hook up. I'm anticipating a dialogue tonight.

Mr. Marrelli asked if there was any contact with anybody from the Village about the south property line landscaping or buffering.

Sam Cannata discussed with Ted & Mr. Hartt and incorporated into revised East Commons Development Agreement Outline dated April 17, 2012 (**Passed out Outline**):

Developer shall design and construct East Commons' Site Improvements:

- e.** to include a landscaping buffer with tree plantings along the entire south property line, which abuts the Village owned PPN 831-05-065, reasonably placed in accordance with proper landscaping standards.
- f.** to include a landscaping buffer with earth mounding, storm water management, tree plantings and any other landscaping reasonably necessary along the property line adjacent to PPN 831-05-010 owned by Charles Kinnaird to mitigate the development's affects.

Sam Cannata on **e**; the south property line we're agreeing to run trees to offset that view corridor along the entire property line all the way down to the pump house. We're suggesting we put the trees on the Village's land (since the elevation was raised), instead of down low to get the maximum affect. We'll work with the Village Arborist to properly place trees. In my experience, people say throw in pine trees, you put in a bunch of pine trees close together, they grow so fast and after 5 years they start growing together and dying. That's why I suggest let's talk with the Arborist for a nice look.

Mr. Marrelli said that'll be a Planning Commission issue.

Sam Cannata on **f**; we're committing for Mr. Kinnaird's property to work with him and the Village to create landscape mounds, trees and landscaping and improve his drainage, his storm water problem on his property. We'd do that all to mitigate the affect on his property as it relates to the development.

Mr. Marrelli said that pretty much catches us up.

Chairman ProTem Fikaris asked the Board Members, does that satisfy the questions from last meeting?

Mr. Marrelli said I think the Planning Commission will have to look at the landscape plan to say if it's sufficient or not.

Sam Cannata said if you work with a professional Arborist or Landscaper to cross check what we propose, it just has to be reasonable. We want it to look professional, not a big hodge-podge. Our aim is to improve the view from the ball fields and help out Mr. Kinnaird's drainage problem.

Mr. Marrelli said since you brought up the drainage problem, these are pictures I received of Mr. Kinnaird's property right after a rain (**Passed out pictures received via e-mail from Mr. Kinnaird 4/11/12**).

Mr. Kinnaird, 294 SOM Ctr Rd said people don't realize the severity of what's coming off of there right now. It's changed drastically since the golf course is no longer there and the mounding has been put there for the soccer fields. My property and the Lazzaro property is the low point.

Mr. Caticchio asked if he can come white water rafting.

Mr. Kinnaird said you could.

Ms. Calta said the developer will have to have a wetland delineation done I believe prior to any approval at Planning Commission. Not that I'm saying any of this is a wetland. That could be one of the things that could potentially impact going back to Planning if there's something that impacts the site as far as the delineation goes that could cause the variances to be affected.

Mr. Caticchio asked if the water flows to the north.

Mr. Kinnaird said it goes east out to SOM. It all comes towards my house.

Sam Cannata said I think our Engineers can adequately engineer that water, maybe put a couple structures on his property and pipe underneath.

Chairman ProTem Fikaris addressed Mr. Kinnaird, asking if there's anything he'd like to add or address.

Mr. Kinnaird replied I have a lot of questions. I want to sit down and talk to these guys. I am the one who is going to be impacted the most by all of this. This is in my backyard. I have to wake up to this every morning. You guys have a right to build. You knew the zoning lines coming into the game. The buffering is a big thing to me. I put property stakes in my yard. I marked what the 20' setback would be away from my property that you want to park on. There are no trees left whatsoever from my back property line to that 20'. I put another ribbon at 60' which is the original parking lot. I put another ribbon at 100', the original building line setback. Legally, I'd like the building as far back as possible. I want my privacy. My property is being encroached. I don't know what you can do in that 20' setback from my property line. From my back door to the property line is roughly 145'. The furthest ribbon line is 100' off of the property. The first green line as the woods start is my property line. The pink ribbon is the 20' that they're proposing as a parking lot, then the middle one which is roughly 55-60' represents the 60' original parking line. The middle ribbon is where that building would be. Another thing, I'm scared about the water. Will this retention pond be able to handle it? Who is going to be responsible when my house has water damage?

Mr. Caticchio said the retention is an engineering issue.

Sam Cannata demonstrates the sewer tie-in location on SOM. If we have to cut open the road to get to the sewer, that's normal engineering. Regarding the trees, chances are with a small piece of ground like this, we'll have to cut all the trees down anyway and re-plant. It's going to be a tight sight. The fact that there're trees within the 40', they're all coming down. A lot of it's scrub brush anyway.

Mr. Hartt said that's a refreshingly honest representation by a property owner.

Michael Gatto said I understand Mr. Kinnaird's position, but if you look at what we're proposing versus what could go up there. Yes, we're looking to go closer, but with your permission, we'll landscape and do all the drainage on your property, and give you buffer on your property. What could go on there is a 3-story structure that would clear everything and you could be looking out at Progressive's building from your site. When you're looking at a 2-story building with gable roofs and shingles, it's going to realistically be like a 2-story house. The aesthetic view will be a lot more pleasing than a 3-story glass building. I understand what you're saying, but I think this is the lesser of two evils. Anything done there will be evil because you're getting rid of the woods. We have no problem re-grading your backyard for

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water issues. We'd come 20' onto your property and plant, so now you have 40' of a block that we can stagger. Does that make sense?

Mr. Kinnaird replied, to you it does. You're here in business to make money. You're encroaching on my property and my privacy for a few pine trees. You want to use my property.

Michael Gatto said that's a compromise. I'm looking to add more buffer for you on your property. It's a compromise to have these 2-story smaller buildings versus a 3-story building. I think we're all trying to make a compromise here. We'll do it at our cost, it's just 20' on your land. If you want 40' on your land, that's o.k. too. The compromise is to end up with smaller structure buildings instead of a PRG looking building back there, and grading for you, getting rid of your drainage problem. It's a give and take. The Village is making a compromise on this site with the variances in lieu of a smaller more aesthetically pleasing type of park instead of another PRG 3-story building.

Ms. Calta asked about mounding. You're looking at 20' between the property lines. You can't mound on 20'.

Sam Cannata said if he doesn't want to, we'll keep it the way it is.

Mr. Hartt asked Mr. Kinnaird if using his property at somebody else's cost to achieve a bigger buffer with the mound is acceptable for this Board to consider.

Mr. Kinnaird replied, I want to talk more about this. I don't want to sign off on anything. These are all just concept drawings. Who isn't to say in two months if we change tenants, we change plans. It looks good if it were 1-story Doctor offices.

Michael Gatto said it's up to 2-stories.

Mr. Kinnaird said the flip side is; we couldn't get the clients so now we designed 2 ½ stories. That building should be 100' from my property line and it's only going to be 47'.

Sam Cannata said look, we have trade offs here. We're all trading off and compromising. If you're not willing to compromise and the Village is not willing to compromise, I don't know what to tell you. We're willing to commit to doing certain things, we're willing to sacrifice certain things and put more money into certain things.

Michael Gatto said and we're legally in this development agreement, committing to the smaller structures.

Sam continued, the trade off for the Village is it's going to possibly spur some economic development that's going to be overall good for the community or it's not. That's why they have their trade offs. Your trade off is you can stand firm or you could have us fix your drainage problem, because the Village isn't, they told you they're not. You could get enhanced landscaping and a bigger buffer. That's your trade off. Let's be honest and get to the point.

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Mrs. Shatten addressed Mr. Kinnaird, BZA plan II is much better for you because there's no parking.

Mr. Kinnaird said these are just concept drawings that can change.

Sam Cannata said we're not changing the variance lines on either drawing. The building setback is the same on BZA I & BZA II. We're not going to come back to change the variances. We're not asking for a parking variance which is the critical thing.

Ms. Calta advised not to confuse a parking setback with a parking variance.

Sam Cannata states the point is we're not changing the setbacks.

Michael Gatto asked, what if Progressive bought this piece of property from us and ended up putting a building at that 100' mark, a 3-story building like what they have across the street, they're legally allowed to.

Ms. Calta thinks we're speaking somewhat out of turn as far as the Court Settlement because we're supposed to be looking at compatible architecture to Governor's Village. Governor's Village is 1 ½ stories.

Michael Gatto states it says architecture. It doesn't limit the size of the story.

Mr. Hartt clarifies it uses both terms; architecture and scale, which is what prompted us to be receptive to these variances in the first place. You may recall we initially acknowledged that full compliance with the zoning when building on the center of the site surrounded by parking was inconsistent with the Settlement Agreement which said it had to be compatible in size and scale.

**NOTE:** Mr. Hartt retracts this statement on Pg # 11 of minutes; "I erroneously spoke regarding what the Settlement Agreement says. It does not refer to scale. It does refer to architectural compatibility. I apologize".

Sam Cannata addresses Mr. Kinnaird. Again, we attempted several times to meet with you and you were busy. We're not going to play phone tag. We were willing to come Saturday, Sunday, whenever. We've offered ideas to mitigate your concerns but we haven't heard anything from you as to what you would want, other than you don't want it. Either you're going to work with us and compromise or flat out tell the Board you don't want it. We already had this meeting one month ago and I don't think we want to table it again. Just say how you feel.

Mr. Kinnaird said I don't want to be hard balled.

Sam Cannata said just say how you feel. This is your forum.

Mr. Kinnaird said if we want to sit down outside of this room and talk more about it.

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Sam Cannata said we've tried.

Mr. Kinnaird said I'm available. I tried to make myself available the one time.

Sam Cannata said you had to think about it for a month now. State it to the Board what you want.

Michael Gatto said we could clear that and put a building on the property line, but we're trying to give you more buffering. No question, it's a compromise.

Mr. Hartt advises the Board. These people have not agreed. I think that's a fact situation you need to take into account when making your decision. If they're not going to agree within the next few minutes within a short caucus or recess, then this is a fact that you have to take into account.

Mr. Caticchio stated, in other words, we make the final decision and none of you are going to be involved in the final decision.

Ms. Calta states any variance that comes before this Board, all of the neighbors are notified. They're here and you are here in that position to express your concerns as the neighbor to this development. You've expressed your concerns. The Board takes those concerns and evaluates them and uses them in making their decision. Having said that, I don't want to throw a monkey wrench into anything, but the process is, the Board makes their decision.

Mr. Caticchio adds, based on what's been presented to us to date.

Ms. Calta said correct and continued, stating an interested party can disagree with that decision and appeal it to Council. You stand in that position of one of those interested parties to appeal the decision within 10 days from today. It doesn't give you a lot of time but it would give you some time if you were to disagree with what the Board does tonight. I don't know what the Board's going to do. I don't know that the Board knows what they're going to do at this point. Having said that, if you do disagree there's a little bit of time for you to continue to have a dialogue. I understand your concerns because this is conceptual. How do you come to some level of detail that satisfies your concerns based upon a concept? That also lends itself to the fact that it is a concept and will go back to Planning. When it goes to Planning, those details will be presented to the Planning Commission. That's another opportunity to interject and include your concerns.

Mr. Marrelli states Planning Commission meeting is a public meeting.

Ms. Calta said I wasn't at the last meeting of this Board, but it seemed to me when you look at the different sides of this project, that this was where they focused their questioning of how this section is going to be impacted the most. It's hard when you just have a concept. I think what they're saying to you is; We'll do whatever you want so we don't impact your property but we need to use your property to do that. That's good and that's bad.

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Chairman ProTem Fikaris asked Mr. Kinnaird if he could summarize his thoughts and concerns for the Board.

Mr. Kinnaird expressed that water is a big issue. The runoff is going to be crazy. If for some reason this retention pond does not hold this water and I get water damage, what rights do I have?

Mr. Caticchio said Mr. Kinnaird you're speculating. Number one, this will be an engineered project. They'll have Engineers who will know exactly how much water is going to come off of this property based on a 500-yr storm. That is not a concern here. We cannot take it into consideration.

Mr. Kinnaird said let me say from past experience, your Engineers, when you took away the golf course doubled the water in my backyard when everybody said everything was fine, the water tables, the land and everything else. I had Mayor Rinker knee deep in that water to finally get him to realize.

Mr. Caticchio said this should correct the situation.

Mr. Kinnaird continued with another concern. They have guidelines such as Governor's Village, but this is just a concept. My property and my privacy are being encroached for their financial gain.

Mr. Caticchio states they have a right to use the property. I hate to be blunt but legally they're the ones that stand in the driver's seat. They've given you a fair opportunity to review this situation with them. My personal feeling, I don't know what the rest of the Board feels, but I think we should conclude this tonight based on the information that we have up to now. We'll take into consideration your issues as being the problems you want us to address.

**CORRECTION:** Mr. Hartt states I erroneously spoke regarding what the Settlement Agreement says. It does not refer to scale. It does refer to architectural compatibility. I apologize.

Michael Gatto said architecture and scale are two different things and architecture you can do 3-story, 4-story and still be the architecture of Governor's Village and that could be in your back yard 100' from there with no trees around.

Mr. Caticchio said no arguments, no threats. We all understand what the worse could be.

### SUMMARY

Mr. Caticchio asked for a summary of the conditions from March's meeting.

Mr. Hartt said the two concerns were the south and east property line. How you turn those into conditions is up to you.

Mr. Marrelli summarizes his best recollection of last meetings concerns:

- There was no issue on the north side because that's up against our property next to the cemetery.
- There was no issue at the street line except that Progressive was worried about the looks of it. Apparently both they and Governor's Village are o.k. with that. That takes care of the west.
- That would leave the south line which they're proposing to address with our Landscape Architect and the east line. The south line is against the soccer fields. They've committed to doing landscaping to the extent that it'll give some kind of backdrop to the fields. Mr. Hartt said remember though, there is no parking variance being requested along the south property line. Even though there was concern regarding the impact on the soccer fields, that 10' parking setback is permitted by right. The variance is for the building, not the parking. The 10' landscaping that's reserved is not subject to a variance, except for the eastern portion of that, that does go into the residential zone.

Mr. Hartt suggests because of the relative complexity of this and the fact you have two (2) concept plans before you that have not been approved, you should act on each of the six variances and how you react to those variances on each alternative. I hate to burden you, but we think you ought to make 12 different motions, one set of motions for BZA I and one set for BZA II Plan. You may conclude that the relationship of what's happening on the site to the surrounding property is different in one of the alternatives. We recognize they want flexibility. I think everybody understands that there's marketing and development flexibility but never the less, you do have two fairly distinctive concepts before you.

Mr. Caticchio asked, aren't we really only giving them an envelope in which to put their buildings?

Mr. Hartt replied no. You could say; I am giving different envelopes knowing that the perimeter of this property is broken up between buildings and parking. That may be a different outcome in terms of granting a variance compared to the other outcome which is saying I'm getting a bigger building in the center of the site and the impact is parking all the way around. To be clear about two options before you, you should be making your motions for each of the options.

Ms. Calta states that if they change it significantly and change the variances, they will have to come back here. I would agree with your envelope theory. You're giving them the framework, an envelope, and within that they can move those pieces and parts of the parking and the buildings. I would take each one separately. I think it's important to focus on what each variance is asking for.

Mr. Marrelli agrees. Especially on the east line, there's a big difference between BZA I and BZA II.

Chairman ProTem Fikaris asked if any additional discussion.

There was none.

**DECISION**

**BZA I Plan**

1. A request for a 90' building setback variance from Section 1173.05 (a) for the north property line provided that if the building is over 160' long then the building setback from the north property line will be 42'.

Mrs. Shatten, seconded by Mr. Russ made a motion to approve variance request (1.) based on the fact that the north land belongs to the Village.

**ROLL CALL**

AYES: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

NAYS: None

**Motion Carried  
Variance Approved**

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2. A request for a 40' 20' building setback variance from Section 1173.05 (a) for the south property line provided that if the building is over 160' long then the building setback from the south property line will be 42'. Note that for BZA-1-Phase II; at least 10% of the total parking length along the south property line shall be dedicated to landscape islands extending 20' into the parking area.

Mr. Hartt changes 10' to 20' building setback. The setback required is 30' and they're asking to go down to 10'.

Mr. Marrelli said if a building's 10' off the property line, there's no way you could block it with trees and landscaping. We at least all know what's possible there.

Ms. Calta said not to confuse things, but the building that's on BZA I noted as Bldg 3 is somewhat of an L-shaped building. If they want to move it around or flip it, then you're looking at a soccer field and a building that's up against that property.

Mrs. Shatten said they'd have no room for vegetation.

Mr. Marrelli said that would have to be mounding and trees on our property if you want to screen that out.

Mr. Hartt said if I look at the capacity of the site under this scheme and the building envelope they could get and the flexibility they'd have to move around, I don't think they need a variance on the south side. If you adhere to the 30', you have plenty of envelope and plenty of space to move this building around and get a fairly sizable building and still get the requisite parking.

Mrs. Shatten, seconded by Mr. Russ made a motion to deny variance request (2.)

**ROLL CALL**

AYES: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

NAYS: None

**Motion Carried  
Variance Denied**

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3. A request for a 50' ~~building~~ parking setback variance from Section 1173.05 (a) from the north property line. Note that for BZA-1-Phase II; at least 10% of the total parking length along the north property line shall be dedicated to landscape islands extending 20' into the parking area.

Mr. Hartt changes building setback to parking setback. Number one was the building setback to allow the building 10' from the property line which you've approved. This is a 50' parking setback to allow the parking 10' from the north property line.

Mrs. Shatten, seconded by Mr. Russ made a motion to approve variance request (3.) with the building to parking change as noted.

**ROLL CALL**

AYES: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

NAYS: None

**Motion Carried  
Variance Approved**

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4. A request for a 30' parking and building setback variance from Section 1173.05 (a) from North Commons Boulevard Right-of-Way.

Mr. Hartt said these two front buildings have been the discussion for the last two years and actually this is what makes this plan work in terms of the scale issue with Governor's Village.

Ms. Calta asked if these are for One-Story buildings.

Mr. Hartt said yes.

Mr. Caticchio, seconded by Mr. Russ made a motion to approve variance request (4.)

**ROLL CALL**

AYES: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

NAYS: None

**Motion Carried  
Variance Approved**

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5. A request for a 43' building setback variance from Section 1173.05 (a) from the east property line.

Mr. Hartt said this would permit the building 57' away from the property line.

Mr. Marrelli said it's supposed to be 100'. They want it at 57'.

Mr. Hartt added, up to two stories, but not three.

Mr. Caticchio asked what the maximum height is of a 2-story building.

Mr. Hartt said maybe 35'.

Ms. Calta adds, the way this building is situated on BZA I, a large majority of it is not in Mr. Kinnaird's plane, but again, this is an envelope so it could move.

Mr. Fikaris, seconded by Mrs. Shatten made a motion to approve variance request (5.)

**ROLL CALL**

AYES: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

NAYS: None

**Motion Carried  
Variance Approved**

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6. A request for a 40' parking setback variance from Section 1173.05 (a) from the east property line.

Mr. Hartt said this one puts the parking no closer than 20'

Mr. Caticchio, seconded by Mr. Russ made a motion to approve variance request (6.)

**ROLL CALL**

AYES: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

NAYS: None

**Motion Carried**  
**Variance Approved**

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**BZA II Plan**

1. A request for a 90' building setback variance from Section 1173.05 (a) for the north property line provided that if the building is over 160' long then the building setback from the north property line will be 42'.
2. A request for a ~~40~~ 20' building setback variance from Section 1173.05 (a) for the south property line provided that if the building is over 160' long then the building setback from the south property line will be 42'. Note that for BZA-1-Phase II; at least 10% of the total parking length along the south property line shall be dedicated to landscape islands extending 20' into the parking area.
3. A request for a 50' ~~building~~ parking setback variance from Section 1173.05 (a) from the north property line. Note that for BZA-1-Phase II; at least 10% of the total parking length along the north property line shall be dedicated to landscape islands extending 20' into the parking area.
4. A request for a 30' parking and building setback variance from Section 1173.05 (a) from North Commons Boulevard Right-of-Way.
5. A request for a 43' building setback variance from Section 1173.05 (a) from the east property line.
6. A request for a 40' parking setback variance from Section 1173.05 (a) from the east property line.

Sam Cannata said even though we may have a single story building along that north property line, it could conceivable go to 160'. That's why we put that provision in here.

Mr. Hartt said on all of these, it's my view that this plan because of the mixing of buildings and parking, and smaller buildings, that this plan with the variances has less impact on the rest of the world than the other plan. If you're approving the variances for BZA I, I think it's reasonable to approve the variances for this. You might even change your vote on number two which was giving no relief for the bigger building when they're requesting some relief for the smaller buildings.

Mr. Caticchio, seconded by Mr. Russ made a motion to approve variance requests for BZA II Plan, all of the six (6) requests all at the same time.

**ROLL CALL**

AYES: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

NAYS: None

**Motion Carried**  
**Variances Approved for Numbers 1, 2, 3, 4, 5 & 6.**

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**'CONDITIONS' to be applied to both BZA I & BZA II Plan**

Discussion

Chairman ProTem Fikaris begins with if this project does not go through, that all variances would be rescinded.

Mr. Marrelli states you guys can't take these variances and another plan and sell it to somebody. The timeframe would be if this project never gets off the ground then everything's off the table.

Ms. Calta said having said that, we're all contemplating a development agreement. Typically in the development agreement we would have a time frame in there.

Sam Cannata said a lot of times in codes I see the project has to start within a certain period of time.

Mr. Marrelli said a lot of building permits are good for one year. Once you're issued the permit, you have one year to get started.

**Condition #1 VARIANCE TIED TO PROJECT**

- **Ms. Calta states the variances are going to be tied to this project.**

**Condition #2 TIMEFRAME OF VARIANCES**

- **Mr. Hartt suggested a timeframe of 2 years for the front two buildings and 4 years from final Council approval to finish the back portion of the site and time can be extended mutually by the Village and Applicant.**

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Mr. Caticchio asked if Planning Commission will have something to say about the stormwater concerns.

Ms. Calta said they'll be required to bring forward as part of their plans a Stormwater Management Plan. I'd add, Mr. Kinnaird is not part of this development, he's a neighboring property. When the Engineers look at the site, often sometimes they look at the site only and not the neighboring property. In this instance we want to make sure they look at the neighboring properties along with the site.

Mr. Caticchio asked if it's going to be a dry or wet basin.

Sam Cannata replied dry.

Michael Gatto asked for clarification that they have Mr. Kinnaird's approval to get onto his property, i.e. a construction easement for a short period of time to fix his problem. It's going to be hard to make this condition if Mr. Kinnaird doesn't approve. We need his permission. We'd enter from the west not to have to come through his front yard with equipment.

Chairman ProTem Fikaris asked Mr. Kinnaird if any of his water comes directly from the west, or does it come from the south-west corner.

Mr. Kinnaird replied it comes everywhere. On Midvale, that's a swale that runs right up through the middle of this whole property. Just north of the property line where the new gas meter is, that's swamp land all year round. To the south side, I get all the water from the other half of the property. When I waterproofed by basement, I mounded 40' or so. The south side is really bad because of the mounding for the soccer fields.

Mr. Caticchio asked John if before Progressive starting building if they got EPA approvals.

Mr. Marrelli said they did all their wetland delineation. There were wetlands established and I think they re-channeled the creek back there.

Mr. Caticchio suggests Sam & Michael take a look at those permits.

**Condition #3 LANDSCAPE BUFFER**

- **Mr. Caticchio states the condition is to incorporate the drainage problem of PPN 831-05-010, Charles Kinnaird 294 SOM Ctr Rd with the project at the time of site clearing.**
- **Ms. Calta added the plan should look at the Village property, Midvale property, Kinnaird property, and what was the Lazzaro property.**
- **Mr. Marrelli established the condition is Applicants will do everything in their power with Mr. Kinnaird's permission to correct the waterflow problem across his property.**
- **Mr. Hartt adds, the Applicant is to make reasonable efforts to extend the 20' buffer setback onto the Kinnaird property to the extent that that could be accomplished.**

Mrs. Shatten asked if Mr. Kinnaird has to suffer with this water issue if the applicants don't start the project for another 2 - 4 years.

Mr. Marrelli said it will be addressed at the time of clearing. The first two buildings have to get built and the parking lots have to get built. It's my opinion that when those happen, this whole site gets cleared because you have to get back to this pond. I think at that point, that's when the drainage issue should be corrected. Am I right?

Sam Cannata said I don't know if 'clearing' is the right trigger point. I think the trigger point is when you put the stormwater structure improvements in.

Mr. Marrelli asked, for the front two buildings, will you have to pipe back to this pond?

Michael Gatto unsure, not engineered yet.

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Mr. Marrelli said that makes a big difference. That means Phase II can sit for 4 more years. I would assume there'll be a request for a clearing permit which will denude this whole property and then nothing will happen for 4 years. That's why I say the drainage issue should be addressed at 'clearing'.

Mr. Hartt states I'm not sure this drainage issue is directly related to a condition for Board of Appeals action. I think it's more Planning and Council's responsibility when they draft the Development Agreement.

Mr. Kinnaird asked, from the time it's cleared, who is liable and responsible if we have a big gush of rain and I incur water damage to my house?

Sam Cannata replied we're liable only to the extent that water runs off our property onto yours and causes some sort of damage. We can't be responsible for what the Village did 5 years ago. We're not here to correct that.

Mr. Kinnaird said once you clear that site, that water has nothing to stick to.

Sam Cannata said you have existing problems there now. That's documented.

Michael Gatto said clearing is not going to cause impervious land.

Sam Cannata said once we strip it, we're obligated to put the stormwater structures in. When we 'strip the land', not necessarily 'clear it', because the top soil & roots are still going to be there.

Mr. Marrelli is still trying to figure out how they're going to build the 2 front buildings and put a parking lot in without putting structures in.

Michael Gatto said the detention basin will get sized and then we'll run some type of stormwater drainage over that site.

Mr. Marrelli said you're missing my point. How do you build these 2 front buildings and a parking lot, where are you draining that to?

Michael Gatto said to the detention basin.

Mr. Marrelli said o.k., so how are you getting piping from the parking lot in these buildings?

Michael Gatto said we'll probably run it either along the north or south property line.

Mr. Marrelli said which means you've got to clear a path to put the pipes in the ground.

Ms. Calta said if you're moving or doing any sort of construction activity, whether you call it taking down trees or stripping, you're going to have to put up stormwater planning, silt fences and all that.

Mr. Caticchio asked about the topography of the land. How does the water run from North Commons Blvd towards SOM Ctr Road towards the basin?

Mr. Marrelli said North-East.

Mr. Caticchio said you could handle the water if it runs North-East, you could strip the land and handle the water with ditches. You don't have to put drainage structures in.

Michael Gatto said we could.

Ms. Calta interjects. I think we're getting into what's the plan going to be. That has to go through Planning. I think it's important though to have this discussion. In trying to evaluate the impact on the neighboring properties and addressing the stormwater, what I'm hearing is it will get addressed. It will be addressed at the planning stage when this goes through Planning Commission. But, there is a clear idea here that with the phasing of this project that your stormwater issues may not be addressed until Phase II.

Mr. Kinnaird asked, do I have to apply for insurance then?

Michael Gatto said we're not going to create additional water drainage on your property.

- **Mr. Hartt's recommendation for condition language; An 'Area Drainage Plan' must be approved by the Village with Mr. Kinnaird's knowledge, understanding and input. The phasing of the implementation is determined either at the time of clearing or the time of construction of Phase I, whichever comes first.**

Michael Gatto is apprehensive with Mr. Hartt's recommendation. I don't want to put up Bldg 1 which is 5,000 sq ft and it ends up being a \$500,000 project and I have \$500,000 in development cost for water. That'll never get financed.

Mr. Hartt states, I said a key component of this was the phasing of the construction. It's an 'Area Drainage Plan' that's going to be adopted by the Village, including the phasing.

Mr. Caticchio comments. No Engineer is going to engineer the storm sewer system for this property unless the Engineer's equipped with the total property. Now, they can put it in and different times, but it has to be engineered totally.

Mr. Marrelli agrees. They have to have it engineered for the whole property.

Michael Gatto said that's not possible because we don't know if we're going to have 5,000 or 10,000 ft of roof, 5,000 or 10,000 ft of parking, so we'll do a worse case scenario on the detention which is not that costly. On the sizing of pipes, that'll have to get done in phases.

Mr. Marrelli said understood.

**Condition #4 STORMWATER**

- **Mr. Hartt summarizes Stormwater Condition; Applicant is obligated to prepare an 'Area Drainage Plan' for this project, including phasing of the drainage plan approved by the Village Engineer prior to either clearing of the site or the construction of Phase I. There's an obligation to at least communicate with Mr. Kinnaird what the plan is intending to do relative to his property.**

Chairman ProTem Fikaris asked if we need condition language on the Court Settlement.

Ms. Calta replied this is all based on the premise.

Mr. Marrelli said the two wildcards are the wetlands delineation and second is the Court Judgment that could affect the whole project.

Chairman ProTem Fikaris asked if there are any further Conditions to discuss.

There was not.

**DECISION- CONDITIONS**

Mrs. Shatten, seconded by Mr. Russ made a motion to approve the four (4) Conditions as discussed & noted. Conditions to be applied to both plans BZA I & BZA II.

**ROLL CALL**

AYES: Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ

NAYS: None

**Motion Carried.  
Conditions Approved As Noted.**

**Right to Appeal**

**Chairman Pro Tem Fikaris stated written notice will be mailed by the Building Department confirming the decision and any interested party has the right to appeal within 10 days.**

**ADJOURNMENT**

Mr. Russ, seconded by Mr. Fikaris made a motion to adjourn the meeting.

**ROLL CALL**

Ayes: All

Nays: None

**Motion Carried**

**Meeting adjourned at 9:45 p.m.**

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Secretary