



# BOARDS & COMMISSIONS APPLICATION

132 North Elmwood Avenue  
330-722-9038  
www.medinaoh.org

Application Number 224-24

GENERAL	Date of Application <u>10/18/2024</u>	
	Property Location <u>322 W Smith Rd</u>	
	Description of Project <u>New construction of a 2 story slab on grade duplex.</u>	
	<u>Zoning code variance requested: Use R2 construction in a C2 zoned property 1135.03</u> <u>Area/size difficulty: Setback requirements hinder the design of any residential project for this proper property. 1123</u>	
CONTACT INFORMATION	<b>Applicant</b> Name <u>John Potter</u>	
	Address <u>3200 W Market St STE 006</u> City <u>Fairlawn</u> State <u>OH</u> Zip <u>44333</u>	
	Phone <u>330-836-2189</u> Email <u>jpotter@thecorniceco.com</u>	
	<b>Property Owner</b> Name <u>David Wascak</u>	
APPLICATION TYPE	Address _____ City _____ State _____ Zip _____	
	Phone <u>216-410-1999</u> Email <u>david.wascak@hotmail.com</u>	
	<b>Planning Commission</b> Site Plan <input type="checkbox"/> Conditional Zoning Certificate <input type="checkbox"/> Code or Map Amendment <input type="checkbox"/>	
	Preliminary Plan <input type="checkbox"/> Final Plat <input type="checkbox"/> Conditional Sign (EMC/Shopping Ctr) <input type="checkbox"/> Cert. of Appr. (TCOV) <input checked="" type="checkbox"/> Other <input type="checkbox"/>	
APPLICANT SIGNATURE	<b>Historic Preservation Board</b> Certificate of Appropriateness <input type="checkbox"/> Conditional Sign <input type="checkbox"/>	
	<b>Board of Zoning Appeals</b> Variance <input checked="" type="checkbox"/> Appeal <input type="checkbox"/>	
	By signing this application, I hereby certify that: 1) The information contained in this application is true and accurate to the best of my knowledge; 2) I am authorized to make this application as the property owner of record or I have been authorized to make this application by the property owner of record; 3) I assume sole responsibility for correspondence regarding this application; and 4) I am aware that all application requirements must be submitted prior to the formal acceptance of my application.	
	Signature <u>John Potter</u> Digitally signed by John Potter Date: 2024.10.18 09:57:35 -04'00' Date <u>10/18/2024</u>	
OFFICIAL USE	Zoning District <u>C-2</u>	
	Meeting Date <u>11-14-24</u>	
Fee (See Fee Sheet) \$ <u>200</u>		
Check Box when Fee Paid <input checked="" type="checkbox"/>		

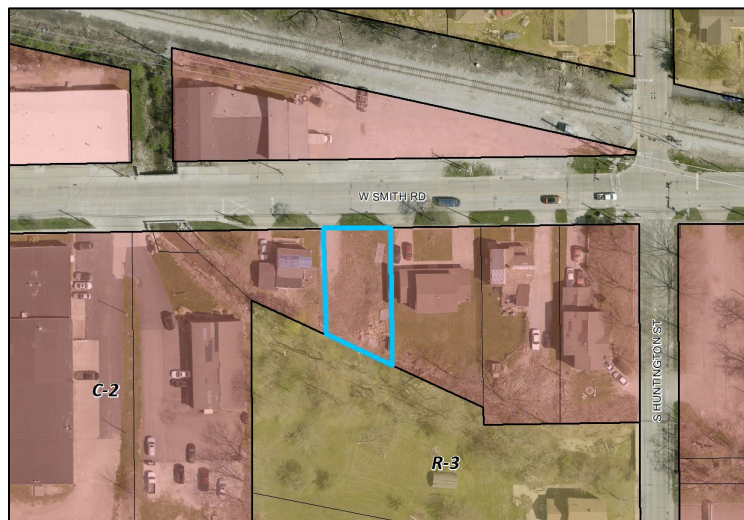
## **Z24-24 REVISED** **West Smith Road New Home**

Property Owners: James and Elizabeth Vanderpool  
Applicant: John Potter  
Location: 322 West Smith Road  
Zoning: C-2 (Central Business)  
Request: Use variance to Section 1135.03 to allow a prohibited two-family residential use and an area variance to Section 1135.06 to allow a principal structure in the rear yard setback, Section 1135.08(a) to allow parking in the front yard, and Section 1135.13(c)(1) to allow a vinyl exterior exceeding the maximum permitted

### **LOCATION AND SURROUNDING USES**

The subject site is composed of 0.13 acres located on the south side of West Smith Road. Adjacent properties contain the following uses and zoning:

- North – Brewery/Taproom (C-2)
- East – Two-Family Residential (C-2)
- South – Single-Family Residential (R-3)
- West – Single-Family Residential (C-2)



### **BACKGROUND & PROPOSED APPLICATION**

The property previously contained a single-family home which was demolished in 2018. The site is currently vacant and backs up to a creek.

The applicant is proposing a new two-family residential building with the following general characteristics:

- Two 1,635 sq. ft. units (approx.) each with an attached one car garage
- A two story structure with a pitched roof with black asphalt shingles
- A front porch for each unit with a black metal roof
- A front elevation with vinyl board and batten siding

On November 14, 2024, the Planning Commission approved application P24-26 for a new building in the Transitional Overlay Corridor (TC-OV) with the following conditions:

1. Shutters shall be installed beside the windows on the front building elevation.
2. Shake siding shall be installed in gabled areas on the front building elevation.

The front building elevation has been revised to incorporate the shutters and shake siding as required.

Also on November 14, 2024, the Board of Zoning Appeals reviewed variances for the project and accepted the applicant's request to table the application. Based on comments from the Board of Zoning Appeals, the applicant has provided two options for the location of the building. Option 1 (Original Location) incorporates a front setback of 31 ft. 8 in. and a rear setback of 14 ft. 5 in. Option 2 incorporates a front setback of 19 ft. 11 in. and a rear setback of 25 ft.

### **ADDITIONAL SUBMITTED INFORMATION**

Supplemental information has been provided on behalf of the applicant including revised responses to variance criteria, references to the Future Land Use Map found in the City of Medina Comprehensive Plan, an easement document, and letters of support for the variance application.

The Future Land Use map is "meant to *guide* the pattern and character of future growth in Medina". The subject property is designated as "Urban Residential Land Use" which includes single-family residential, multi-family residential, and community facility uses.

### **ENGINEERING AND SERVICE DEPARTMENTS INFORMATION**

At the previous Planning Commission and Board of Zoning Appeals meetings, there were a number of items discussed regarding drainage and access. After consulting with the City Engineering and Service Departments, the following information has been provided:

#### **Storm Sewer Structures and Easement**

The city installed a storm sewer line, catch basin, and outlet on the east side of the property at 328 W. Smith Rd. The city has easements on both properties at 322 and 328 W. Smith Rd., which are a minimum of 5 ft. off each side of the shared property line. The easements, which are a minimum combined 10 ft. wide, are sufficient for the city to access, repair, and maintain the storm sewer line, catch basin, and outlet.

#### **Permit and Plan Review**

When plans are submitted to the city's Building Department for a new two-family dwelling, a Lot Improvement Plan must also be submitted to the city's Engineering Department. The Lot Improvement Plan must include information on how stormwater will be managed and include elevations, drainage details, and other relevant items. The plan is reviewed to ensure stormwater management complies with city regulations and does not result in negative impacts on area properties.

#### **Creek Maintenance**

The creek to the rear of the properties at 322 and 328 W. Smith Rd. has been maintained by the city. To perform maintenance, the city has accessed the creek at the S. Huntington St. bridge and worked westward to the bridge at W. Smith Rd.

### **USE VARIANCE – TWO-FAMILY RESIDENTIAL USE (SECTION 1135.03)**

Section 1135.03 indicates permitted uses in the C-2 zoning district, which are predominantly commercial. The proposed two-family residential use is not a permitted use in the C-2 zoning district.

### **Standards for Variances and Appeals (Section 1107.08(i))**

Variances and appeals shall be granted only in accordance with, and based on, the findings set forth in this Section. The burden of proof for variances and appeals shall be upon the applicant. The extent to which the following factors, standards, and criteria apply to a specific case shall be determined by the Board.

### **Standards Applicable to Use Variances (Section 1107.08(i)(2))**

The applicant shall demonstrate by clear and convincing evidence that all of the following standards have been met in order to find an unnecessary hardship exists so as to justify the granting of a use variance, as determined by the Board:

- A. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district
- B. The hardship condition is not created by actions of the applicant;
- C. The granting of the variance will not adversely affect the rights of adjacent owners;
- D. The granting of the variance will not adversely affect the public health, safety or general welfare;
- E. The variance will be consistent with the general spirit and intent of this Ordinance;
- F. The variance sought is the minimum which will afford relief to the applicant; and
- G. There is no other economically viable use which is permitted in the zoning district.

### **Applicant's Responses to Standards for Variances and Appeals**

The applicant's responses to the Standards for Variances and Appeals include, but are not limited to, the following:

- The variance stems from a unique condition as the property is on a block that is zoned C-2 and contains single-family and two-family residences.  
In addition, the proposal complies with the overall intentions of the TC-OV, C-2 district uses, and the Comprehensive Plan's Future Land Use Map.
- The rights of adjacent owners will not be affected as a single-family residence was previously on the property and a neighboring property is a two-family residence.  
In addition, a Lot Improvement Plan will be required prior to construction, an easement is present allowing access and maintenance to existing stormwater structures, and the application is supported by an adjacent property owner and business owner.
- There is no other economically viable use for the property and a residential use requires a variance.

Please consider Sections 1107.08(i) and 1107.08(i)(2) when reviewing the proposed Use Variance.

### **AREA OR SIZE TYPE VARIANCES (MULTIPLE SECTIONS)**

The property is zoned C-2 and subject to requirements of Section 1135, which are more appropriately applied to commercial uses. Though the proposed use is a two-family residence, the requirements of the section apply.

Section 1135.06 states that when a property in the C-2 zoning district is adjacent to a residential zoning district, the rear yard setback of the C-2 property is equal to that of the adjacent residential zoning district. The adjacent property to the rear is zoned R-3, which has a 30 ft. rear yard setback. **The rear yard setback of the proposed property is thus 30 ft.** The setback was previously incorrectly cited as 50 ft., which is the rear yard setback in the R-2 district.

The applicant has proposed two rear yard setback options of 14 ft. 5 in and 25 ft. Neither option complies with the required 30 ft. rear yard setback. Though a 25 ft. riparian setback is shown on the submitted plan, the setback is a recommendation by the City's Engineering Department and is not a formal requirement.

Section 1135.08(a) states that off-street parking is not permitted in the front yard. The applicant has proposed parking in the front yard in a shared driveway.

Section 1135.13(c)(1) states that no more than 15% of the area of a building facing a right-of-way can be vinyl. The proposed building elevation facing the West Smith Road right-of-way is clad in 8 in. vinyl board and batten and vinyl shake siding.

### **Standards for Variances and Appeals (Section 1107.08(i))**

Variances and appeals shall be granted only in accordance with, and based on, the findings set forth in this Section. The burden of proof for variances and appeals shall be upon the applicant. The extent to which the following factors, standards, and criteria apply to a specific case shall be determined by the Board.

### **Factors Applicable to Area or Size Type Variances (Section 1107.08(i)(1))**

Factors applicable to area or size-type variances ("practical difficulty"). The applicant shall show by a preponderance of the evidence that the variance is justified, as determined by the Board. The Board shall weigh the following factors to determine whether a practical difficulty exists and an area or size-type variance should be granted:

- A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- B. Whether the variance is substantial;
- C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
- D. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
- E. Whether the property owner purchased the property with knowledge of the zoning restrictions;
- F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or
- G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

### **Applicant's Responses to Standards for Variances and Appeals**

The applicant's responses to the Standards for Variances and Appeals include, but are not limited to, the following:

#### **1135.06 – Rear Yard Setback**

- The variance is not substantial as the rear setback creates a hardship for the property and adjacent properties are within the required rear yard setback.  
In addition, the proposed reduced rear setback provides additional room for the front driveway and would align the building with an adjacent two-family residence.
- The essential character of the neighborhood will not be altered as the proposed two-family residence is aligned with adjacent properties.
- The spirit and intent behind the zoning requirement will be observed as the residence will enhance the neighborhood, align with area residences, and incorporate increased side yard setbacks.

1135.08(a) – Parking in the Front Yard

- The only beneficial use of the property is residential and the proposed standard is a commercial requirement.
- The essential character of the neighborhood will not be altered as the proposed drive and parking in the front yard does not affect the residential side of West Smith Road.
- There is no option other than a variance as the size of the lot is not conducive for parking in the side yard. In addition, residential uses typically include parking in the front yard.

1135.13(c)(1) – Vinyl Siding

- The variance is not substantial and the essential character of the neighborhood will not be altered as existing homes on the street are completely clad in vinyl siding.
- There is no option other than a variance as another exterior material would not be appropriate for the area.
- The spirit and intent behind the zoning requirement will be observed as the proposed vinyl board and batten siding will have an improved appearance.

Please consider Sections 1107.08(i) and 1107.08(i)(1) when reviewing the proposed Area or Size-Type Variances.

**STANDARDS APPLICABLE TO USE VARIANCES ("UNNECESSARY HARDSHIPS")**

The applicant shall demonstrate by clear and convincing evidence that all of the following standards have been met in order to find an unnecessary hardship exists so as to justify the granting of a use variance, as determined by the Board:

A. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;

The property while being zoned C-2, has been residential and is within a residential 'block'. It's location is a wedge shape block flanked by a single family home and a residential duplex. The block has 4 homes and is adjacent to residential in the rear.

B. The hardship condition is not created by actions of the applicant;

Correct, Our client has not purchased the property yet pending approval. We believe the best use of the property is to stay residential.

C. The granting of the variance will not adversely affect the rights of adjacent owners;

The single family home that was on the property was torn down in 2019. We do not believe rebuilding affects the adjacent property owners, one being an duplex already.

D. The granting of the variance will not adversely affect the public health, safety or general welfare;  
We do not have any reason to believe so.

E. The variance will be consistent with the general spirit and intent of this Ordinance;

Correct, the property is zoned C-2 but has been residential and it makes sense to stay residential for the foreseeable future.

F. The variance sought is the minimum which will afford relief to the applicant; and

Correct. We seek to build a duplex and nothing more.

G. There is no other economically viable use which is permitted in the zoning district.

Correct, to rebuild any residential project on this property it has been be a variance.

**FACTORS APPLICABLE TO AREA OR SIZE-TYPE VARIANCES ("PRACTICAL DIFFICULTY")**

The applicant shall show by a preponderance of the evidence that the variance is justified, as determined by the Board. The Board shall weigh the following factors to determine whether a practical difficulty exists and an area or size-type variance should be granted:

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

Given that the property is adjacent to the stream and that there is residential on the other side of the stream, the required 50 rear setback is unattainable for construction of a new residential home.

B. Whether the variance is substantial;

The 50' setback creates a hardship for this property, along with the adjacent properties already constructed. Given the stream is not included in the 50', we believe we are still within principle of the setback.

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

We do not believe so. The proposed duplex intent to be aligned with adjacent properties which are within the 50' setback.

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

We do not believe so as the project is putting back a residential building where there already was one.

E. Whether the property owner purchased the property with knowledge of the zoning restrictions;

The property has not been closed on for this reason.

F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or

This variance was a requirement proposed by the City of Medina. In order to build on the property as is, a variance is required.

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

We are taking steps to enhance the existing neighborhood, aligning the buildings, and providing more than required side setbacks. We strongly believe the location will be greatly served by this proposed project and a variance is a necessity to make it move forward .

**FACTORS APPLICABLE TO AREA OR SIZE-TYPE VARIANCES ("PRACTICAL DIFFICULTY")**

The applicant shall show by a preponderance of the evidence that the variance is justified, as determined by the Board. The Board shall weigh the following factors to determine whether a practical difficulty exists and an area or size-type variance should be granted:

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

Side lot parking is a requirement for the C2 commercial area. This being proposed use for residential, we do not believe the requirement is needed.

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B. Whether the variance is substantial;

Side car parking is not a requirement for duplex construction.

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

being the property is located on a residential side of W Smith, we see no effect.

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

No effect.

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E. Whether the property owner purchased the property with knowledge of the zoning restrictions;

Property has yet to be purchased, pending appeal approval.

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F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or

The size of the lot is not conducive for side lot parking, nor is it required for residential construction.

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G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

yes, we see that the spirit of the residential zoning requirement would make the most sense for this property and proposed plan.

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**FACTORS APPLICABLE TO AREA OR SIZE-TYPE VARIANCES ("PRACTICAL DIFFICULTY")**

The applicant shall show by a preponderance of the evidence that the variance is justified, as determined by the Board. The Board shall weigh the following factors to determine whether a practical difficulty exists and an area or size-type variance should be granted:

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

By matching existing houses on the street, we believe the return is staying cohesive with the neighbor hood.

B. Whether the variance is substantial;

We believe introducing 75% of the front of the house as different material would not be cohesive with the neighborhood and the associated cost of construction would be increased substantial.

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

Adjoining properties would be benefited by similar materials as they are 100% vinyl sided.

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

No effect.

E. Whether the property owner purchased the property with knowledge of the zoning restrictions;

Property has yet to be purchased, pending appeal approval.

F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or

We do not believe introducing additional siding materials would be appropriate.

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

The spirit of the neighbor hood would stay intact, and the use of board and batten vinyl would also improve they over all appearance.

# MEDINA DUPLEX

## NEW CONSTRUCTION



**THE CORNICE COMPANY**  
 3200 WEST MARKET, SUITE 6  
 FAIRLAWN, OH 44333  
 (330) 836-2189

## OVERALL SITE PLAN

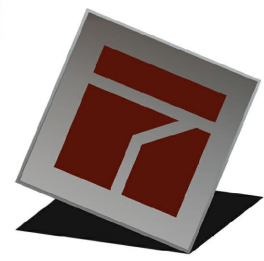
1 OVERALL SITE PLAN  
TS-100 NO SCALE

TS-100

SITE PLAN  
OPTION 2

MEDINA DUPLEX  
NEW CONSTRUCTION

PLANNING AND ZONING 11/20/2024



THE CORNICE COMPANY  
3200 WEST MARKET, SUITE 6  
FAIRLAWN, OH 44133  
(330) 836-2189

DRAWING INDEX

TS-100 TITLE SHEET / SITE PLAN

ARCHITECTURAL  
A-100 FIRST FLOOR PLAN  
A-200 ELEVATIONS  
A-201 ELEVATIONS

OVERALL SITE PLAN

ZONING INFORMATION

CONTACT INFORMATION:

CONTRACTOR: THE CORNICE CO.,  
3200 WEST MARKET ST, STE 006  
FAIRLAWN, OH, 44133

ADDRESS: 322 W SMITH ROAD  
PARCEL NUMBER: 028-19C-05-121  
INTENDED USE: MULTI-FAMILY

ZONING DISTRICT: C-2 CENTRAL BUSINESS

DISTRICT C-2 REQUIREMENTS:

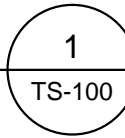
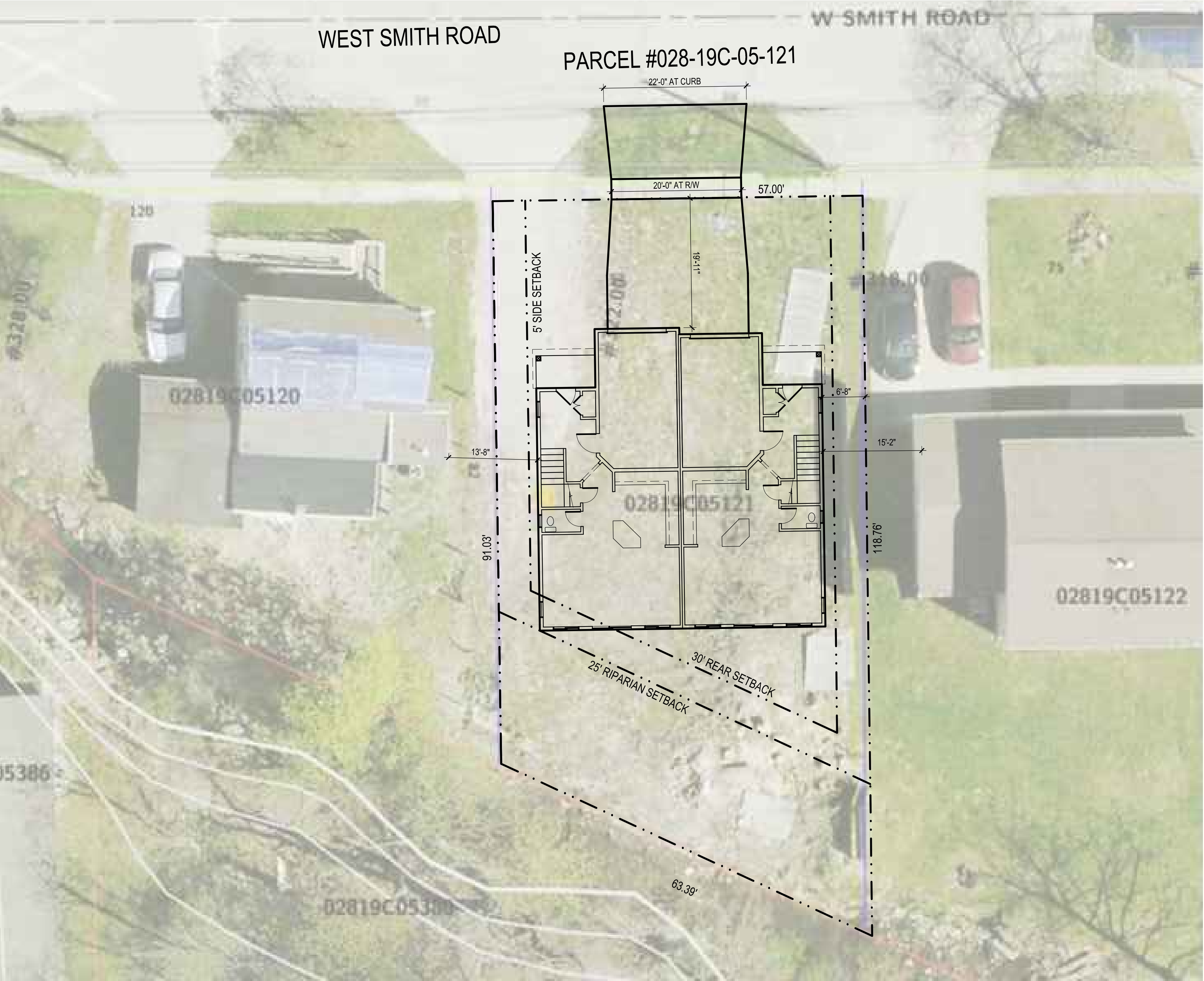
	REQUIRED	PROVIDED
MAX LOT COVERAGE	NONE	-
MIN FRONT YARD	NONE	19'-11"
MIN REAR YARD	50'	25'-0"
MIN SIDE YARD	NONE	6'-7"
MAX HEIGHT	40'	27'-9"

VARIANCE REQUESTED: R2 DUPLEX USE WITHIN A  
C2 CENTRAL BUSSINESS DISTRICT 1135.03

VARIANCE REQUESTED: C2 25' IN LIEU OF 30' REAR  
SETBACK ADJOINING RESIDENTIAL DISTRICT 1135.06

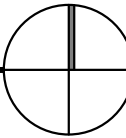
VARIANCE REQUESTED: C2 PARKING TO BE  
PERMITTED IN FRONT YARD 1135.08

VARIANCE REQUESTED: C2 100% USE OF VINYL  
IN LIEU OF REQUIRED 15% 1135.13



1 OVERALL SITE PLAN

TS-100 NO SCALE



PLAN NORTH

Medina Duplex  
322 W SMITH ROAD  
MEDINA, OH 44256

PROJ. NUMBER: 24-0541  
OCT 20, 2024 PLAN/ZONING

TITLE SHEET

TS-100

REVISED  
BUILDING  
ELEVATIONS

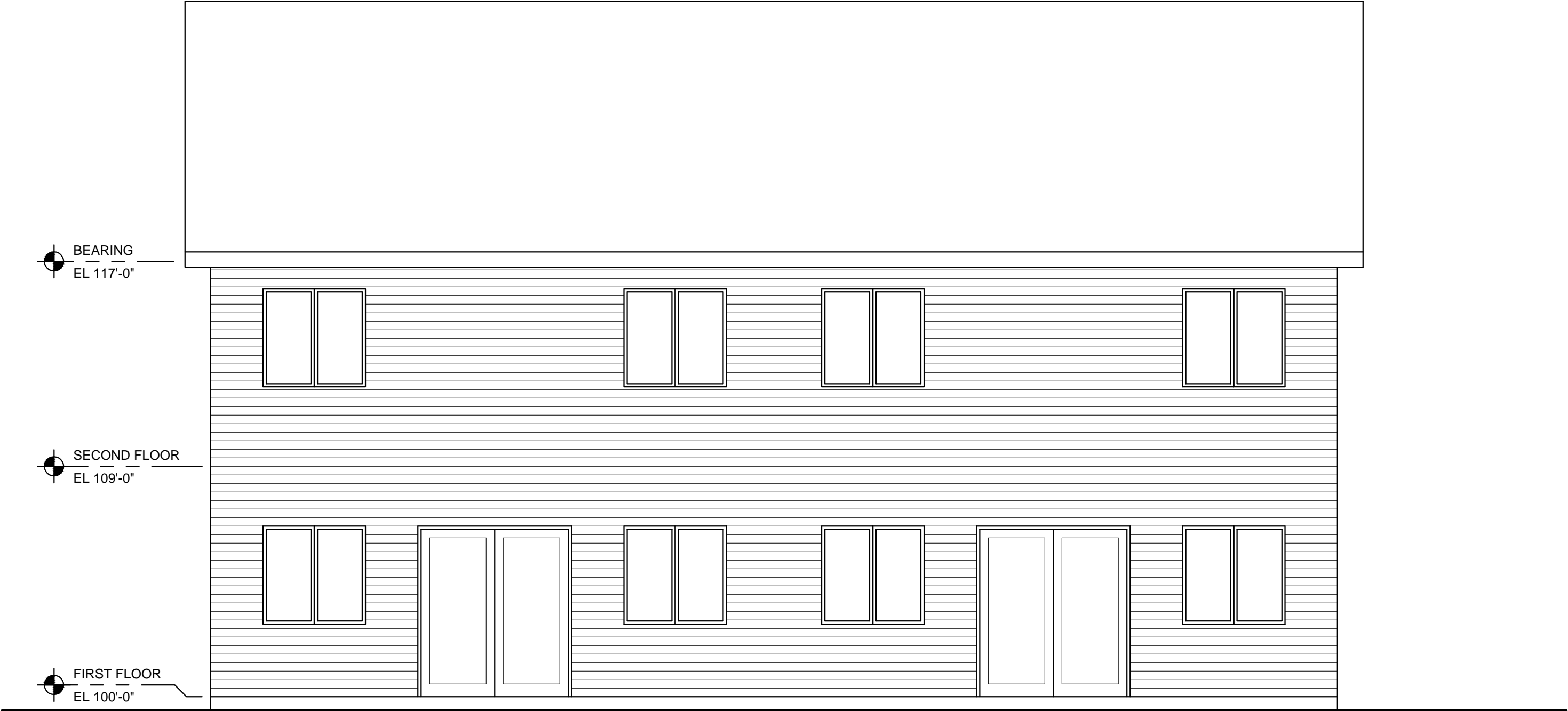


1 NORTH ELEVATION  
A-200 1/4" = 1'-0"

\*Color, shutters, and shake siding added



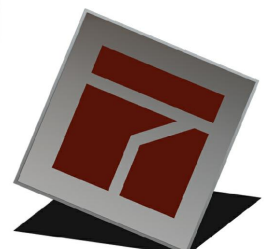
2 EAST ELEVATION  
A-200 1/4" = 1'-0"



3 SOUTH ELEVATION  
A-200 1/4" = 1'-0"



4 WEST ELEVATION  
A-200 1/4" = 1'-0"



THE CORNICE COMPANY  
3200 WEST MARKET, SUITE 6  
FAIRLAWN, OH 44133  
(330) 836-2189

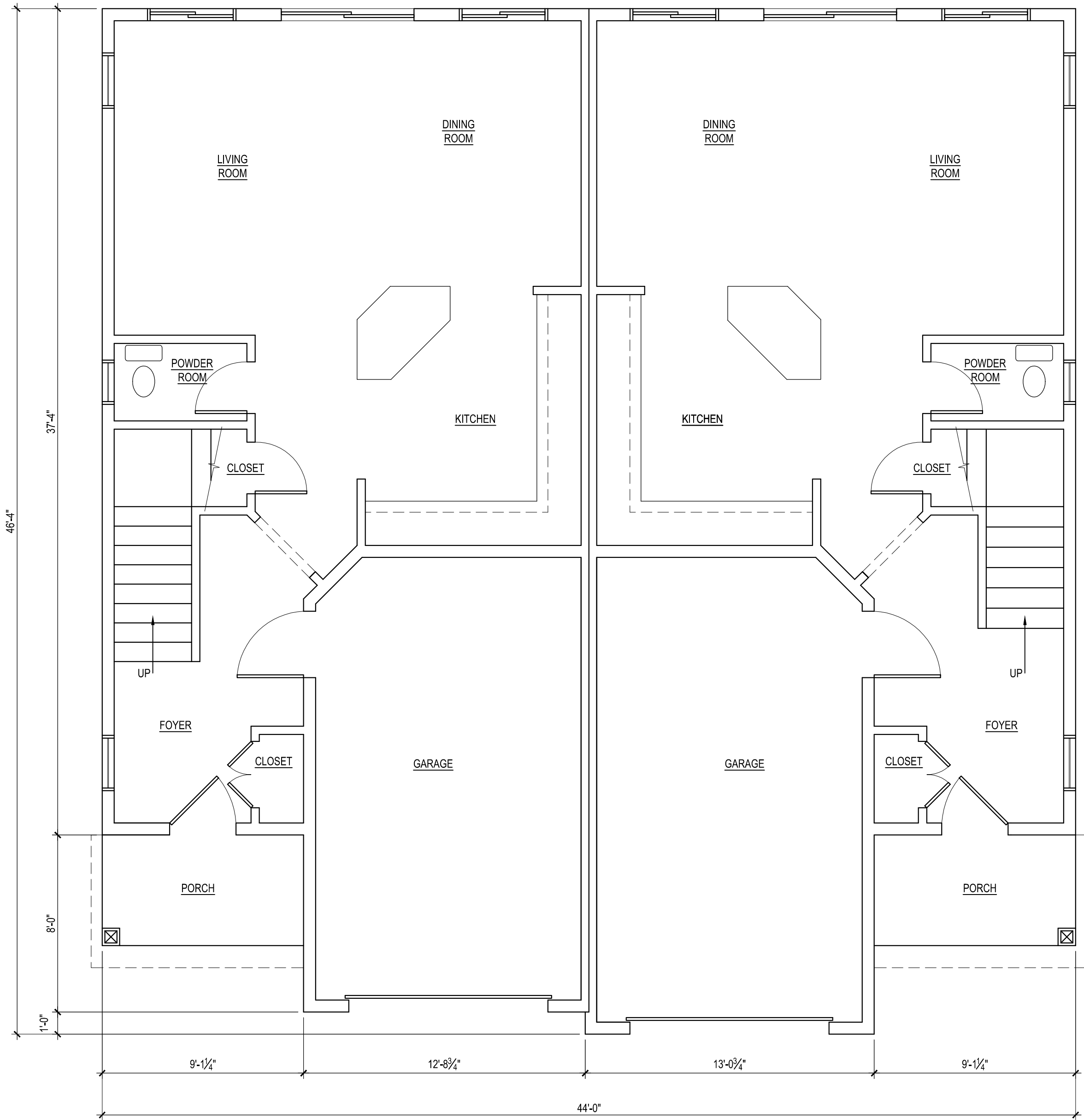
Medina Duplex  
322 W SMITH ROAD  
MEDINA, OH 44256

PROJ. NUMBER: 24-0541  
OCT 20, 2024 PLAN/ZONING

ELEVATIONS  
AND DETAILS

A-201

(NO CHANGE)



1 FIRST FLOOR PLAN  
A-100 1/4" = 1'-0"

PLAN NORTH



THE CORNICE COMPANY  
3200 WEST MARKET, SUITE 6  
FAIRLAWN, OH 44133  
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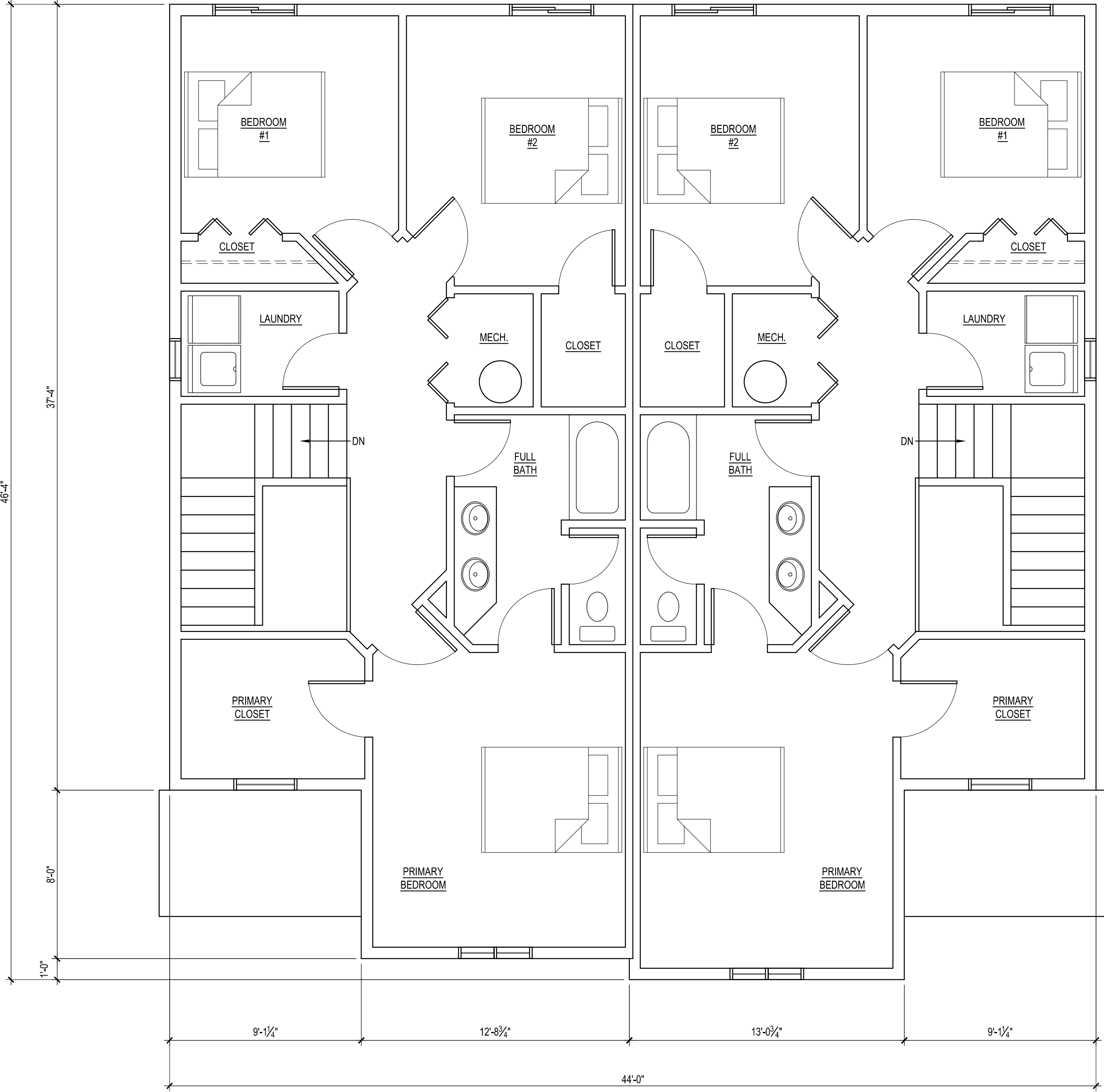
Medina Duplex  
322 W SMITH ROAD  
MEDINA, OH 44256

PROJ. NUMBER: 24-0541  
OCT 20, 2024 PLAN/ZONING

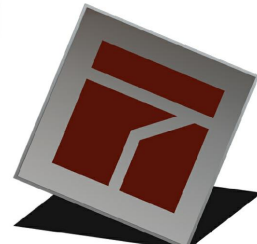
FIRST FLOOR PLAN

A-100

(NO CHANGE)



1 SECOND FLOOR PLAN  
A-101 1/4" = 1'-0"



THE CORNICE COMPANY  
3200 WEST MARKET, SUITE 6  
FAIRLAWN, OH 44133  
(330) 836-2189

Medina Duplex  
322 W SMITH ROAD  
MEDINA, OH 44256

PROJ. NUMBER: 24-0541  
OCT 20, 2024 PLAN/ZONING

SECOND FLOOR PLAN

A-101

**328 W. Smith Road**



**318 W. Smith Road**



## CITY JOB No. 836E



CURRENTLY, DURING HEAVY RAINFALL EVENTS THE EXISTING DWELLINGS ALONG W. SMITH ROAD HAVE EXPERIENCED FLOODING ISSUES. TO HELP ALLEVIATE SOME OF THESE FLOODING ISSUES THE CITY IS PROPOSING TO INSTALL A NEW CURB INLET BASIN ALONG SMITH ROAD. A NEW 2-2-B CATCH BASIN WILL ALSO BE INSTALLED IN THE FRONT YARD OF 328 W. SMITH ROAD TO HELP DRAIN A LOW POINT THAT IS TRAPPING WATER. THE TWO BASINS WILL OUTLET INTO CHAMPION CREEK VIA A PROPOSED TWELVE INCH STORM SEWER. SOME MINOR GRADING WILL BE COMPLETED TO ENSURE DRAINAGE IS PROVIDED IN ALL AREAS.

-  - EX. WATER LINE VALVE
-  - EX. FIRE HYDRANT
-  - EXISTING UTILITY POLE
-  - EX. SANITARY MANHOLE
-  - EX. STORM MANHOLE
-  - EX. STORM INLET BASIN
-  - EX. STORM INLET BASIN
-  - PROP. 2-2-B CATCH BASIN
-  - EXISTING DECIDUOUS TREE
-  - EX. SPOT ELEVATION
-  - PROP. SPOT ELEVATION

2 WORKING DAYS  
BEFORE YOU DIG

CALL TOLL FREE 800-362-2764

OHIO UTILITIES PROTECTION SERVICE  
NON-MEMBERS MUST BE CALLED DIRECTLY

REF.	DESCRIPTION	QUANTITY	UNIT
MEDINA	GRADING TO PROVIDE DRAINAGE, PER PLAN, COMPLETE	1	LUMP SUM
MEDINA	STORM SEWER, 12" DIAMETER WITHIN REAR YARD AREA (including trenching, bedding, and natural compacted backfill)	88	LINEAL FEET
MEDINA	STANDARD CURB INLET BASIN, COMPLETE IN PLACE	1	EACH
MEDINA	STANDARD 2-2-B CATCH BASIN, COMPLETE IN PLACE	1	EACH
MEDINA	STANDARD 12-INCH HALF HEADWALL, COMPLETE IN PLACE	1	EACH
MEDINA	CONCRETE SIDEWALK, (4" Fiber Reinforced Type C), COMPLETE	38	SQUARE FEET
MEDINA	CONCRETE PAVEMENT, 10" THICK TYPE MS FIBER REINFORCED (including pavement removal, 2" - 57 base, and int. curb)	36	SQUARE FEET
ODOT	ODOT 601 ROCK CHANNEL PROTECTION TYPE 'B'	32	CUBIC FEET
ODOT	ODOT 653 TOPSOIL FURNISHED AND PLACED	20	CUBIC YARDS
ODOT	ODOT 659 SEEDING, FERTILIZER AND MULCHING	175	SQUARE YARDS
MEDINA	FENCE REMOVED AND REINSTALLED	1	LUMP SUM

CITY OF MEDINA	
Project:	WEST SMITH ROAD DRAINAGE IMPROVEMENTS
Title:	DRAINAGE PLAN
Scales: PLAN - 1" = 10'	
Date: FEBRUARY 1, 2008	Sheet Number: 1 of 3
Revisions: 1. 2.	

g. File #: 836E \ dwg \ 836E\_BASE.dwg

2  
1  
0  
0  
0



Eton Tower  
28601 Chagrin Blvd., Suite 600  
Cleveland, Ohio 44122  
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fax: 216.831.0542  
www.meyersroman.com

Nicholas J. Hanek, Esq.  
[nhanek@meyersroman.com](mailto:nhanek@meyersroman.com)

To : Medina City Planning Commission  
Medina City Board of Zoning Appeals

Re: **Application P24-26, Z24-24 Supplemental Information**

I am writing on behalf of the pending property owner/applicant, David Wascak, regarding Application P24-26 to the Medina City Planning Commission and Application Z24-24 to the Medina City Board of Zoning Appeals regarding property at 322 West Smith Road. This parcel is located in the C-2 District and in the Transitional Corridor Overlay District ("TC-OV"). The property currently sits vacant and is located next to residential uses (both single family and duplexes) and across from a commercial use (Lager Heads Company and Tap Room). The applicant is seeking to build a new two-family residential building on this lot that has been vacant since 2018.

This matter was previously heard on November 14, 2024 by both the Planning Commission and the Board of Zoning Appeals.

On November 14, 2024, application P24-26 was approved 5-0 contingent on an approval of a use variance by the Board of Zoning Appeals with the following conditions: 1) Shutters shall be installed besides the windows on the front building elevation and 2) Shake siding shall be installed in gabled areas on the front building elevation. The pending property owner/applicant will comply with these conditions.

On November 14, 2024, application Z24-24, following discussion, was tabled to a future meeting. This matter was ultimately continued until February 13, 2025.

The applicant is seeking the following from the Board of Zoning Appeals:

- A use variance to Section 1135.03 to allow a two-family residential use.
- An area variance to Section 1135.06 to allow a principal structure in the rear yard setback.
- An area variance to Section 1135.08(a) to allow parking in the front yard.
- An area variance to Section 1135.13(c)(1) to allow a vinyl exterior exceeding the maximum permitted.

---

As to the **Use Variance** to Section 1135.03 factors and in supplement to the prior application for the Board’s consideration:

**A. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district:**

322 West Smith Road is located in the C-2 District and the TC-OV District in a row of residential buildings including similar two-family residences. There are a large number of non-conforming uses throughout this residential block similarly situated in the C-2 district.

This property, however, is also located in the TC-OV (Section 1116.07) an overlay zoning district that specifically is defined as a district that “possesses [a] mixture of residential and nonresidential uses” and “contain a mixture of residential and nonresidential zoning classifications” pursuant to Section 1116.07. Therefore, while a use variance is necessary, the proposed building fits into the overall intention expressed in both the City of Medina Zoning Code regarding the TC-OV District and in the 2022 Comprehensive Plan for the City of Medina encouraging multi-residence development in appropriate areas.

Specifically, this area of West Smith is viewed as “Urban Residential” in the City of Medina Comprehensive Plan– meaning that multi-family residential is explicitly viewed as appropriate for the long term plans for the City of Medina. The proposed use also fits in with the general idea of the C-2 district and TC-OV overlay district, but due to the uniqueness of the parcel it is not a typical parcel that would be suitable for mixed-use development but would be suitable for Urban Residential. Attached as Exhibit A is a copy of pg. 77 of the 2022 Medina Comprehensive Plan marking this area as “Mixed Use” in a “Future Land Use” diagram and Exhibit B is a discussion on pg. 79 from the Medina Comprehensive Plan regarding the definition of “Urban Residential” with a recommended development intensity including higher net densities as an express goal.

Multi-family residential use is expressly permitted in the C-2 district pursuant to 1135.03, but only when it is a part of a mixed-use building. The size, shape, and location of this parcel would make the location of a mixed-use building or a commercial enterprise impossible or highly impractical. A convenience retail establishment, bar or tavern, or another retail business with multi-family housing could be expressly permissible at this parcel but the dimensions of the parcel itself would not allow for other requirements such as parking to be met – and it would also create an unusual use in a row of residential uses. However, this property is located close to and across from a nearby retail establishment across the street. While this parcel does not meet the exact definition of mixed-use, it fits with the intention of the zoning district and overlay due to the proximity to businesses.

The uniqueness of this parcel allows for an opportunity to create multiple family housing near a commercial business in a way that allows for the intentions of the districts to be met through a use variance thereby meeting the intentions of both the C-2 district and the TC-OV overlay.

**B. The hardship condition is not created by the actions of the applicant:**

This property has remained vacant without any use since 2018.

**C. The granting of the variance will not adversely affect the rights of adjacent owners:**

There has been significant discussion regarding potential water flow or issues that are without basis. The applicant agrees with the assessment in the Staff Report and will present a Lot Improvement Plan that complies with the City of Medina requirements and, per city regulations, will not result in a negative impact to area properties.

In addition, and attached as Exhibit C, there is an easement of a combined 10 feet wide that is on both 322 West Smith Road and 328 West Smith Road. The current owner of 328 West Smith Road entered this easement in 2017 for the purpose of allowing the City of Medina to continue to access the area for the purposes of maintenance. There is no concern to the neighboring properties regarding the access and maintenance of this area due to the easement and the necessity of compliance with the regulations of the City of Medina regarding stormwater management. This project will ultimately improve the water management in this area and for the adjoining properties.

The other adjacent business and property residents are supportive of the proposed project. Attached is Exhibit D, a statement by Shannon Rush who resides in the duplex next door at 316 West Smith Road, that is supportive of this plan as an improvement to the area. Also attached is Exhibit E, a letter from Matt Kiene – the owner of Lager Heads Brewing Company – directly across from this parcel who is also supportive of this application. Finally, attached is Exhibit F, a statement by Leslie Burns, who is the listing realtor of this property regarding this property sitting vacant and the potential use of this property.

**D. The granting of the variance will not adversely affect public health, safety, or general welfare:**

There is no known detriment to the area the granting of a variance. This proposed project is located in an area with multiple family housing and other residential uses on a residential block. It is located immediately next to another duplex.

**E. The variance will be consistent with the general spirit and intent of this**

**Ordinance:**

This project fits both into the larger plans for the City of Medina (as viewed in the City of Medina 2022 Comprehensive Plan and in the designation as a part of an overlay zoning district) and will improve the immediate area.

**F. The variance sought is the minimum which will afford relief to the applicant:**

A use variance to allow for residential use is necessary to allow for this project. A multiple family use would be permitted if this also included a retail component, but it cannot contain a retail or mixed-use component due to property constraints and due to practical location in a residential block.

**G. The variance sought is the minimum which will afford relief to the applicant:**

There is no known commercial or retail use that is viable given this parcel's shape, size, and location. A use variance is necessary to build a residential use.

---

As to the **Area Variances**, these requests are secondary to the initial use variance request as much of the application of the C-2 standards would prove to be impossible and/or wholly impractical:

At the hearing on November 14, 2024, the rear yard setback requirement was discussed as 50 ft. Per the December 12, 2024 Staff Report that has been corrected to 30 ft. The applicant has provided two rear yard setback options of either 14 feet 5 inches or 25 feet.

*As to the Area Variance as to 1135.06—Rear Yard Setback:*

**A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance:**

Residential use is not possible without a variance to the rear yard setback. Allowing for the setback to be 14 feet and 5 inches would allow for this property to have additional driveway room for the potential residential use and would align this property with the existing duplex that is next to this property.

**B. Whether the variance is substantial:**

This is not a substantial request as an adjacent property is located close to the creek running through the back the property. The stream runs diagonal across the back of the properties

and, without the direction of that stream, it would not be an issue as only one portion of the proposed building is within the setback.

**C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance:**

This neighborhood would likely gain value from the building and this proposed building is in character with the duplex located next to this parcel.

**D. Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer, garbage):**

As shown in Exhibit C, an easement exists to allow for the continued care and maintenance of the creek by the City of Medina. This property has always been a residential use prior to becoming a vacant lot.

**E. Whether the property owner purchased the property with knowledge of the zoning restrictions:**

The owner has gone through the appropriate approval and application process regarding the potential variances with appropriate requests.

**F. Whether the property owner's predicament feasibly can be obviated through some other method other than a variance:**

There is no other potential principally permitted use in the C-2 district that would be feasible on this lot without a variance to the rear yard setback.

**G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance:**

As discussed as related to the Area Variance, the proposed use upholds the spirit and intention of the zoning ordinance and is in line with the comprehensive plan and zoning ordinances.

*As to the Area Variance as to 1135.08—Parking in the Front Yard:*

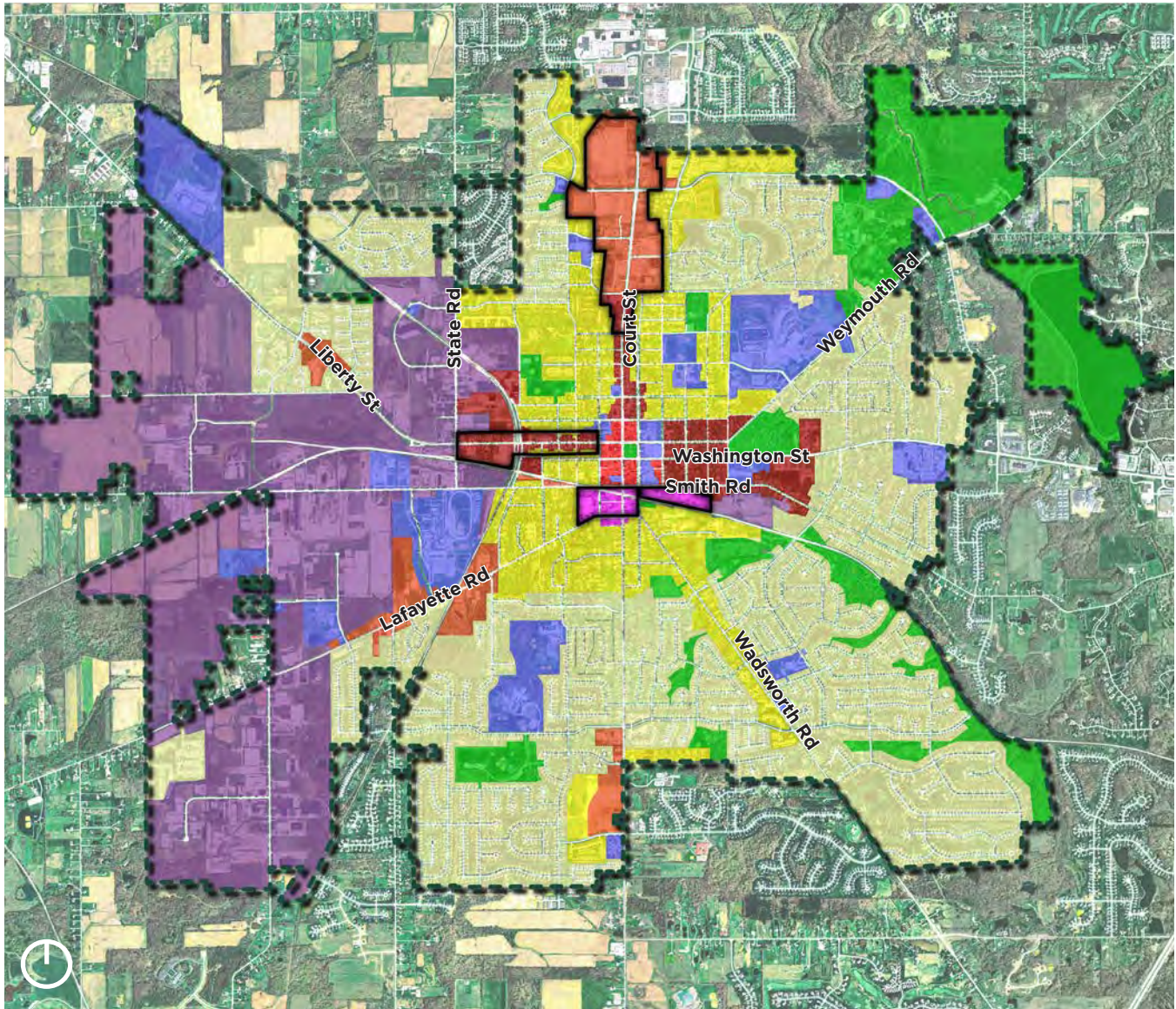
A variance is necessary due to the C-2 zoning district, but there is no feasible project at this location given the parcel shape and size that would allow for appropriate parking that would not be in the front yard of the parcel. The discussion of both the Use Variance and the Area Variance related to 1135.06 would also apply to the variance request to 1135.08.

*As to the Area Variance as to 1135.13—Vinyl Exterior:*











A variance is necessary due to the C-2 zoning district, but Vinyl is appropriate for the use and the neighborhood for this residential project and fits into the surrounding buildings. The discussion of both the Use Variance and the Area Variance related to 1135.06 would also apply as to the variance request to 1135.13.

## Exhibit A

Figure 4.1 - Future Land Use



### LEGEND

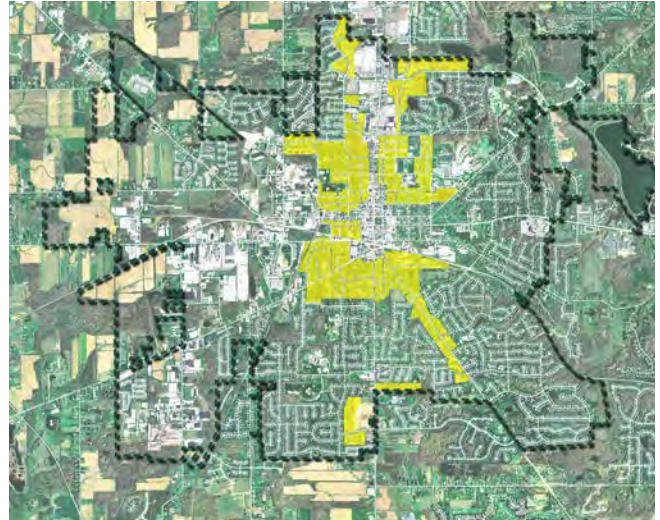
	Parks & Open Space		Mixed Use
	Suburban Residential		Institutional
	Urban Residential		Innovation
	Community Commercial		Urban Corridor
	Central Business District		Focus Areas

## URBAN RESIDENTIAL

### DESCRIPTION

Urban Residential is characterized by communities with a range of single and multi-family housing options with on-site, shared amenities.

- **Development Character** should be single family, multi family residential, and community facilities that offer various amenities to residents such as a community center, recreational paths, and natural areas.
- **Development Intensity** should be up to 10 dwelling units per acre. Higher net densities may be achieved through open space dedication, as long as the overall density does not exceed fifteen units per acre, unless density bonuses allow.
- **Common Spaces** should be carefully designed and integrated into the development. This could include areas for pets, play, common activity areas, or passive green spaces.
- **Connectivity** should be that of a neighborhood character, with narrow street widths and streetscapes that include trees, lighting, green stormwater infrastructure, etc.



### DEVELOPMENT CHARACTER

<b>Height</b>	1-3 stories
<b>Front Setback</b>	25-60 ft
<b>Parking</b>	--
<b>Recommended Development Intensity</b>	Up to 10-12 units/acre
<b>Recommended Uses</b>	<ul style="list-style-type: none"> <li>• Detached Single Family</li> <li>• Attached Single Family</li> <li>• Multifamily</li> <li>• Public</li> <li>• Semi Public</li> </ul>



*Attached townhomes are one example of the type of housing that could exist in the Urban Residential District.*



8 1 8 1 7 5 7  
Tx:8135296

**2017OR024464**

**COLLEEN M. SWEDYK  
MEDINA COUNTY RECORDER  
MEDINA, OH  
RECORDED ON  
10/26/2017 3:45 PM**

**REC FEE: 52.00  
PAGES: 6  
DOC TYPE: EASE**

Exhibit C

MEDINA COUNTY RECORDER

COLLEEN M. SWEDYK

(DO NOT REMOVE THIS COVER SHEET.  
THIS IS THE FIRST PAGE OF THIS DOCUMENT)

ODOT LPA RE 804  
Rev. 09/2012

ED  
ORD. 128-17  
Exh. A

## EASEMENT

KNOW ALL MEN BY THESE PRESENTS THAT: **Christopher Kalina**, married, the Grantor(s) herein, in consideration of the sum of \$7,500, to be paid by City of Medina, Medina County, Ohio, the Grantee herein, does hereby grant, bargain, sell, convey and release to said Grantee, its successors and assigns forever, an easement, which is more particularly described in exhibit A attached hereto, within the following described real estate:

PARCEL(S): .03-SHV  
MED-M.R. 4-0.00

SEE EXHIBIT A ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Medina County Current Tax Parcel No. 028-19C-05-120  
Prior Instrument Reference: #2002OR010986, Medina County Recorder's Office

And the said Grantor(s), for himself and his successors and assigns, hereby covenants with the said Grantee, its successors and assigns, that he is the true and lawful owner(s) of said premises, and lawfully seized of the same in fee simple, and has good right and full power to grant, bargain, sell, convey and release the same in the manner aforesaid, and that the same are free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions, and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules, and regulations; and (d) any and all taxes and assessments not yet due and payable; and that Grantor (s) will warrant and defend the same against all claims of all persons whomsoever.

The property conveyed herein is being acquired by Grantee for a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a public road and the purpose of replacement and constructing, and thereafter using, operating, inspecting, maintaining, repairing, replacing, and removing a culvert along West Smith Road over Champion Creek.

In the event that the Grantee decides not to use the property conveyed herein for the above-stated purpose, the Grantor(s) has a right under Section 163.211 of the Revised Code to repurchase the property for its fair market value as determined by an independent appraisal made by an appraiser chosen by agreement of the parties or, if the parties cannot agree, an appraiser chosen by an appropriate court. However, this right to repurchase will be extinguished if any of the following occur: (A) Grantor(s) declines to repurchase the property; (B) Grantor(s) fails to repurchase the property within sixty (60) days after Grantee offers the property for repurchase; (C) Grantee grants or transfers the property to any other person or agency; or (D) Five years have passed since the property was appropriated or acquired by Grantee.

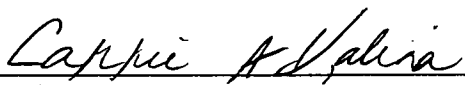
The Grantor(s) and the Grantee agree:

- (1) No entry outside of the easement area will be permitted on the property owned by the Grantor(s).
- (2) The Grantor(s) shall be permitted to utilize the easement area to the extent said use does not interfere with the Grantee's use thereof.

And, for the consideration hereinabove written, Carrie A. Kalina, the spouse of Christopher Kalina, hereby relinquishes to said Grantee, its successors and assigns, all rights and expectancies of Dower in the above-described premises.

IN WITNESS WHEREOF, Christopher Kalina and Carrie A. Kalina have hereunto set their hands on the 31<sup>st</sup> day of July, 2017.


  
CHRISTOPHER KALINA

  
CARRIE A. KALINA

STATE OF OHIO       )  
                              )ss:  
COUNTY OF MEDINA)

BE IT REMEMBERED, that on the 31<sup>st</sup> day of July, 2017, before me the subscriber, a Notary Public in and for said state and county, personally came the above-named Christopher Kalina and Carrie A. Kalina, who acknowledged the foregoing instrument to be their voluntary acts and deeds.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

**JULIE BAUMAN**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JAN. 29, 2021  
RECORDED IN MEDINA COUNTY

This instrument prepared by:  
Gregory A. Huber, Law Director  
City of Medina  
132 North Elmwood Avenue  
Medina, OH 44256  
Tel: (330) 722-9070

**EXHIBIT A**

RX 271 SHV

Page 1 of 2

Rev. 06/09

Ver. Date 05/12/2017

PID 97553

**PARCEL 3-SHV  
MED-M.R. 4-0.00  
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES  
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS  
IN THE NAME AND FOR THE USE OF THE  
CITY OF MEDINA, MEDINA COUNTY, OHIO**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the City Of Medina, Medina County, Ohio, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

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[Surveyor's description of the premises follows]

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Situated in the City of Medina, County of Medina, and State of Ohio, and being part of Outlot 1002, as conveyed to Christopher Kalina (hereinafter known as the "Grantor"), by deed dated March 18, 2002 and recorded in Document Number 2002OR010986, of the Medina County Recorder's Office, Medina County, Ohio, and being bounded and more particularly described as follows:

Being a parcel of land lying on the south side of the centerline of existing right-of-way of West Smith Road, (a 60' Right-of-Way), as shown and delineated upon the right-of-way plans designated as MED-M.R. 4-0.00 prepared for the State of Ohio, Department of Transportation by Carpenter Marty Transportation Inc., and being more particularly described as follows:

Beginning at a point at the Grantor's northwesterly corner, also being the northwesterly corner of Outlot 1002, said point being in the existing southerly right-of-way line of said West Smith Road, said point being 30.00 feet right of Station 89+76.50 in said centerline;

Thence along the Grantor's northerly line, and northerly line of Outlot 1002, also being the existing southerly right-of-way line of said West Smith Road, North 89 degrees 2 minutes 22

**EXHIBIT A**

Page 2 of 2

Rev. 06/09

RX 271 SHV

seconds East a distance of 38.50 feet to an iron pin set 30.00 feet right of Station 90+15.00 in said centerline;

Thence through said Outlot 1002 the following two courses:

- 1) South 0 degrees 57 minutes 38 seconds East a distance of 17.00 feet to an iron pin set 47.00 feet right of Station 90+15.00 in said centerline;
- 2) South 89 degrees 2 minutes 22 seconds West a distance of 19.14 feet to a point in Grantor's westerly line, and westerly line of Outlot 1002, said point being 47.00 feet right of Station 89+95.86 in said centerline;

Thence along said westerly line and the westerly line of Outlot 1002, North 49 degrees 40 minutes 59 seconds West a distance of 25.77 feet to the TRUE POINT OF BEGINNING, containing 0.0112 acres, of which the present road occupies 0.000 acres.

The above described Parcel of land is located in Auditor's Parcel Number 028-19C-05-120.

Iron pins set are ¾ inch diameter rebar, 30 inches long with a 2 inch diameter aluminum cap marked "MEDINA CITY R/W, P.S. 8124".

This description is based on a survey performed for the Ohio Department of Transportation in April of 2015 by Carpenter Marty Transportation Inc. This description was prepared and reviewed on May 12, 2017 by Kevin P. Carpenter, Registered Surveyor Number 8124.

The bearings found herein are based on Grid North of the Ohio State Plane Coordinate System, North Zone, NAD 83 (2011) with a project adjustment scale factor of 1.00010561.

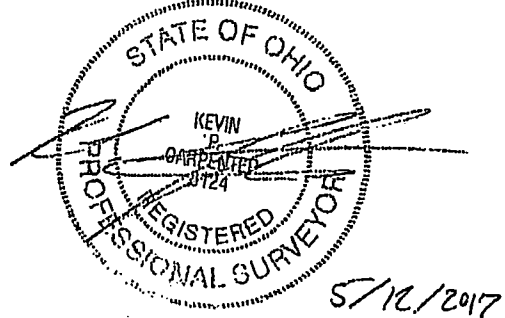


Exhibit D

December 3, 2024

City of Medina  
132 N Elmwood Ave  
Medina, OH 44256

To Whom It May Concern,

My name is Shannon Rush and I live at 316 W Smith Road. I live in the duplex next door to the open lot at 322 W Smith Road.

I understand that the city is reviewing plans to construct a new duplex at 322 W Smith, and I wanted to share my support for the approval of this project. It should be approved immediately.

The open lot next door has been vacant for years and is an eyesore. I have seen the blueprints for the duplex, and it would be a beautiful addition to this neighborhood.

Thank you,

A handwritten signature in black ink, appearing to read 'Shannon Rush', with a stylized, cursive script.

Shannon Rush

440-506-8003

Exhibit E



Lager Heads Brewing Co.  
325 W Smith Road  
Medina, OH 44256  
330-721-2337

November 27, 2024

Andrew Dutton  
City of Medina  
Planning & Zoning  
132 N Elmwood Ave  
Medina, OH 44256

Dear Andrew,

Unfortunately I will not be able to attend the zoning board meeting on 12/12/24, but I felt it was important to voice my opinion on the Planning and Zoning matter that is before the board, regarding 322 W Smith St.

I have reviewed the building plans that Mr. Wascak has submitted to the city for approval, and I fully support the building of this duplex. The duplex will provide additional (needed) housing opportunities for residents, increase property values, provide additional tax revenue for the city, and give an updated appearance to the street. This lot has been vacant for several years, and I would ask that the zoning board approve the variance requests without delay, so that construction may begin.

Sincerely yours,

Matt Kiene

Owner - Lager Heads Brewing Co.

## **Statement to the Medina City Board of Zoning Appeals**

*Regarding the Proposed Variance for 322 W. Smith Road, Medina*

Dear Members of the Medina City Board of Zoning Appeals,

Thank you for the opportunity to submit this statement in support of the requested variances for the property located at 322 W. Smith Road in Medina. Although I regret that I cannot attend the upcoming meeting, I appreciate your consideration of my written remarks.

As the listing agent for this property, I have been actively involved in its marketing and have communicated with various parties, including neighboring property owners, throughout this process. I would like to provide some context to address concerns raised at the initial meeting and demonstrate why this variance is both reasonable and in the best interest of the community.

### **Background and Neighboring Property Concerns**

- **Initial Interest in the Property:** Shortly after I placed the sale sign on the property on July 24th, I received an inquiry from a colleague in my office who had spoken with Mr. Chris Kalina, the owner of the neighboring property at 328 W. Smith Road. Mr. Kalina mentioned that he had previously offered \$15,000 for this parcel, which was declined by the previous owner. He also indicated that he was not willing to offer more than \$20,000. This suggests a prior interest in acquiring the lot, rather than a specific concern about its development.
- **Survey Concerns:** On October 21st, Mr. Kalina contacted me directly to express concerns about the property markers placed by the survey company, Exacta. I encouraged him to contact Exacta with his questions, and I believe this matter could be easily resolved through dialogue between the involved parties.
- **Claim of Adverse Possession:** During the same conversation, Mr. Kalina mentioned that if the markers were confirmed to be accurate, he would consider filing for adverse possession due to his claim of maintaining the property for over 21 years. He also shared that he believed development on this parcel would limit access to the rear of his property and expressed an intent to pursue legal action to prevent any construction.

### **Observations on Opposition to the Variance**

Having reviewed the minutes from the prior meeting, it appears that Mr. Kalina's attorney primarily raised concerns regarding potential water intrusion in the basement of his property, which was built in 1897. While I empathize with concerns about water management, this issue seems to pertain more directly to the condition of his home rather than the proposed development on the neighboring lot. The proposed duplex design includes appropriate drainage systems and grading plans to ensure compliance with city standards, which would likely improve overall water management in the area.

### **Supporting the Variance**

This lot has remained vacant since the demolition of a single-family home in 2018. As noted by city staff, the proposed duplex aligns with the mixed residential and commercial character of the surrounding neighborhood and represents a reasonable and beneficial use of the property. The applicant has demonstrated a willingness to work within the city's guidelines, making adjustments to the design to address aesthetic and functional concerns.

I respectfully request that the Board consider the broader context of this application, including the community benefit of revitalizing this vacant lot, and weigh the applicant's good-faith efforts to meet the standards for approval.

Thank you for your time and for your thoughtful consideration of this matter. Should you have any further questions, I would be happy to address them following the meeting.

Leslie Burns, REALTOR  
M.C. Real Estate  
403 E Washington St  
Medina, OH 44256  
(330) 242-3195

**CITY OF MEDINA PLANNING COMMISSION**

**AND**

**CITY OF MEDINA BOARD OF APPEALS**

**IN RE: APPLICATION P24-26, Z24-24**



Now comes Christopher Kalina, adjacent property owner, by and through the undersigned attorney, and makes his written objections to the variance applications, P24-6 and Z24-24, filed for the real property at 322 W. Smith Rd., Medina, Ohio; PPN# 028-19C-05-121, ("322 W. Smith Rd. lot").

There are significant objections to the Applicant's requested variances. A critical issue with the planned "Two-Family Dwelling" on the 322 W. Smith Rd. lot is the safety of future tenants and especially, their children. The 322 W. Smith Rd. lot fronts one of the heaviest truck and automobile routes leading to the city's industrial and business districts.

The planned oversized 3,270 sq. foot "Two-Family Dwelling" structure with two side-by-side "off street parking and loading driveways will occupy a majority of the 5,702 sq. ft. area of the 322 W. Smith Rd. lot. Considering the Applicant has also requested an "area variance" to reduce the back yard setback from 30' to 14' 5" or 25" the site plan leaves little, if any, recreation area for the tenants and their children of the two units of the "Two-Family Dwelling".

The back yard setback area includes a portion of Champion Creek, which runs west to east along the full rear lot line of 322 W. Smith Rd, lot. Champion Creek presents an additional safety risk for the tenants' children since it serves as a storm water collector stream that often fills with deep and fast running storm water.

The Medina City Board of Appeals owes an obligation to look out for the safety of the occupants' use of any building constructed on a lot within the City of Medina. To ignore this paramount safety issue would be subjecting future families of the proposed "Two-Family Dwelling" to multiple safety risks.

The following presents a review of Applicant's applications for a "use" variance and three "area" variances for the 322 W. Smith Rd. lot in respect to applicable Ohio law and the City of Medina Planning and Zoning Code.

## I. THE REQUESTED VARIANCES

A “use variance” is requested to allow the R-2 Medium Density Urban Residential District “conditionally permitted use” of a “Two-Family Dwelling” found in Section 1123.04<sup>1</sup>, of the Medina City Planning And Zoning Code. Applicant seeks to construct a “Two-Family Dwelling” (“Two-Family Dwelling”) on a vacant lot in the C-2 Central Business District which does not permit construction of a “Two-Family Dwelling” unless it is within a “Mixed Use Building.”

If the “use variance” is granted, the “Two-Family Dwelling” still cannot be constructed as planned unless the Applicant is granted three “area variances.” As designed the planned “Two-Family Dwelling” cannot meet the C-2 Central Business District Section 1135.03 Lot Development Standards, Section 1135.08 Off-Street Parking and Loading Standards and Section 1135.13 Building Development Standards. If the “use” and the “area variances” are granted, Applicant is being afforded the addition right to apply the C-2 Central Business District Lot Development Standards to a non-permitted C-2 District use and not the R-2 Medium Density Urban Residential District Lot Development Standards, which Applicant’s planned “Two-Family Dwelling” cannot meet.

**If the variances are approved, the Applicant is being granted an unauthorized rezoning of the 322 W. Smith Rd. lot by variance.** *See: Dauterman v. Washington Twp. Bd. of Trustees*, 3d Dist. Hancock CASE NUMBER 5-99-54, 2000 Ohio App. LEXIS 1707, at \*9 (Apr. 20, 2000) citing *Fox v. Johnson* (1971), 28 Ohio App. 2d 175, 181, 275 N.E.2d 637; *State ex rel. Basista*, 118 Ohio App. 37, 48, 188 N.E.2d 293 (8th Dist.1963).

## I. STANDARDS FOR A VARIANCE

**A. BURDEN ON APPLICANT.** Section 1107.08(i) of the Medina City Planning And Zoning Code mandates that a variance “**shall be granted only in accordance with, and based on, the findings set forth**” in Section 1107.08(i). Section 1107.08(i) specifically places **the burden of proof for a variance on the applicant**.

**B. AREA VARIANCES.** The Applicant must show by a “**preponderance of the evidence**” that the variance for an area or size-type variance is justified. The Applicant must establish that there is “**practical difficulty**” in the planned use of the property. The Board shall “weigh the factors” set forth In Section 1107.08(i)(1) to find there is a “practical difficulty” as claimed by the Applicant.

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<sup>1</sup> “Sections” cited are to the Medina City Planning And Zoning Code, Amended Through 12/26/2024.

C. **USE VARIANCES.** The Applicant must demonstrate by “**clear and convincing evidence**” that **all of the standards** set for in Section 1107.08(i)(2) have been met in order to find an “**unnecessary hardship**” exists so as to justify the granting of a use variance.” Emphasis has to be placed on the requirement that “**all**” of the standards must be demonstrated by “clear and convincing evidence.”

## I. THE SELF-IMPOSED HARDSHIP RULE

The Medina County Auditor and the Medina County Recorder place the title in Brian James Vanderpool and Elizabeth Anne Vanderpool and not as claimed by “Applicant/Owner, David Wascak,” Neither of the title owners filed the application for the “use variance” and the “area variances.” John Potter, a potential purchaser, is the Applicant.

The Applicant, Mr. Potter, admits in his Applications that he has not purchased the 322 W. Smith Lot. And it can be assumed that the purchase is contingent on the variances being granted.

By the fact that the Applicant seeks a “use variance” and “area variances” for the 322 W. Smith Rd. lot before purchase, is an admission that the property is being acquired for a use outlawed by the Code. The Applicant wants to build a Multiple Family “Two-Family Dwelling” in a C-2 zoned district, which does not permit Multiple Family Dwellings unless they are within a Mixed-Use Building. It is the Applicant’s desire to build a non-permitted “Two-Family Dwelling” in a C-2 zoned district that is creating the “practical difficulty”, and the “unnecessary hardship” relied upon to justify the granting of the respective “area variances” and the “use variances”.

The law in Ohio vitiates a claim of “practical difficulty” or “unnecessary hardship” by an Applicant who purchases property intending to use it in a manner prohibited by the existing zoning ordinance. In support of this rule these two cases support the “self-imposed” hardship rule.

In the present case, appellees imposed the hardship upon themselves as they acquired an interest in the premises with knowledge of the zoning classification. **Where a purchaser of commercial property acquires the premises with knowledge of the zoning restrictions, he has created his own hardship and generally cannot thereafter apply for a zoning variance based on such hardship. The record before us is void of any clear evidence of unnecessary hardship or practical difficulty except those created by appellees.** The mere fact that appellees’ property can be put to a more profitable use does not, in itself, establish an unnecessary hardship where less profitable alternatives are

available within the zoning classification. *Consol. Mgt., Inc. v. Cleveland*, 6 Ohio St.3d 238, 242, 452 N.E.2d 1287 (1983). (Emphasis added).

**A more appropriate statement of the self-imposed hardship rule may be stated in this fashion: Generally, a person who knowingly acquires property *intending to use it in a manner prohibited by the existing zoning ordinance may not thereafter obtain a use variance based upon unnecessary hardship.*** See, 3 Anderson, American Law of Zoning (3 Ed. 1986), Variances, Section 20.45 ("The self-created hardship rule has been applied most frequently to persons who acquired land for a purpose outlawed by the zoning regulations.") *Id.*;

Verbalized in these terms, the self-imposed hardship rule militates *only* against those who acquire property intending to use the land for a prohibited purpose, speculating that the use variance would be available or might be obtained through affirmative efforts. By the same token, this approach spares the person who purchased with knowledge of the restrictions and conformed his use, but because of changed conditions on adjacent properties, suffers hardship independent of, and without regard to, any self-inflicted conditions.

*Craig v. Babcock*, 11th Dist. Portage Case No. 90-P-2248, 1991 Ohio App. LEXIS 3653, at \*7-9 (Aug. 2, 1991).

Applicant is not an owner of 322 W. Smith Rd. lot who purchased the lot and "conformed its use" but change conditions in the surrounding adjacent lots. Applicant is a speculating potential purchaser of the 322 W. Smith Rd. lot with the admitted intent "to use it in a manner prohibited by the existing zoning ordinance." This prevents Applicant from obtaining variances based upon "practical difficulties" and/or "unnecessary hardship."

### III. APPLICATION OF THE STANDARDS FOR A USE VARIANCE

#### A. The use variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district:

An "unnecessary hardship" does not exist unless the property is not conducive to any of the uses permitted by the zoning resolution. *Dauterman v. Washington Twp. Bd. of Trustees*, 3d Dist. Hancock CASE NUMBER 5-99-54, 2000 Ohio App. LEXIS 1707, at \*9 (Apr. 20, 2000)

Applicant ignores the fact that within the C-2 District, Section 1135.03 of the Code permits "Attached Single-Family Dwellings within a Mixed-Use Building – Not including Ground Level Residential Units in the Public Square Area." (The 322 W. Smith Rd. lot is not in the Public Square Area.)

Applicant cites to Sections 1135.03 "Multi-Family Dwellings within a Mixed-Use Building." and ignores the fact that there are Mixed Use Buildings with an attached Single-Family Dwelling currently in the C-2 District. Applicant has not demonstrated by "clear and convincing evidence" that a building containing both a single-family dwelling and one of the commercial uses listed in Section 1135.03 cannot be constructed on the 322 W. Smith Rd. lot.

Because Applicant wants to build a large "Two-Family Dwelling," (3 bedrooms each), on a small lot, does not make the 322 W. Smith Rd. lot possess any unique conditions. The Board must consider that Applicant is contemplating purchasing the property to build a "Two-Family Dwelling" that is oversized for the 322 W. Smith Rd. lot.

Applicant ignores that the 322 W. Smith Rd. lot can be utilize for Section 1135.03 PRINCIPALLY PERMITTED USES including, "single-family dwellings attached to a multi-use building"; an "Office" or "Other similar Uses as Determined by the Planning Commission. "

It is apparent that the sole interest of Applicant is to purchase the property to construct a non-permitted "Two-Family Dwelling" in the C-2 District. Applicant has not shown by "clear and convincing evidence" that none of the Section 1135.03 permitted or conditionally permitted uses are available for development of the 322 W. Smith Rd. Lot.

#### B. The hardship condition is not created by the actions of the applicant:

Applicant's responses for not causing the hardship condition are: (i) Applicant has not purchased the property yet; (ii) the best use of the 322 W. Smith Rd. lot is to stay residential, and (iii) the 322 W. Smith lot has remained vacant since 2018. None of these are relevant to the creation of the "hardship condition" by Applicant.

Applicant admits being "a person who knowingly acquires property to use it in intending a manner prohibited by the existing zoning ordinance." The "hardship condition" claimed by Applicant exists because a lot within the C-2 zoning district does not permit construction of a standalone "Two-Family Dwelling". Application of the "self-imposed unnecessary hardship" rule bars Applicant's application for the "use variance" allowing a R-2 conditional permitted use for the 322 W. Smith Rd. lot.

**C. The granting of the variance will not adversely affect the rights of adjacent owners:**

Allowing the construction of a "Two-Family Dwelling" with each unit having three bedrooms on a lot that historically allowed only a single-family dwelling will adversely affect the adjoining adjacent owners. The size of the "Two-Family Dwelling" and the lack of any undeveloped run-off area outside the "Two-Family Dwelling" building and attending "off-street parking" driveways cannot but affect the amount of water that will flow onto the adjoining property and West Smith Road. The Applicant nor the City of Medina requested a study of 322 W. Smith Rd. lot by the Medina County Soil and Water Conservation District to determine the storm water run-off impact on the adjacent properties and West Smith Road.

Applicant's site plan for the planned "Two-Family Dwelling" provides no viable outdoor recreational and leisure activities areas for the tenants and their children. The lack of a usable back yard, a usable front yard or usable side yard areas for any recreational activities will impose a burden on the adjoining owners when and if the tenants and their children seek additional areas to engage in any recreational activities. The Board must consider that there are no viable parks or recreational areas near the 322 W. Smith Rd. lot.

**D. The granting of the variance will not adversely affect public health, safety, or general welfare:**

Applicant's response that: "We do not have any reason to believe so." demonstrates a total lack of concern for the safety of the tenants that may occupy one of their "Two-Family Dwelling" units and the public utilizing West Smith Road.

**(1) Safety Hazards Affecting West Smith Road**

The applicant ignores the potential safety hazards of building a large "Two-Family Dwelling" which fronts on West Smith Road. The planned side by side "off street parking and loading" driveways that exit directly onto West Smith Road and require a vehicle to back onto West Smith Road.

West Smith Road services a large number of businesses and industrial complexes west of the 322 W. Smith Lot. Adding two side-by-side driveways that require vehicles to back out onto West Smith Road will affect the safety of the tenants of the "Two-Family Dwelling" and create

additional risks to the safety of the existing drivers utilizing West Smith Road. Based upon ODOT's 2022 vehicle counts for West Smith Road east of the 322 W. Smith Rd. lot total 7,600 vehicles per day.

Applicant's site plan shows the "Two-Family Dwelling" will have "off street parking" driveways by two side-by-side driveways that do not comply with Section 1145.10 (a) or Section 1145.10 (d).

1145.10 (a) General. The location, width and number of driveways serving off-street parking facilities shall be planned in such a manner as to interfere as little as possible with the use of adjacent property and the flow of traffic on the street system.

1145.10 (d); Forward Movement. Parking facilities shall be designed so that all vehicles may be driven forward into the street, except for one and two-family dwellings located on local residential streets. **One and two-family dwellings located on streets designed as collector streets or arterial streets as shown on the City's Thoroughfare Plan or Comprehensive Plan shall comply with this provision.**

West Smith Road is classified by the City of Medina as a "Minor Arterial Throughfare" <sup>2</sup> which would require the driveways of the "Two-Family Dwelling" to only allow vehicles to be driven forward onto West Smith Road and not to be backed onto West Smith Road as planned.

The planned front-loaded side-by-side driveways which only permit vehicles to exit by backing onto West Smith Road are a safety risk. During a vehicle's exiting the "Two-Family Dwelling" "off street parking" and backing out onto West Smith Road, if another vehicle is parked in the other driveway, the view of on-coming traffic on West Smith Road or pedestrians utilizing the sidewalks will be obstructed.

Applicant's application also violates Section 1135.11 (b), which requires the submission of a "traffic impact study" for any development within the C-2 zoning district. An impact study is necessity for the Board to evaluate whether the driveways of the planned "Two-Family Dwelling" will "interfere as little as possible with \*\*\*the flow of traffic" on West Smith Road as required by section 1145.10 (a).

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<sup>2</sup> NOACA and ODOT both classify Smith Rd. as a "collector" street.

## **(2). Limited Visitor Parking**

The Applicant's site plan provides a single car garage and driveway for "off-street parking and loading" for each unit of the "Two-Family Dwelling." This configuration will meet Section 1145.04 requirement of the ability to park two vehicles for each "Two-Family Dwelling." However, if the "area variance" for a reduction of the required 30' rear yard setback to 14'5" or 25' is granted, it is still problematic there would be sufficient area for one additional vehicle "off-street parking and loading" for each unit of the "Two-Family Dwelling." Since there is no available permitted off-street parking along West Smith Road, the lack of sufficient "off-street parking and loading" will impact the safety of the tenants and any third-party visitors to the "Two-Family Dwelling" units.

## **(3). Lack of Sufficient Tenant Recreational Area**

The site plan submitted by Applicant contemplates a "Two-Family Dwelling" with each unit having three bedrooms, which will encourage families with children to rent. However, the site plan submitted for the "Two-Family Dwelling" requires front load garages replacing most of the front yard. Applicant seeks an area variance to allow a rear yard setback of 14' 5" or 25'.

A "setback" is defined in Section 1105.134:

"Setback" means the line beyond which **no use, building, or improvement or part thereof** shall project or exist, except as otherwise provided by this Zoning Code. "Setback" shall include the front, side and rear yard setback lines."

"Use" is defined in Section 1105.154:

"Use" means the purpose for which a building or premises is or may be occupied. In the classification of uses, a use may be a use as commonly understood or the name of an occupation, business, activity or operation carried on, or intended to be carried on, in a building or on premises, or the name of a building, place or thing, which indicates the use or intended use.

Applying these definitions to Applicant's site plans, there is no area outside the "Two-Family Dwelling" building for any recreational activities for the families, especially for any children. The site plan does not show any rear yard patio or deck for the "Two-Family Dwelling" units. This is obvious because the area behind the "Two-Family Dwelling" building cannot be "used" for any improvements made within the setback areas.

The Applicant's site plan simply forces any recreational activities or leisure activities to be pursued by the renters and their children into the off-street parking driveway areas and the remaining front yard area both in close proximity and adjacent to one of the busiest truck and automobile routes in the City of Medina.

The Applicant is requesting the Board to place the desire for profit ahead of the safety of any tenant with children.

**E. The variance will be consistent with the general spirit and intent of this Ordinance:**

The general spirit and intent of the C-2 Central Business District regarding residential uses is limited to "Single -Family Dwellings within a Mixed-Use Building" and "Multi-Family Dwellings within a Mixed-Use Building."

"Multi-family dwelling" is defined in Section 1105.46 as "a building arranged, intended or designed to be occupied by three or more families living independently of each other. Therefore, there is no provision for "Two-Family Dwellings within a Mixed-Use Building" much less a stand-alone "Two-Family Dwelling" in the C-2 District.

It is the current intent of the City of Medina Planning and Zoning Code that any residential use permitted within the C-2 zoning district should promote and enhance the business activities of the district. This is the controlling intent and spirit of the Ordinance.

**F. The variance sought is the minimum which will afford relief to the applicant:**

The Applicant is not a homeowner looking for a variance to construct a single-family dwelling, which was the permitted residential use of the 322 W. Smith Rd. lot before removal of the single-family residential dwelling. Nor, has Applicant considered a lesser-sized "Two-Family Dwelling" that would provide a more practical use of the 322 W. Smith Rd. lot considering the lot's limited usable area. The Applicant is a speculator looking to maximize the limited space of the 322 W. Smith Rd. lot for its maximum economic use.

Applicant has not shown by "clear and convincing" evidence that a C-2 District "permitted" "Single-Family Dwelling attached to a Multi-Use Building" is not a viable minimum alternative to Applicant's desire to construct a non-permitted 3,270 square foot stand alone "Two Family Dwelling."

#### IV. APPLICATION OF THE STANDARDS FOR AN AREA VARIANCE

Only two of the relevant standards required for granting area variances are discussed since both are prevented by law and ordinance from being granted.

##### A. The hardship condition is not created by actions of the applicant.

The Applicant admits the applied for "area variances" are "secondary" to the initial "residential use" variance application. Since the application of the C-2 Lot Development Standards would prove to be "impossible and/or wholly impractical" for the construction of Applicant's "Two-Family Dwelling."

Applicant's admission invokes the finding by the Ohio Supreme Court in *Consolidated Management, Inc. v. Cleveland*, supra at 1291: **"The record before us is void of any clear evidence of unnecessary hardship or practical difficulty except those created by appellees."** The same can be said of Applicant's requested "use" and "area" variances, any "unnecessary hardship" or "practical difficulty" are created by the Applicant.

The Applicant requests a "use variance" to allow a R-2 conditionally permitted "Two-Family Dwelling" coupled with an application for "area variances" to the C-2 zoning district standards. If the R-2 standards for "Two-Family Dwelling" were required, the planned "Two-Family Dwelling" could not be constructed. Further, even if the "use variance" is granted, Applicant still cannot construct the planned "Two-Family Dwelling" without variances to the C-2 Lot Development Standards. Obviously, Applicant has created his own "practical difficulties."

##### B. The granting of the variance will not adversely affect public health, safety or general welfare. or general welfare.

The most significant "area variance" requested by Applicant is to permit parking in the front yard as prohibited by Section 1135.08 (a): "No off-street parking or loading space shall be located in any front yard."

Section 1135.08 also requires that "off-street parking and loading shall be regulated pursuant to Chapter 1145. Section 1145.10 (d) prohibits "off street parking and loading" that would allow vehicles to be backed into West Smith Road.

1145.10 (d); Forward Movement. Parking facilities shall be designed so that all vehicles may be driven forward into the street, except for one and two-family dwellings located on local residential streets. **One and two-family dwellings located on streets designed as collector streets or arterial streets as shown on the City's Thoroughfare Plan or Comprehensive Plan shall comply with this provision.**

West Smith Road is classified by the City of Medina as a "Minor Arterial Throughfare" which would require the off-street parking driveways of the "Two-Family Dwelling" only to allow vehicles to be driven forward into West Smith Road and not to be backed into West Smith Road. Therefore, Section 1145.10(a) mandates the denial of Applicant's application for a variance of Section 1135.08 (a) which would permit the "Two-Family Dwelling" "off-street parking and loading" driveways, to be constructed in the front yard.

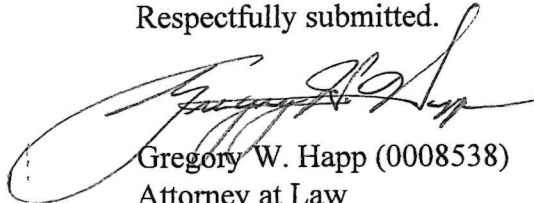
## V. CONCLUSION

Applicant is causing his own "unnecessary hardships" and "practical difficulties" by trying to jam an oversized "Two-Family Dwelling" on a small lot in the C-2 Central Business District fronting on West Smit Road.

Of utmost concern must be the safety of the public utilizing West Smith Road and the tenants and their children having to live adjacent to and backing out into a road that is constantly used by trucks and automobiles traveling to or from the business and industrial area of the City of Medina.

The variance applications must be denied based on the law and the Medina Planning and Zoning Code.

Respectfully submitted.



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