September 26, 2014

To: Members of the Board of Zoning Appeals

From: Don Phillips, Chief Building Inspector

Subject: Staff Comments for the Meeting of October 2, 2014

C. Items of Public Hearing

1. Variances – Front, Side & Rear Yard Setbacks; Number of Parking spaces; Drive Aisle Width – New Gasoline/Convenience Store Station – **2182 W. Dublin-Granville Rd.** (UDF) **BZA 32-14**

Findings of fact:

1. This property is in the C-3 district and is being rezoned to the C-4 district. The Municipal Planning Commission has recommended approval of the rezoning to City Council. The following requirements are common to both the C-3 and the C-4 districts:
    a. Front yard setback – 50 feet
    b. Rear yard setback – 30 feet
    c. Side yard setback – 15 feet
    d. Parking – 1 for each 2 fuel dispensing stations not at the fueling station plus 1 for each 150 gross square feet of retail floor area
    e. 22 foot drive aisles
    f. Offstreet parking and aisles setback 25 feet from residential uses. This requirement can be reduced to 12 feet 6 inches with a solid wall or fence at least 4 feet in height but not more than 6 feet in height
    g. Fencing is not permitted between the right of way line and the building setback line

2. The adjacent property to the west is within the City of Columbus and the two parcels cannot be combined into one.

3. The two parcels are being redeveloped and part of that redevelopment is dedication of 30 feet of right of way along West Dublin-Granville Road.

4. The applicant is redeveloping both parcels into one gasoline/convenience store as follows:
    a. A canopy and fueling stations are proposed 17 feet from the proposed West Dublin-Granville Road right of way. The requested variance is 33 feet for front yard setback.
    b. A 4480 square foot convenience store is proposed 18 feet from the north property line. The requested variance is 12 feet for rear yard setback.
    c. An approximately 12 foot by 12 foot pergola is proposed adjacent to the convenience store, approximately 27 feet from the north property line. The requested variance is approximately 3 feet.
    d. A convenience store and fueling canopy is proposed to cross the west property line and be entirely within the 15 foot side yard. The requested variance is 15 feet for side yard setback.
    e. 4 of 10 fueling stations and 38.1% of the 4,480 square foot retail store, or 1707 square feet, are proposed in Worthington. This requires 14 parking spaces and almost 12 parking places are provided. The requested variance is 3 parking spaces.
    f. The drive aisle for deliveries in the rear is proposed at 18 feet in width. The requested variance is 4 feet.
    g. The eastern parking and drive aisle is proposed to be 10 feet from the east property line with a 4 foot open style fence. The requested variance is 15 feet for parking setback from residential uses.
    h. A fence long the east property line is proposed to the new right of way location. The requested variance is 50 feet.

5. The 2011 Ohio Building Code requires exterior walls and projections within 5 feet of a lot line be made of 2 hour, fire-resistance rated construction for Mercantile Group M. Any zoning code variances granted do not grant any variances from the requirements of the 2011 Ohio Building Code. Those variances must be granted by the Ohio Board of Building Appeals.

6. The property is subject to, and the demolition and construction have been approved with modifications by, Architectural Review Board.

7. The Gasoline/Convenience store use requires, and the Municipal Planning Commission approved, a Conditional Use Permit.

The following conclusions are presented:

1. The 30 foot right of way dedication shifted the project to the north, reducing the amount of space available between the canopy and the new right of way, and the building and pergola to the north property line. The canopy and pergola are open structures and do not create as large a visual impact. These factors mitigate the substantial nature of the front and rear yard variance requests for the canopy and building. The pergola setback is not substantial.

2. The two properties being in different municipal jurisdictions prevent the combination of the two parcels into one. With the combination of the lots no side yard setback variance would be required and mitigates the side yard setback variance request.

3. A combined property would require 35 parking spaces under Worthington's requirements, and a minimum of 23 and a maximum of 28 under Columbus' requirements. 25 parking places are provided and this seems adequate for this type of retail use where people do not typically casually shop for long periods of time.

4. The north drive aisle will be signed for one way traffic to allow delivery vehicles adequate maneuvering room and appears adequate for the site.

5. There is significant vegetative screening along the east property line and if the zoning code allowed its use to reduce the parking and aisle setback from residential uses, a reduced variance would be required. These factors mitigate the substantial nature of the parking and aisle setback from residential uses variance request.

6. The fence extending to the right of way along the east property line will discourage people from cutting through the vegetation. This factor mitigates the substantial nature of the fence in the front yard variance request.

7. The essential character of the neighborhood should not be substantially altered.

8. The delivery of governmental services should not be affected.

The following motion is recommended:
THAT THE REQUEST BY UNITED DAIRY FARMERS INC. AND COBANCORP INC. FOR VARIANCES FROM CODE REQUIREMENTS FOR FRONT, SIDE & REAR YARD SETBACKS; NUMBER OF PARKING SPACES; DRIVE AISLE WIDTHS; PARKING AND DRIVE AISLES SETBACK FROM RESIDENTIAL USES TO ALLOW THE CONSTRUCTION OF A NEW GASOLINE/CONVENIENCE STORE AT 2182 WEST DUBLIN-GRANVILLE ROAD, AS PER CASE NO. BZA 32-14, DRAWINGS NO. BZA 32-14 DATED AUGUST 22, 2014, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

2. Variance – Side Yard Setback – Condensing Unit – **195 Tucker Dr.** (David & Sherri Holcomb) **BZA 33-14**

Findings of fact:

1. This property is an existing lot of record in the R-16 district where the minimum side yard requirement is 10 feet and existing side yards can be reduced to the prevailing setback. Building service equipment cannot be located in a required yard.

2. The existing dwelling is approximately 6.3 feet from the east property line.

3. The applicant replaced an air conditioner condenser within the east side yard. The requested variance is to allow the entire condenser within the side yard setback.

4. Staff has no record of any inquiries regarding the location of the condenser.

The following conclusions are presented:

1. The essential character of the neighborhood should not be substantially altered.

2. The delivery of governmental services should not be affected.

The following motion is recommended:

THAT THE REQUEST BY DAVID AND SHERRI HOLCOMB FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO ALLOW AN AIR CONDITIONER CONDENSER TO REMAIN AT 195 TUCKER DRIVE, AS PER CASE NO. BZA 33-14, DRAWINGS NO. BZA 33-14 DATED AUGUST 27, 2014, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

3. Variance – Rear Yard Setback & **Offstreet Parking in the C-5 Zoning District –** Multi-family Dwellings **– 39 & 41 W. New England Ave.** (Showe Worthington LLC/Snow House)
BZA 34-14 **To Be Tabled**

4. Variance – Construction of Sidewalks **– 6335 Plesenton Dr.** (Jean-Clare Bohm) **BZA 35-14**

Findings of fact:

1. This property is in the R-16 district. Subdividing property requires sidewalks be constructed within the right of way.

2. The existing lot was recently split into 1 l0.932 acre lot and 1 0.419 acre lot on the condition this Board grant a variance from the sidewalk requirement. The requested variance is to not build any sidewalks in the Plesenton Drive and Olentangy River Road rights of way.

The following conclusions are presented:

1. This particular portion of the subdivision has a steep grade up Plesenton Drive and the Olentangy River Road is elevated with guard rails, making sidewalks impractical to construct and use. The Plesenton Drive subdivision does not have sidewalks and neither does Olentangy River Road. Signage is provided advising motorists that pedestrians use the roadway. The requested variance is not significant.

2. The essential character of the neighborhood should not be substantially altered.

The following motion is appropriate:
THAT THE REQUEST BY JEAN-CLARE BOHM FOR A VARIANCE FROM CODE REQUIREMENTS TO CONSTRUCT A SIDEWALK AT 6335 PLESENTON DRIVE, AS PER CASE NO. BZA 35-14, DRAWINGS NO. BZA 35-14 DATED SEPTEMBER 4, 2014, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

5. Appeal – Notice of Violation and Order to Correct – Excessive Vehicles on Site – **6568 N. High St.** (Tilton's Automotive Services) **BZA 36-14**

Findings of fact:

1. This property is in the C-3 district where Automotive Services is neither a permitted or conditional use.

2. On May 18, 2004 an application for a change in nonconforming use was received to allow Tilton's Automotive Services to operate at the property. The application included a site plan showing 17 parking spaces. The building has 3 vehicle maintenance bays which total 20 spaces for vehicles.

3. At the June 3, 2004 Board of Zoning Appeals hearing, Andy Tilton testified he would have from 10 to 20 cars on the lot at any given time. The Board approved the change from one nonconforming use to another. Approved was up to 20 vehicles on that portion of the property for the nonconforming use.

4. On August 4, 2014, the Building Inspector found 20 vehicles south of the building, 19 vehicles north of the building, and 3 vehicles inside the building totaling 42 vehicles on the portion of the property approved for 20 vehicles.

5. On August 4, 2014, the Building Inspector found were 13 vehicles in the lot of 6660 North High Street. No record of an application was found seeking an expansion of a nonconforming use nor was any such approval found.

6. On August 12, 2014, the Chief Building Inspector found 6 vehicles in the lot of 6600 North High Street. That building has been vacant for a number of years. No record of an application was found seeking an expansion of a nonconforming use nor was any such approval found.

7. The Chief Building Inspector found the Board of Zoning Appeals approved the parking of 20 vehicles on the property associated with the nonconforming use and 55 vehicles were parked on August 4, 2014. This expansion of a nonconforming use was not approved, is in violation of the Zoning Ordinance, and ordered the owner of the property and the operator of the automotive services use to correct the violation.

8. The appellant has requested the matter be tabled and staff does not object to the delay.

The following conclusions are presented:

1. It is not clear if the Board of Zoning Appeals would have approved the change from one nonconforming use to another if 55 vehicles were proposed instead of 20, especially when the vote in 2004 was a close 3 to 2. Similarly the 2 office uses on the property were never part of the discussion about the change in nonconforming use and expansion into those adjacent portions of the property had not been applied for, not approved, and the change from a conforming use to a nonconforming use would not be permitted.

2. Staff did not err in finding a violation of the Zoning Ordinance.

The following motion is appropriate:

THAT THE REQUEST BY DONALD PLANK, TILTON'S AUTOMOTIVE SERVICE, AND 6600 NORTH HIGH STREET LLC FOR AN APPEAL OF THE DECISION OF THE BUILDING INSPECTOR TO ALLOW UNLIMITED PARKING AT 6568 NORTH HIGH STREET, AS PER CASE NO. BZA 36-14, DRAWINGS NO. BZA 36-14 DATED AUGUST 29, 2014, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Reference

Portions of Section 1129.05

(a) Generally. The Board of Zoning Appeals shall have the following powers, and it shall be its duty to: hear and decide appeals where it is alleged there is an error of interpretation made by the Building Inspector in the enforcement of this Zoning Ordinance, the Building Code, or the Property Maintenance Code, or any amendment thereto.

(c) Area Variances. The Board shall have the power to hear and decide appeals and authorize variances from the provisions or requirements of this Zoning Ordinance. In authorizing a variance, the Board may attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objective of this Zoning Ordinance. The Board may grant a variance in the application of the provisions of the Zoning Ordinance when it is determined that practical difficulty exists based on the following factors:

(1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

(2) Whether the variance is substantial;

(3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

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

(5) Whether the property owner purchased the property with knowledge of the zoning restriction;

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and,

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

(g) Variances to the Building Code. The Board shall have the power to hear and decide appeals and authorize such variances from the provisions or requirements of the Building Code, Chapter 1305 of the Codified Ordinances for one, two and three family dwellings as will not be contrary to the public interest. In authorizing a variance, the Board may attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objective of the Building Code. The Board may grant a variance in the application of the provisions of the Building Code for one, two and three family dwellings after hearing expert independent testimony on the application only if all of the following findings are made:

(1) There are unique circumstances or conditions present by which strict conformity to the provisions of the Building Code would create significant hardship for the property owner or contractor performing services for the property owner;

(2) The unique circumstances or conditions were not created by the property owner or contractor performing services for the property owner; and,

(3) The variance, if authorized, shall not, in any way endanger the health, safety or welfare of the building occupants or the general public. Such determination shall be based on independent expert testimony.