

**ZONING BOARD OF APPEALS
MEETING MINUTES
Mayfield Village
March 20, 2012**

The Board of Appeals met in regular session on Tues, March 20, 2012 at 7:30 p.m. at the Mayfield Village Civic Center, Main Conference Room. Chairman Joe Prcela presided.

ROLL CALL

Present: Mr. Joseph Prcela Chairman
Mr. Paul Fikaris Chairman Pro Tem
Mrs. Shirley Shatten
Mr. Pat Caticchio
Mr. William Russ

Absent: Ms. Diane Calta Law Department

Also Present: Mr. John Marrelli Building Commissioner
Ms. Deborah Garbo Secretary
Mr. Ted Esborn Economic Development Coordinator
Mr. Nick Delguyd Councilman

CONSIDERATION OF MEETING MINUTES: **Nov 15, 2011**

Mr. Caticchio, seconded by Mrs. Shatten made a motion to approve the meeting minutes of Nov 15, 2011.

ROLL CALL

Ayes: Mr. Prcela, Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ
Nays: None
Motion Carried
Minutes Approved as written.

2012 ORGANIZATIONAL

ELECTION OF CHAIRMAN

Chairman Prcela opened the floor to a motion for Chairman of the Board of Appeals 2012 nominations.

Mr. Caticchio, seconded by Mrs. Shatten made the motion to nominate Joseph Prcela.

The nominations were closed. Chairman asked if there was any discussion. There was none.

Chairman asked for a Roll Call on the nomination Joseph Prcela.

ROLL CALL:

Ayes: Mr. Prcela, Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ
Nays: None
Motion Carried
Mr. Joseph Prcela to serve as 2012 Chairman.

ELECTION OF CHAIRMAN PRO-TEM

Chairman Prcela opened the floor to a motion for Chairman Pro-Tem of the Board of Appeals 2012 nominations.

Mr. Russ, seconded by Mr. Caticchio made the motion to nominate Paul Fikaris.

The nominations were closed. Chairman asked if there was any discussion. There was none.

Chairman asked for a Roll Call on the nomination for Paul Fikaris.

ROLL CALL:

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

Nays: None

Motion Carried

Mr. Paul Fikaris to serve as 2012 Chairman Pro-Tem.

ELECTION OF SECRETARY

Chairman Prcela opened the floor to a motion for Secretary of the Board of Appeals 2012 nominations.

Mr. Caticchio, seconded by Mr. Russ made the motion to nominate Deborah Garbo.

The nominations were closed. Chairman asked if there was any discussion. There was none.

Chairman asked for a Roll Call on the nomination for Deborah Garbo.

ROLL CALL:

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

Nays: None

Motion Carried

Ms. Deborah Garbo to serve as 2012 Secretary.

PLANNING & ZONING REPRESENTATIVE

Chairman Prcela opened the floor to a motion for Planning & Zoning Representative to the Board of Appeals 2012 nominations.

Mr. Caticchio, seconded by Mr. Russ made the motion to nominate Paul Fikaris.

The nominations were closed. Chairman asked if there was any discussion. There was none.

Chairman asked for a Roll Call on the nomination for Paul Fikaris.

ROLL CALL:

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

Nays: None

Motion Carried

Mr. Paul Fikaris to serve as 2012 P & Z Rep to the BOA.

CONSIDERATION OF CASE NUMBER: #2012-01

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 BOA-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 BOA-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 Rehabilitation, 290 NCB

SOM Ctr Rd: 294 SOM Ctr Rd.

OPEN PORTION

Chairman Prcela called the meeting to order, reciting the variance request and administering the oath.

OATH

Chairman Prcela 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.

INTRODUCTION by Mr. Esborn

Mr. Esborn said Sam Cannata & Michael Gatto first met with me and David Hartt 2 years ago this month. David was not able to be here tonight, but something he and I want to make as clear as possible is that Sam & Michael have taken steps in this project that David & I have recommended they take. They have relied on our guidance and acted on our guidance. We've consulted Mayor Rinker frequently throughout the process and reflected his feedback in discussions we've had with Sam & Michael.

Our goal from the beginning of the time we met with Sam & Michael was to find a strategy for their project that would be most conducive to success. This is an enormous economic development opportunity. Especially given it's one of the few remaining pieces of land in Mayfield Village capable of being developed for commercial use.

In light of all that, I want to give a very brief recap of what we've done in the last two years. Instantly this project was complicated by the fact that there is a Court Settlement Agreement dictating use on the land as well as the zoning. That Settlement Agreement is from 2006 with Costanzo & Son and it also involves 500 SOM which is the piece of land the new Library will go on.

The Agreement calls for construction on the property to be compatible in architecture to the architecture of Governors Village. Immediately, that limits the developer in what would otherwise be the maximum amount of square feet that could be developed on that land. The maximum amount of square feet without any Settlement Agreement operating could be achieved by a single building, maybe 2 or 3 stories in the middle of the site with a sea of parking around it but that would be precluded by the Settlement Agreement.

In the over the year period that we went back and forth with Sam & Michael on a site plan was again, the goal to find a plan that was most conducive to success given the unique situation with the Settlement Agreement. We saw there were tight parameters. We went looking for a site plan that would be economically feasible for these guys, meet the zoning, comply with the Settlement Agreement and have a nature and character that was attractive enough that it was going to propel it through the approval process. We knew we were dealing with tight parameters and it was going to take a good fit for a site plan to do that. We spent over a year refining this.

Last summer we arrived at a plan we thought was the best fit. It may not have completely met the zoning or completely met the applicants' projections, but it felt like the best balance. At that point, we recommended the applicants break the project into 3 phases and start the process with Planning and Zoning looking at just the first phase which would be 2 buildings close to North Commons.

It was around that time that the possibility that a larger tenant who would need a building larger than any of those small buildings on the plan became serious. The applicant wanted to allow for that possibility. This past Fall they pulled back from the Planning & Zoning process and we

worked with them in what was really a condensed version of what we had done to come up with the original site plan, to come up with an alternative site plan that included a larger building that we felt was the best way to balance the interest of the Village with feasibility for the developers.

Ted concludes. I think the best way to state this from the point of view from the Planning Development Department is that what you have in front of you is what we feel is the best way to maximize the Village interests while still allowing this to be feasible for the applicants. It's not an easy task. There're a lot of moving pieces in this project. David & I feel what you have in front of you, we can't think of a better way to do it.

OPEN DISCUSSION

Chairman Prcela thanked Mr. Esborn for the introduction. I think everybody is looking forward to some development in the Village. Obviously this Board has to weigh the benefits of development with a lot of other factors. We have two plans before us; BZA-1 & BZA-2. Ted, you mentioned what we see before us is what you feel is the best. Does that refer to BZA-1 or BZA-2?

Mr. Esborn said what we were shooting for was allowing for the possibility of a larger tenant and giving an alternative that presents that. This is the best set of two alternatives.

Mr. Caticchio states, I'd like a little bit of background on this whole situation. Who are the parties of this Settlement Agreement?

Mr. Esborn replied it's between Mayfield Village and Costanzo & Son. Without getting into the details that I don't know well enough, it grew out of the Progressive Campus III plans. To grossly over generalize it, it was a land transaction that resulted as part of those plans. It involved Mr. Costanzo taking possession of property that was owned by the Village.

Councilman Nick Delguyd, 6750 Thornapple said this is directly part of the 500 SOM Eminent Domain Settlement. This Settlement set the zoning standards for the frontage being residential, what had to stay residential and then the property behind it going back to North Commons Blvd. That Court Settlement sets the zoning requirements for this.

Mr. Caticchio said in reading this document, I get the impression we're being asked to overturn or modify the document.

Sam Cannata said no. We're not looking to overturn the Court Ordered Settlement in any way. The Settlement provides that the lot along SOM Center Rd is to remain with no structure, not to be built on. We're going to adhere to that. Another main provision is that our architecture has to conform to Governors Village. We're going to abide by that. Those are the two main provisions of concern. It's to remain zoned Office/Laboratory. We're going to abide by that. We're not looking to change the zoning here. We're going to follow what's dictated in the Settlement between Mayfield Village and Costanzo. The document you're looking at briefly talks about the Settlement Agreement, but then it goes on to talk about the development and

some of the self imposed conditions and/or restrictions that we have agreed to put upon ourselves to conform to what Mayfield would like to have in their Village. A lot of them are not required by your code or ordinances. We're suggesting that we'll do a development agreement with Mayfield so it can hold our feet to the fire on certain things that you would want us to abide by. They're mostly self imposed restrictions, i.e. your code provides for a building that can be 2 ½ stories. We're saying we won't build a building more than 2 stories. This is just an outline of what we think will become a development agreement that will be developed with your Law, Planning & Building Department.

Property Ownership

Mr. Caticchio said the applicant shows East Commons, Ltd. Do they own the property at this time?

Sam Cannata replied no. We have a contract to purchase the property.

Mr. Caticchio asked who the owner of the property is now.

Sam Cannata replied Sam Costanzo & Sons. Sam Costanzo passed away, it's in his estate.

Unnecessary Hardship / Practical Difficulty

Mr. Caticchio said I'm a little bit puzzled. Under the Charter, the only thing this Board can consider is 'unnecessary hardships' or 'practical difficulties'. Can someone tell what the unnecessary hardships or practical difficulties are here?

Sam Cannata will try to address. What we're here to talk about is not a use variance because we're abiding by the zoning. We're here to talk about an area variance. I think the Ohio standard for hardship addresses the use. We're not here to talk about that.

Mr. Caticchio asked, wouldn't that come under the Planning and Zoning Commission's jurisdiction instead of us?

Sam Cannata replied the hardship we're here to talk about that we feel we're encountering is the Court Ordered Settlement with the requirements to abide by the architecture of Governors Village and the fact that we have to keep one acre of our property unbuildable.

Mr. Caticchio said neither of those come under our definition. I refer back to the Charter;

“Unnecessary hardships or practical difficulties as a result of some peculiar or unique conditions or circumstances pertaining only to the zoning lot in question.”

Mr. Caticchio continued. We're talking about circumstances about the physical land. You've got a big gully there. The reason I ask this question is, you may be in the wrong room here.

Sam Cannata said we're here because we were directed and told after Planning Commission that our next step is the Zoning Appeals Board.

Mr. Caticchio asked if this has been run by the Law Department.

Mr. Esborn replied yes. The Law Dept has said the practical difficulty is the Court Settlement Agreement.

Mr. Caticchio said I disagree with the Law Dept. That has nothing to do with the physical configuration or condition; 'peculiar or unique condition or circumstances pertaining only to the zoning lot in question'.

Mr. Esborn said we think a peculiarity could be a settlement agreement.

Mr. Caticchio said we've been through this many times before. They seem to take a rather lax approach to this whole thing. We are bound by the Charter. I want to make sure you guys know there's a possibility that we have no jurisdiction here.

Chairman Prcela said I believe we do have a jurisdiction. I spoke with Mr. Marrelli. I did not speak to our Law Dept.

Mr. Marrelli said there have been many consultations with the Legal Dept, Planning Dept & Administration. The variances that the applicant is seeking are setback variances. The peculiarities, if you've read the minutes of the Planning and Zoning meetings have been considered as the Court Ordered uses that have been placed on the property. It's already pretty much been established that because there's a Court Order on how this property could be used. It's unlike any other property in the Village that has that same zoning because they're not allowed to do the things that everybody else can do. That's the peculiarity. That's the way it's been interpreted.

Chairman Prcela asked Sam what it is in the Agreement with the Costanzo property that's making him seek a variance.

Sam Cannata replied one big portion is that one (1) acre of the property we're not allowed to build on. One out of five acres is a substantial amount of property.

Mr. Caticchio said that's a financial condition. It's not a land related unique condition. Excuse me for being a little bit skeptical on this. The first reason I'm bringing these issues up is a full record should be made here. That way, if any questions come in the future, a record has been made. Understand we are a quasi judicial entity. Therefore we want to follow the rules of court as much as possible. You should be aware of the fact that anybody who has an interest in wishing to contest this can.

Chairman Prcela asked if required notices were sent to the abutting properties.

Mr. Marrelli confirmed. We have 3 of those 3 parties here tonight representing Progressive, Governors Village & Resident Mr. Kinnaird @ 294 SOM.

Alternative Plan Options

Sam Cannata said Michael Gatto my Partner just made a good point. Note that this is all part of a negotiation that would work best for not just us as developers but for Mayfield Village. Reality is we can come in here and put in a 150,000 sq ft building, go up 3-stories with no variances, as long as we met the parking requirements and maybe put in structured parking like Progressive. We think we can do that. The alternative is to try to work something out with the Village that would be conducive to Governors Village, enhance the neighborhood, conform to streetscape of lighting so it's uniform and preserve this lot. Although it's zoned residential, we're not arguing the fact that maybe we can put a fourplex there. We're going to back off that and leave it green.

Councilman Nick Delguyd questioned the acre Sam is referring to.

Chairman Prcela clarified it's the acre on SOM PP #831-05-007. It's the one specifically spelled out in the development agreement that needs to remain green undeveloped land. In this case it appears it's being proposed to be a retention basin which I think meets the intent.

Mr. Russ added it's the acre with the For-Sale sign on it.

AERIAL VIEW PRESENTATION by Mr. Marrelli

Mr. Marrelli points out the 831-05-007 parcel proposed as a retention pond. The south line has our soccer field right next to it. The variances you're looking at are along the south line. There's supposed to be a 10' vegetation buffer shown on the plan, but we took our Village Arborist out there and he's pretty convinced there's no way you can put a parking lot here and save any trees. Assume all these trees will go away between the soccer field and development. I don't know what trees can be saved when the roads and buildings go in but I think it's safe to assume there'll be no trees in here when this is done. This house in the lower right corner is Mr. Kinnaird's property. There's also a request for a variance that backs up to his property line.

Mr. Caticchio asked if there's been any consideration to include the Kinnaird property into this development to keep another opening from appearing on SOM Center.

Sam Cannata replied one of the stipulations in the Court Ordered Settlement Agreement is we cannot have any access off of SOM. I spoke with Mr. Kinnaird tonight and offered some ideas to him to mitigate the development.

Michael Gatto stated I'm almost certain it lists Mr. Kinnaird's property as potential development and no access in that Court Ordered Settlement.

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Mr. Marrelli points out the north line of this property that abuts the Village property. This is zoned residential. There are no plans for anybody to build any homes in this treed area. This will remain green, hopefully forever.

Chairman Prcela asked, the Village's current plans are to maintain the residential zoning and not develop it?

Mr. Marrelli replied correct. I wanted to point that out because that has some bearing on the variance being requested to do more development towards that line.

Chairman Prcela said the other setback requirement is off of North Commons Blvd.

Michael Gatto reads off Journalization of Settlement Agreement;

Permanent Parcel Number 831-05-007 shall remain as undeveloped and undisturbed green space and shall not be used for the erection of any structure or for use of access to or from SOM Center Road through the property described in Exhibit "B", "C", or any other adjacent property. Furthermore, Permanent Parcel Number 831-05-015 shall not be used for access to or from SOM Center Road through the property described in Exhibit "B", "C" or any other adjacent property."

Michael said so it restricts access for Mr. Kinnaird's property off of SOM Center.

Chairman Prcela asked if this has been run past the Law Dept. It appears to me that storm water management would be considered 'green'.

Mr. Marrelli believes that's the case. It's not considered a structure, not considered a building. They're looking at it as green space. We haven't seen a landscape plan yet. We don't know what kind of landscaping could be done to hide/buffer it.

Chairman asked if it's being proposed wet or dry.

Sam Cannata replied dry. Wet becomes a nuisance, a liability.

Michael Gatto said further to your point John. The south property line, if those trees go, if they're dead, the landscape plan will account for new trees.

Mr. Marrelli refers to the 2 plans. One shows a path on that 10' which has been placed on top of the green existing vegetation. There can't be both. You have to straighten that out with your Landscape Architect. You show two different uses on the same 10'. Probably neither will be there because when you put the parking lot in, all these trees will get killed. The reason I point that out, right now with our soccer fields, when you look from Parkview and SOM, when you look towards the soccer fields, all you see is green space and trees. When these trees are gone, you're going to see green space and buildings. So that buffer, that backdrop for the soccer field is something Planning Commission's going to have to decide that it's o.k. to open this up to buildings or not. You're asking for a 30' building setback variance on the south side. The

Board needs to be cognizant of the fact that as you build and park towards that south line, these trees go away, there's going to be no visible backdrop for the soccer fields anymore.

**Residential / Commercial Zoning Clarification Required
Sam Costanzo vs. Mayfield Village Court Case**

Charles Kinnaird, 294 SOM Ctr Rd, following swearing in by Chairman states that with the buffer it's the same thing on the east property line. As far as taking the trees out, the parking lot basically comes into my backyard.

Chairman Prcela asked Mr. Kinnaird what his position is on the proposed development.

Charles Kinnaird replied I'd love to see it be woods forever. If it's sold, I want to see it as small and low as possible. Lighting is a big thing, people walking in my backyard, parking and losing my privacy. This is zoned single family residential well back into the woods.

Michael Gatto said it's not. That was in the Eminent Domain Case. That was negotiated with Costanzo as commercial.

Simultaneous discussions occur.

Chairman Prcela establishes order, asked for one conversation at a time. My understanding of the zoning of the parcel that abuts your parcel is that it's not zoned residential at this time. It's zoned Office/Laboratory, Medical-Office. Is that your understanding as well?

Michael Gatto said yes, per the Court Case. That's not something we did. That was a settlement between Costanzo and Mayfield Village. We're not the bad guys on that please.

Mr. Marrelli said we have to assume they're correct, that when the court made the settlement, they effectively wiped out the single family zoning behind your property. There's still a doubt and there still may need clarification required to absolutely for sure put that to bed. There may be a strip of single family zoning that goes between your property and Mr. Kinnaird's property that hasn't been settled.

Mr. Esborn states we intend to get that clarification. This is the area (demonstrating on aerial view) on which there's some ambiguity in the Settlement Agreement. We've interpreted it as being Office-Lab.

Chairman Prcela asked, if we have ambiguity on the actual zoning of that parcel, is it safe to say we may be a little premature on the setback for the variance?

Mr. Marrelli states for the purposes of this meeting and because the legal department hasn't had this confirmed, we're operating on the premise this is zoned commercial.

Mr. Esborn said legal suggested going through this process contingent on the Court clarifying it as Office-Lab.

Chairman Prcela said for the purposes of this meeting and any motions on that setback, we're going to assume it's zoned Office-Lab all the way to the end of the parcel. Any action we take will be contingent on that.

Mr. Marrelli said it has to be contingent. If it comes back and the Court says "We didn't rezone that. We can't rezone that.", then everything you do here, the contingencies all kick in and it starts over. We're proceeding with wording from the Law Dept that, with no disrespect to you, that their property is suffering irregularities because of the Court Order. Not a physical hardship, but a legal hardship and based on the fact that the zoning may or may not be commercial there, we're going based on the fact that it would be commercial. There are two assumptions here. One will be straightened out by the Court. The other you can take up with the Law Dept.

Chairman Prcela said my personal opinion based on the hardship requirement, I'd side with the applicant in thinking that since this is the only parcel that's developable that has the restrictions on it, I would say that, in my opinion would be a hardship. The question then becomes, I'm a little concerned with a lack of buffering space to the soccer fields (where my neighbors and my kids play) and then of course the residential property. The setbacks are put in place to protect development from coming up right to somebody's back yard. Does the applicant have a tenant in mind that's requiring this much square footage for the parcel?

Sam Cannata replied, we've been in discussions with tenants but it's a fluid process. We think given the economy, this approach with smaller buildings is more saleable. We threw in the larger building idea because we've been running around with a couple large quality users that I think the Village would like to have in their town. We have to have something to give them.

Mr. Marrelli said I don't think it's been made clear that the front of this property is to put medical use on it. Of course we're hoping to see 50 or 60 Doctors move into this area.

Sam Cannata said this is designed for professional Accountants, Lawyers, Medical, etc that will bring high paying jobs.

Michael Gatto sets the stage. There's a lot of hardship with this property with the Court Case. We came in initially 2 years ago with a plan that was basically to cut a little road in there and build one-story small residential looking office buildings. It would look very much like larger homes, i.e. operable windows, shutters, stone, brick, gable roof with shingles on it. That is still our ultimate plan. We believe that is still the way the market is going to go. Our plan is also to sell these buildings off so you have permanent business residents in the community. We have interest from two tenants right now that are in that 40 – 45,000 sq. ft. range. We had a drawing at one time done where we could meet all the zoning restrictions, put a 3-story building up at 15,000 sq ft per story and a sea of parking and you'd have a 45,000 sq ft building that would be extremely visible from the soccer fields, from 91, from all over the place. That's not what you guys want and that's really not what we want. But, we're getting to the point after two years where our neck is going to be on the line with the purchase of this property and we're going to be out some hard dollars. We're going to have to make a move at some point to do something.

We don't want that, but yet, we don't want that to be a fallback position either. This has been worked on and massaged with the legal department, with Mr. Hartt, Mr. Esborn and a lawyer to come up with a property that the first two buildings are in line and the back section is a fluid situation. If we end up with a 3rd or a 4th building, it sets the tone for the rest of the property. If it comes down to a point where we do end up getting that 40,000 sq ft tenant, it will set the tone for the rest of the property. We're looking to work with the Village to come up with a plan that makes everybody happy, that we feel is great for the neighbors, the soccer fields and could create some development. If you look at BZA-2, filled with a bunch of Doctors, Accountants, Lawyers, guys that are making big money and paying taxes on it, it's going to be a whole lot more appealing than 40,000 sq ft of chairs at office wages.

Mr. Caticchio said you said you dealt with the Village, the Law Dept and Planning Dept, now you're before us, you have to deal with us which is the last step in this whole thing. Let's keep that in mind for the rest of this meeting.

Michael Gatto said sure, but I think the focus is the setback lines for the parking and the building, to come up with a box that we can develop within.

Chairman Prcela said right. I think Mr. Gatto brings up a good point. It sounds to me the applicants are not looking for a variance to the Settlement Agreement. They're looking to variances from our 1173.05 Yard Regulations setbacks.

Mr. Caticchio asked, how many feet is it from the property line of SOM Ctr Rd to the west line of Kinnaird's property?

Charles Kinnaird said now because of the Eminent Domain, roughly 180'.

Chairman Prcela asked what the building setback is supposed to be that abuts Kinnaird's property.

Mr. Marrelli replied 100' because it's residential, and 60' parking setback.

Mr. Caticchio asked about the storm water management area. Mr. Marrelli said that's about 180', about same depth as Kinnaird's property.

Mr. Caticchio said the block that's an issue that needs clarification from the Law Dept., that's the remainder of the 300'?

Mr. Marrelli said you have 180' and then maybe another 70' – 100' little sliver.

Chairman Prcela makes note that everything done for this meeting tonight will be conditioned on assumption that that sliver of residential zoning doesn't exist until we receive clarification from the Law Dept.

Abutting Property Owners Comments

Chairman Prcela said we have representatives from Governors Village and Progressive. Are you here to speak against or just listen in? Do you have any comments?

Michelle Gorman, Administrator Governor's Village, following swearing in states I'm here to listen in. We're also going to be going through this process. I've met with John about expanding our structure as well. I wanted to know what's going across the street from us and to be aware of the process.

Chairman Prcela asked, are you opposed to this request?

Michelle Gorman said not at all.

Kevin McGrath, Manager of Development Progressive Insurance Co. 5920 Landerbrook Dr, following swearing in states I wouldn't say I'm necessarily here to speak against the project as much as for informational purposes. We're trying to understand it. This is the front door of our second campus. We're obviously interested in the integrity of the North Commons Right-of-Way. It would seem upon looking at this, variances on all sides, it seems the Developer is trying to put 10 pounds into a 5 pound sack. There's concern for us about the overcrowding of the property. There may be an issue of scale with the development that may not be appropriate.

Sam Cannata said we're restricted by the parking. We'll always be restricted by the parking. It's important to point out we're not asking for any variance on parking. We'll always be handcuffed by that. I think Progressive's points are well taken but Mr. Hartt did extensive analysis with Ted & I that will show we're not overdeveloping this. In fact, if we put in structured parking like Progressive has, we can go a couple hundred thousand sq. ft here.

Chairman Prcela said I think structured parking would fly in the face of the development agreement. Where would you put structured parking?

Sam Cannata said a 3-story building, parking underneath.

Mr. Marrelli asked, do you think that would be the same 1-story architecture as Governors Village?

Sam Cannata said we're not restricted by stories, we're restricted by.....

Mr. Marrelli interjects. That's the problem with the Court Order. It says 'similar'.

Michael Gatto said these are a lot of the hardships. No one wants to get into a legal battle here. Realistically speaking, the architecture of Governors Village has a couple of peaks in it and has a little bit of brick. We can meet that architecture in a 3-story building.

Sam Cannata said the point is we're not trying to stuff 10 pounds into a 5 pound bag. We're trying to work with the Village to put something in that's complimentary.

Mr. Marrelli said I'm hearing what Progressive's saying and what Mr. Kinnaird is saying. Governors Village is staying quiet. My opinion, and I'm not a Planning Director, I think you'll be less harmful on this site to ask for a parking variance than a building setback variance as far as the site goes.

Sam Cannata said we're not asking for a parking variance on the south side of the property. It can go up to 10'. Note that there's a 10' parking setback from non-residential. Reality is we can put parking up to that.

Mr. Marrelli said but then on the other side you need 60'. Maybe we can come to some kind of compromise.

Sam Cannata said that's part of the compromise. The other compromise we've made on this drawing is we are required to put those 2 smaller buildings in with the cul-de-sac road no matter what we do. That was part of maintaining the streetscape of North Commons. That was a compromise on our part.

Chairman Prcela asked whose requirement that was.

Mr. Esborn confirmed the Village's. Sam talked about the analysis David & I did. The best way to sum that up is that Michael & Sam are not requesting more square footage of building than they would be entitled to given the zoning. One of the reasons the variances are needed are David & I thought, give them the best chance of success with this plan, if they had the cul-de-sac drive and the two buildings close to North Commons. We're recommending that. We pushed that internally. Keep that in mind. The most important part is they're not requesting more sq footage than they would be entitled to given the zoning.

Mr. Marrelli asked, do you have an issue with the parking?

Sam Cannata replied we're not asking for a parking variance.

Michael Gatto said we'll make the parking work because if you get less parking than a building can support, you end of shooting yourself in the foot. Progressive parks all the way down the street now because there's not enough parking. That doesn't do anything for the development.

Mr. Marrelli said I bring that out because your parking here is because you think you're going to be using all of it, not because the code says you need this many spaces.

Michael Gatto said correct.

Councilman Nick Delguyd said I'm also a member of the Community & Economic Development Committee Board. It was brought up at the CEDC that the south line of parking would be a positive feature on the weekends for the soccer fields instead of parking all the way down North Commons Blvd. There would have to be some sort of usage variance you'd grant us for after 6:00 p.m., and on Saturdays & Sundays. We can also connect it with the path.

Charles Kinnaird gets back to the east setback line. BZA-1 plan shows only a 10' buffer from my back yard for parking.

Michael Gatto said what if we had that 10' buffer and landscaped into your property with all kinds of beds and plants another 20', and we'd pay for it.

Charles Kinnaird said sorry guys, I want to see as much buffer as possible. Progressive's looking right into my back yard when all these trees are gone here. Ten foot is nothing.

Sam Cannata said we're suggesting 20'.

Chairman Prcela said we've got two plans and tenant potentials. I'd go along with the hardship provided we have a development plan. It appears very fluid. I personally have a hard time granting a variance against Mr. Kinnaird's property. I think we've got a lot of room on the north side where it's Village owned land with a plan never to develop on. Maybe we can come up with some sort of compromise.

Sam Cannata said in jest, if we give the Village this 1 acre, we'll take 4 or 5 here.

Chairman Prcela said in jest, that's a nice compromise, one that I can't sign off on.

Sam Cannata said all kidding aside, we're just asking for a building envelope with the lines consistent on both plans.

Michael Gatto asked, are the parking and building setback lines north, south and west acceptable? The only thing we're looking is the east?

Chairman Prcela gives his personal opinion. The north line looks good. South, I'd like to see a buffer between the soccer fields and this development. If that doesn't work, I guess we can have you put some vegetation on our parcel as a compromise. My biggest concern is Mr. Kinnaird's residentially zoned lot.

Michael Gatto asked, is that a consensus? Is Mr. Kinnaird's the biggest issue?

Mr. Marrelli said the feeling I get is the south line and the one contingent to Mr. Kinnaird's property are the two sticking points.

Michael Gatto said maybe we could do what Mr. Prcela mentioned, landscaping & buffering on Village property, enhance that swale and put vegetation in.

Mr. Marrelli thinks that could work to hide the parking. That's a possibility.

Mr. Caticchio said we're only talking about seven (7) parking spaces butting up against Mr. Kinnaird's property.

Mr. Fikaris said I participated as a member of the Planning & Zoning Board. I've seen a lot of different plans and my understanding is, and correct me if I'm wrong; These plans represent the first 2 buildings being built. The back is completely flexible in both plans as these plans sit now. If somebody comes up, 5 or 6 may turn into a 3, a 4 and 5 might be bigger and repositioned, so there's nothing hard here until it's spected. I want to make that understanding in that these aren't just two different plans. If you could click your finger, have your way, would you go with BZA-1 or BZA-2, what's best for you?

Sam Cannata said depends on who the tenants are.

Mr. Fikaris' point being this is all variable. This may or may not ever occur and then as to what. We don't know and you need those assurances to move forward.

Mr. Caticchio said Paul brought up an issue that is very unusual. We've been brought plans which are merely speculative, both plans.

Michael Gatto said except for Phase I, that's the 2 front buildings.

Mr. Caticchio asked, are you going to break ground soon on that?

Michael Gatto replied if we approval for the whole thing. We can't afford to break ground on Phase I and not come to an agreement on Phase II and end up with a piece of land this big that we could develop on, then we're stuck because we bought the property.

Mr. Caticchio asked, what happens if what you're speculating on today does not pan out and then you come back and for some reason you cannot develop the property as shown on these two plans. Will you be coming in for a building permit for a 3-story building?

Sam Cannata said no. We're restricting ourselves to a 2-story building, less than what the code provides for. We're going to state that in either a Developers Agreement or on our plans.

Mr. Caticchio said we're also going to state it in our decree here.

Chairman Prcela said the Development Agreement has not been formulized. What's going on here is we've got a development team that's been working with our municipality trying to figure out what size envelope they can do to make sense. It's how big of a box you want to give them. Regardless of the box, they're going to have to abide by the rules of the Architectural Review Board and our Legal Department to make sure it looks like Governors Village.

Mr. Marrelli said today we're here to figure out how big the box could be.

Sam Cannata said the biggest restriction is the parking. We're going to be handcuffed by the parking. We're not asking for a variance there.

Michael Gatto states the parking dictates the size of the building.

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Kevin McGrath asked what the setback requirement is for parking and building for East Commons frontage.

Michael Gatto replied a 60' parking and building setback.

Kevin McGrath asked how far the 2 buildings are proposed to be setback from the Right-of-Way.

Sam Cannata said the closest point is 30', but that was part of the compromise with Mr. Hartt and the Village. He wanted to provide for the streetscape, a nice entry with two buildings heavily landscaped.

Kevin McGrath asked, so it was the Village's motivation to put the buildings near the street rather than the parking?

Michael Gatto said correct.

Kevin McGrath asked if there's an elevation of the buildings.

Sam Cannata replied not yet.

Kevin McGrath asked, but it's not to exceed 2-stories, right?

Michael Gatto replied 1-story.

Sam Cannata said we've given to the Village for their review a Deed Covenant Restriction that lays out the type of materials you'd see in a residential community, i.e. stone front natural materials, a restriction again on our property.

Michael Gatto said stone & brick veneer.

Sam Cannata said I'd like to put something on the record. I had an opportunity to meet Mr. Kinnaird tonight for the first time. I suggested to him a couple things; 1) We'd landscape or screen, taking into account his concerns. We'll work with him in an open dialogue. 2) We got a sense that he has a drainage problem back there. We would agree to clean up his drainage problem, any storm water that sits back there. We may incorporate that into our work. He was concerned about lighting. We'll make sure we do a lighting plan to make sure the lighting doesn't cascade into his backyard.

Charles Kinnaird invites anybody to walk the property line, walk the soccer field and see the water. That was caused by the soccer fields. When it was a Golf Course, I didn't have anywhere near the water. Finally after a good storm, I dragged Rinker in the back yard knee deep in water before I got him to put this swale in.

Sam Cannata said we'll do whatever is proper engineering.

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Mr. Marrelli said I'd like to point out on the plan 'Existing Vegetation To Remain'. That's a fallacy. It could be somewhere else. It can't be there.

Chairman Prcela said we could require a bigger screen be built, but it appears it would have to be built on Village property.

Kevin McGrath said I hear you talk about wetlands with vegetation growing. If there's vegetation in there, you have level III wetlands, you have the Army Corps.

Sam Cannata said we haven't done a delineation of it yet. We're getting proposals.

Discussion ensued on option to table or vote tonight.

Chairman Prcela asked about applicants timing. There're a lot of open issues. I'd hate to entertain a motion that might not work in your favor. Would you be better served if we tabled this until you've had a chance to talk with the resident who has potential issues?

Sam Cannata replied I don't know how much more we can do. We could have an open dialogue with Mr. Kinnaird and talk about his issues and mitigate his problems. I gave him my card. We'd like to get this in for a vote right-a-way. We do have financial considerations coming up in the next two months. We either have to move forward on the project or pull up our tent. We've been at this for two years and we've been compromising for two years and spending a lot of money on all these plans. I realize we're before you for the first time tonight, so don't take that the wrong way. At some point we have to say "They just don't want us to do it".

Chairman Prcela said we welcome the development. We'd like to make sure it's done well.

Michael Gatto asked Chairman Prcela, what are you recommending? Are you recommending we table this for one month, work through a couple things and see if we can come back a little bit more in agreement?

Chairman Prcela thinks that would be a good idea considering the fact we've got a long time resident here with legitimate concern, rather than take a vote that brings you back to the 100' setback. Once that vote's done, it's a little more difficult to undo. If there's a time constraint, we could take a vote and maybe seek a compromise on that setback line.

Mrs. Shatten asked Chairman Prcela what issues he wants the applicants to clear up.

Chairman Prcela states I speak for myself. I think I'd have a hard time granting such a large side yard variance abutting an existing residential property. I don't have those same concerns on the south or the north provided there be some vegetation on the side that buffer from the soccer fields. I personally wouldn't have an issue with the North Commons side. I am hearing from one of our good neighbors, Progressive that they might want some discussion and comfort level as well.

Michael Gatto said thank you to Progressive. You're a staple and wonderful corporation in this community. What would you like to see?

Kevin McGrath replied I'd like to understand the quality of construction so close to the right-of-way. Truthfully, I'd ask that we have the time to be able to assess that kind of nexus between the quality of the façade and the look of the building in conjunction with its proximity to the right-of-way.

Michael Gatto asked, your biggest concern are mostly these two buildings and the closeness to the right-of-way?

Kevin McGrath replied, sure. We'd like it to look nice. Our buildings are top of the line quality. We'd like to look across the street at something that we feel comfortable looking across the street at.

Chairman Prcela addressed Mr. Gatto. We understand time is of the essence and we are in a position I think to take a vote on this matter, I was suggesting if you want to take another 30 days and address it then and maybe have an adjusted plan, a conversation with Progressive, a conversation with this neighbor, it may be a little easier for us. I don't want you to take it the wrong way. If time is of the essence and you need a vote today, we can do that.

Sam Cannata states, if we can vote on this today and get an approval, let's do it. We have a lot of work to do. We have to go back to Planning. If you need not a month, but a couple weeks to discuss this internally, then take a couple weeks, but we're up against it. Quite frankly, I'm ready to pull up my tent if the writing's on the wall.

Chairman Prcela states I'm comfortable taking a vote tonight.

Michael Gatto asked, when would we come back if we tabled it?

Mr. Marrelli said to come back in 2 weeks, it would have to be a Special Meeting.

Mr. Caticchio said the issues are a little complex. The problem is writing them up in a manner which will be upheld. We're going to be making a record. I would suggest that we make sure Diane from the Law Dept is here at the next meeting so she could write up the ultimate draft.

Chairman Prcela said I hear what you're saying. It would be nice to have the Law Director here. I don't believe it's a requirement of the Court to have a Law Director here. If the applicant wants a vote, the applicant gets a vote.

Mr. Caticchio said we could be doing him a disservice.

Sam Cannata states I think it would be beneficial to have all the players here. I think everybody should be here. I don't know who is missing.

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Mr. Marrelli said a vote can be taken. Sometimes it's advantageous to have the Planning Director and Law Department here to clear up any issues, to talk about zoning, what's permitted, what's not, what's a hardship.

Mr. Esborn said the Assistant Law Director and Planning Director commented they will make themselves available in the case there'd be a Special Meeting.

Mr. Marrelli said I'm not seeing this as being that complicated. In my mind there are a couple issues that have to be resolved. I think you have to work with the neighbor. I think you have to do something along that soccer field line. If you have any ideas on what your construction's going to look like, I'd show it to your neighbors across the street, come back and say "These problems are gone". If you come in here and say "We don't want to look at the parking from the soccer fields because soccer fields and parking lots don't really go together". You tell the Village you're going to put evergreens on top of the hill and maple trees that'll shield in a few years.

Sam Cannata said that's no problem. I'm confident if we have a dialogue with Progressive and Governors Village and show them what we intend per our Deed Covenant and Restrictions, they'll see it conforms to a residential look. It'll be explicit.

Mr. Marrelli asked, don't you think it would be wise to take that time?

Chairman Prcela said when we have applicants for the Board of Zoning Appeals and have two residents with concerns it will obviously weigh in how much we can bend.

Sam Cannata reiterates, we can work with Progressive and Governors Village and satisfy their concerns. We just met Mr. Kinnaird for the first time tonight. He's heard what we're willing to do. If he has other ideas, we're willing to work with him. We just have to have that dialogue. By that same token, we have to be reasonable. We're willing to clean up a big mess with his drainage and provide screening whether it's a combination of fence, trees, vegetation. But, are we going to back up the buildings to the 100', and are we going to back up the parking to the 60', I don't think so. We can't, and if that's going to be a consideration.....

Michael Gatto interjects and asked for a few minutes with Sam. Applicants exit the room @ 8:55 p.m.

Charles Kinnaird states I'm all ears. I can see they want to help me out. Any kind of drainage coming through the back of the property is going to kill any mature tree that's there. I would legally like them as far back as possible from my property line. We can landscape into my yard, we can plant evergreen trees against my bedroom window. I'd just like to see it as far back as humanly possible.

Mr. Marrelli said you should know, and I'll go on the record. When they submit an elevation and drainage plan, because this all has to be calculated and accounted for, it all has to go into the detention pond. It can never be worse than it is now by design.

Charles Kinnaird states you guys messed up before.

Applicants return @ 9:00 p.m.

Michael Gatto said I've done this numerous times in a lot of different cities with a lot of different residents. Mr. Kinnaird is probably one of the most reasonable residents I've come across. Making him happy is not going to be hard. I think Progressive is going to be reasonable and manageable too. I believe we can sit down with these two people, work something out, come back to you and have this thing worked out on those two issues. Are there any other issues that you guys have that we should address? So when we come back we're not talking about something else, understanding that it's contingent upon the Court Zoning clarification.

Chairman Prcela said Mr. Gatto brings up a good point. If they're going to take the time to address these concerns, is there anything we as a Board have a concern with? I think a buffering plan on the south side, something that satisfies our resident who comes in here and says yes, that they're seeking maybe a 40' or 20' setback variance, and then something from Progressive Ins that says they've looked at their front elevations and are comfortable.

Michael Gatto states we'd like to table this for 30 days. Meet with Mr. Kinnaird, meet with Progressive, get their approvals, whether they come to the next meeting or submit written approvals for the next meeting and then work with Ted.

Chairman Prcela asked for a consensus that those are the three sticking points.

Mr. Caticchio agreed those are the major sticking points. One of the things I'm concerned about that when this thing is written up and entered into the record that we make sure there are not going to be any changes in this project from what we grant when we vote. We have to have conditions that bind them.

Michael Gatto said the Development Agreement binds us. It would be conditioned upon a Development Agreement.

Mr. Caticchio said what I'm saying is that these have to be incorporated into our decision and made of record. That's why I'd like to have Diane here to write this up.

Michelle Gorman from Governor's Village states, I don't have concerns, but I want to be involved.

DECISION

Chairman Prcela said for the record, the applicant is requesting to table this matter until the next regularly scheduled meeting April 17th. I'd like to entertain a motion.

Mrs. Shatten, seconded by Mr. Russ made a motion to table the variance requests until April 17th.

ROLL CALL

AYES: Mr. Prcela, Mr. Fikaris, Mrs. Shatten, Mr. Caticchio, Mr. Russ
NAYS: None

**Motion Carried.
Variance Requests TABLED.**

ANY OTHER BUSINESS

• **Section 1185.07 Application For Permits; Approval**

Mr. Marrelli said I need to make a record of clarification. Something we've been telling the applicants over and over again is they have so much time to get their permit, or the variance expires. No such thing. Once you grant a variance it is good forever on land. A property variance, once it's granted, stays with the property forever. They don't expire.

Mr. Caticchio said stop to think what's going to happen here. If we grant this, it stays with the land even though they may be out of the picture.

Mr. Marrelli said correct. Remember when the sign variances were issued at Village Plaza? We told them to get their permits because approvals are going to expire in one year. In the case of signs, it does expire in one year. Any other variance, property variance, once it's granted it never goes away. It does not expire ever. Even if they never pull the permit to do what they said they needed the variance for, it doesn't go away. I'll give an example. A homeowner comes in for an oversized shed. You say o.k. Something happens, they never build the shed. Anybody that buys that place can build an oversized shed.

ADJOURNMENT

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

ROLL CALL

Ayes: All
Nays: None

**Motion Carried
Meeting adjourned at 9:10 p.m.**

Chairman

Secretary