

City of Medina

Board of Zoning Appeals

Case No. Z24-24

Applicant: John Potter

Subject Property: 322 West Smith Road, Medina, Ohio

Final Decision and Conclusions of Fact

The Board of Zoning Appeals (hereinafter the “Board”) of the City of Medina, Ohio (hereinafter the “City”), makes the following conclusions of fact in support of its final decision in the above-referenced case.

After the hearing of all evidence and arguments of the interested parties in this matter at a quasi-judicial administrative hearing held at two public meetings of the Board on November 14, 2024 and February 13, 2025 (hereinafter the “BZA Hearing”), and considering the standards set forth in the City of Medina Codified Ordinances (hereinafter the “Code”) Section 1107.08 with respect to variances, the Board has granted a use variance to Code Section 1135.03 to allow a prohibited two-family residential use and granted an area variance to Code Section 1135.06 to allow a principal structure in the rear yard setback, Code Section 1135.08(a) to allow parking in the front yard, and Code Section 1135.13(c)(1) to allow a vinyl exterior exceeding the maximum permitted at 322 West Smith Road.

The Board’s conclusions of fact supporting its decision are:

1. The Subject Property is known as 322 West Smith Road in the City of Medina, Ohio, Medina County PID#: 028-19C-05-121, and is comprised of approximately 0.1309 acres (hereinafter the “Property”).
2. A single-family residence was previously located on the Property. The structure experienced a fire in 2018 and was demolished in 2019 per City of Medina Building Permit records.
3. The Property is currently owned by Brian and Elizabeth Vanderpool who purchased the Property in 2021, per the Medina County Auditor.
4. The Property is located in the “C-2 Central Business” zoning district as described in the City of Medina Planning and Zoning Code and Zoning Districts Map, adopted pursuant to Chapter 1113 of the Code.
5. Applicant John Potter (hereinafter the “Applicant”) requested development of the Property for a two-family dwelling. The Applicant submitted an application to the Planning Commission for a new principal structure in the Transition Corridor Overlay District (hereinafter the “TC-OV”) and a variance application to multiple sections of the Code to be reviewed by the Board.

6. Code Section 1135.03

- a. Code Section 1135.03 includes a table of “Principally Permitted Uses” states:
The following uses shall be permitted in the C-2 Central Business District:

Residential	Public/Semi-Public	Commercial
Attached Single-Family Dwellings within a Mixed Use Building - Not including Ground Level Residential Units in the Public Square Area	Club	Bar or Tavern
Multi-Family Dwellings within a Mixed Use Building - Not including Ground Level Residential Units in the Public Square Area	Passenger Transportation Agency and Terminal	Clinic
		Commercial Entertainment
		Commercial Recreation
		Convenience Retail
		Mixed Use Building - Not including Ground Level Residential Units in the Public Square Area
		Off-Street Parking Lot, Garage or Deck
		Office
		Personal or Professional Services
		Restaurant
		Retail Business
		Short Term Rental
		Other Similar Uses as Determined by the Planning Commission

- b. The proposed two-family residence is not a permitted use in the C-2 zoning district per Code Section 1135.03. The Applicant submitted an application for a use variance to construct a two-family residence on the Property.

7. Code Section 1135.06

- a. Code Section 1135.06 includes a table of “Lot Development Standards” and states:

“Lots in the C-2 Central Business District shall adhere to the following standards:

Minimum Rear Yard None unless adjacent to a Residential District, then the Setback
 Shall be that of the Residential District Plus One Foot Additional
 for each Two Feet of Building Height over 35 Feet.”

- b. Adjacent land to the rear of the Property is zoned “R-3 High Density Urban Residential” and the proposed two-family residence is 27 ft. in height.

- c. Code Section 1125.05 includes a table of “Lot Development Standards” and states:

“Lots in the R-3 High Density Urban Residential District shall adhere to the following standards:

Minimum Rear Yard 30 Feet for Principal Use or Structure”

- d. The applicable rear yard setback for the Property is therefore 30 Feet.
- e. The Applicant submitted an application for an area or size-type variance to Code Section 1135.06 to allow a two-family dwelling in the rear yard setback including two site plan options. Option 1 incorporates a rear yard setback of 14 ft. 5 in. and Option 2 incorporates a rear yard setback of 25 ft.

8. Code Section 1135.08(a)

- a. Code Section 1135.08(a) states:

“No off-street parking or loading space shall be located in any front yard.”

- b. The Applicant submitted an application for an area or size-type variance to Code Section 1135.08(a) to allow parking in the front yard including two site plan options. Option 1 and Option 2 both incorporate parking in the driveway, which is located in the front yard.

9. Code Section 1135.13(c)(1)

- a. Code Section 1135.13(c)(1) states:

“The exterior use of concrete masonry units, vinyl siding or metal siding shall be no more than 15% of the area of a building facade that can be viewed from the public right-of-way.”

- b. The Applicant submitted an application for an area or size-type variance to Code Section 1135.13(c)(1) to allow vinyl siding on 100% of the building facade that can be viewed from the public right-of-way, less doors, windows, and roofing.

10. The Board was provided with Code 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.

11. The Board was provided with Code Section 1107.08(i)(2):

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;
- 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.

12. The Board was provided relevant information regarding the request including, but not limited to:

- a. Staff reports from the City of Medina Community Development Department.
- b. Site plans, exterior building elevations, responses to Standards Applicable to Use Variances, and responses to Factors Applicable to Area or Size-Type Variances submitted by the Applicant and his representative, Nicholas Hanek.
- c. Letters of support for the project submitted by Nicholas Hanek from adjacent resident Shannon Rush, adjacent business owner Matt Kiene, and real estate agent Leslie Burns.

- d. Documents requesting denial of the variance requests submitted by Gregory Happ, representing Christopher Kalina.
 - e. Documents providing information regarding the request submitted by Christopher Kalina.
13. Andrew Dutton, City of Medina Community Development Director, testified under oath at the BZA Hearing that:
- a. Shutters and shake siding were added to the front building elevation at the request of the Planning Commission.
 - b. The applicable rear yard setback on the Property had initially been incorrectly referenced as 50 ft. The correct rear yard setback for the Property was 30 ft. A variance to Code Section 1135.06 was required for the corrected 30 ft. setback.
 - c. Code Section 1145.10(d) had been identified requiring that two-family dwellings accessing a collector or arterial street must have “forward movement” onto the street. The section applied to the proposal as West Smith Road is designated a Collector Street in the Comprehensive Plan.
 - d. A storm sewer existed on the adjacent property on 328 West Smith Road. The city had acquired an easement on the Property, a minimum of 5 ft. off the property line, which was adequate to access the storm sewer.
 - e. Prior to construction of a two-family residence, a Lot Improvement Plan must be submitted to the City of Medina Engineering Department including information on how stormwater will be managed, elevations, drainage details, and other relevant items. The Lot Improvement Plan is reviewed to ensure stormwater management complies with city regulations and does not result in negative impacts on area properties.
 - f. The City of Medina maintains the creek to the rear of the Property. For maintenance, the city accesses the creek at the South Huntington Street bridge and works westward to the bridge at West Smith Road.
 - g. The Property is designated as “Urban Residential Land Use” on the Comprehensive Plan’s Future Land Use Plan. The designation includes single-family residential, multi-family residential, and community facility uses.
 - h. He consulted with the City Engineer, and the requirement for a traffic impact study had been waived per Code Section 1135.11(b).
14. David Leach testified under oath at the BZA Hearing that:
- a. The proposed structure was positioned in an effort to keep it in line with the two-family residence next door.
 - b. Permitted uses in the C-2 zoning district were not feasible for the Property and the only viable use of the Property was residential.

- c. A turnaround was not on the submitted plan, however, a turnaround of approximately 8 ft. by 10 ft. would be installed to comply with Code Section 1145.10(d).
 - d. A single-family residence could be built on the Property, but was not the intent of the application.
15. Gregory Happ, representing the owner of an adjacent property at 328 West Smith Road, Christopher Kalina, stated at the BZA Hearing:
- a. His client objected to the location of a two-family residence on the Property.
 - b. The Property was too small for the proposed two-family residence.
 - c. A drainage pipe was located on his client's property.
 - d. The Applicant did not show practical difficulties, which are required for the requested variances.
 - e. If approved, the Property would be effectively rezoned by variance. The Property should be rezoned to R-2 for the proposed two-family residence.
 - f. The Applicant had not submitted clear and convincing evidence to meet the standards necessary for the Board to approve the variance.
 - g. The Applicant was not the current owner of the property and could not submit a use variance application.
 - h. The Applicant did not submit a traffic impact study, which is required by Code Section 1135.11(b), unless waived.
 - i. The proposed two-family development would result in unsafe conditions.
16. Nicholas Hanek, representing the Applicant, stated at the BZA Hearing:
- a. The square footage and footprint of the two-family dwelling were compliant with City of Medina requirements.
 - b. The footprint of the structure was smaller than the indicated square footage, which includes the second floor, and there was no request for a variance to the size of the structure.
 - c. There was no feasible use for the Property, other than residential due to the uniqueness of the Property and the proposed two-family residence was appropriate for the area.
 - d. The Applicant would comply with City of Medina engineering requirements and the proposed development would not have negative effects on the area properties regarding drainage.
 - e. The Applicant would revise plans to incorporate a vehicle turnaround in order to comply with Code Section 1145.10(d).

17. Christopher Kalina testified under oath at the BZA Hearing that:
 - a. If the Property was rezoned to R-3, a single-family residence could be built on the 5,702 sq. ft. site.
 - b. The proposed development had a higher ratio of building area to lot size in comparison to other area properties.
 - c. The burden of proof for granting of the variances was on the Applicant.
 - d. The Applicant incorrectly referenced an easement provided identified as “Exhibit C” as an easement on the west side of the Property and east side of his property at 328 West Smith Road. The easement provided was an unrelated easement located on the west side of his property at 328 West Smith Road.
18. At the Public Meeting on November 14, 2024, the Board accepted the Applicant’s request to table the application.
19. Based on all of the forgoing Paragraphs 1 through 18, the testimony of the witnesses, and the exhibits submitted and accepted at the BZA Hearing, the Board found that the use variance to Code Section 1135.03 to allow a prohibited two-family residential use met the requirements of Code Section 1107.08(i)(2), “Standards applicable to use variances (“unnecessary hardships”)” and the use variance was approved. In the motion to approve the use variance, the following were cited:
 - a. The variance requested stemmed from a condition which was unique to the property at issue and not ordinarily found in the same zone or district.
 - b. The granting of the variance would not adversely affect the public health, safety or general welfare.
 - c. The variance would be consistent with the general spirit and intent of the Ordinance.
20. Based on all of the forgoing Paragraphs 1 through 18, the testimony of the witnesses, and the exhibits submitted and accepted at the BZA Hearing, the Board found that the area or size type variance to Code Section 1135.06 to allow a principal structure in the rear yard setback, Code Section 1135.08(a) to allow parking in the front yard, and Code Section 1135.13(c)(1) to allow a vinyl exterior exceeding the maximum permitted met the requirements of Code Section 1107.08(i)(1), “Factors applicable to area or size-type variances (“practical difficulty”)” and the area or size type variance was approved. In the motion to approve the area-size type variance, the following were cited:
 - a. The essential character of the neighborhood would not be substantially altered.
 - b. The variance would not adversely affect the delivery of governmental services.
 - c. The spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance.

21. The adoption of these Conclusions of Fact constitutes the final decision of the Board in this case.

APPROVED BY:

Motion of the City of Medina Board of Zoning Appeals on March 13, 2025.

Confirmed: _____

Bert Humpal,
Chair of the Board of Zoning Appeals

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CITY OF MEDINA BOARD OF ZONING APPEALS

CASE Z24-24

322 WEST SMITH ROAD

- - -

Transcript of Proceedings held on Thursday,
the 14th day of November, 2024, before the
City of Medina Board of Zoning Appeals, commencing
at approximately 7:00 p.m., as taken by
Makenzie J. Sabo, RPR, Notary Public within and for
the State of Ohio, and held in Medina City Hall,
132 North Elmwood Avenue, Medina, Ohio 44256.

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MEDINA COURT REPORTERS
209 North Broadway Street
Medina, Ohio 44256
(330) 723-2482
office@crmedina.com

1 APPEARANCES:

2 Bert Humpal, Chairman,
3 Mark Williams, Member,
4 Paul Roszak, Member.

5 City of Medina Planning and Community
6 Development Department,
7 Andrew Dutton, Community Development Director,
8 Sarah Tome, Administrative Assistant.

9 Applicant:

10 David Wascak, Property Owner.
11 David Leach, The Cornice Company.

12 Also present:

13 Gregory W. Happ, Esq.
14 on behalf of Christopher and Carrie Kalina.

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1 (Whereupon, all those intending to
2 testify were previously placed under oath by
3 the notary.)

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5 PROCEEDINGS

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7 CHAIRMAN: Z24-24,
8 322 West Smith Road.

9 MR. DUTTON: (Displaying case
10 packet.)

11 Here we have the property on the south side
12 of West Smith Road. As you can see, it's zoned
13 C-2, which is a commercial central business
14 zoning. The properties on the south side of
15 West Smith are two-family and single-family
16 homes, they're zoned commercially; and the
17 property across the street is Lager Heads Tap
18 Room and Brewery. The property previously had
19 a single-family home on it, which was
20 demolished in 2018, and currently backs up to a
21 creek.

22 And this is also located in the TV-OV
23 overlay district, so the Planning Commission
24 reviewed that portion of the project and
25 approved it earlier tonight. I'll just let you

1 know that.

2 There are -- here you have the site plan
3 showing the location of the two-family home
4 with a single drive kind of in the center of
5 the lot there, the pretty much mirrored sides
6 of the two-family structure, each being
7 1,635 square feet with one-car garages.

8 So the first type of a variance is a use
9 variance. So as I note, the property is zoned
10 C-2, central business. This does not allow
11 single-family -- or two-family residential
12 uses; therefore, per Section 1135.03, a use
13 variance is required to allow the two-family
14 use.

15 The applicant has provided responses to the
16 Standards for Variances and Appeals, noting
17 that the variance stems from a unique condition
18 as the property is on a block which is zoned
19 C-2, contains single-family and two-family
20 residences and the rights of adjacent owners
21 will not be affected as a single-family
22 residence was previously on the property and a
23 neighboring property is a two-family residence.
24 So that's the first type of variance that the
25 Board will be reviewing.

1 The second are area or size type variances.
2 The first being the rear setback, so the
3 setback and -- the rear setback in the C-2
4 district, as there is -- the residential zoning
5 to the rear is fifty feet. You can see on the
6 plan there, a fifty-foot rear setback kind of
7 goes diagonally through the home. The actual
8 setback of the building is fourteen feet, five
9 inches.

10 You also see a riparian setback on the plan
11 there. That is not a standard requirement,
12 it's a recommendation, so a variance is not
13 required for that particular section.

14 The second area or size type variance is
15 1135.08(a), as it is a commercial district
16 which is also in our uptown area. Parking is
17 not permitted in the front yard. With the use,
18 there is a -- kind of a standard shared
19 driveway, which will result in some parking in
20 the front yard area.

21 Third area variance will be to the
22 materials used. So Section 1135.13(c)(1)
23 states no more than fifteen percent of the
24 area facing a right-of-way can be vinyl.
25 And you'll see in these plans that the

1 majority of the front of the building is
2 vinyl board and batten. I'll note that with
3 the Planning Commission's review, they did
4 require shake siding in the peaks and shutters
5 on the windows facing the right-of-way for
6 Smith, which I assume will also be vinyl, so
7 that won't change the material but might change
8 the look a little bit for the front of the
9 building.

10 The applicant has provided responses to the
11 Variances and Appeals regarding the area
12 variances noting that the variance is not
13 substantial for rear setback as it creates a
14 hardship on the property and it is in line with
15 the rear yard setback from other properties in
16 the area, the spirit and intent behind the
17 zoning requirement will be observed as the
18 residence will enhance the neighborhood and
19 align with area residences, and incorporate
20 increased side yard setbacks.

21 Regarding parking in the front yard, they
22 noted the only beneficial use of the property
23 is residential and the proposed standard is a
24 commercial requirement, the essential character
25 of the neighborhood will not be altered as the

1 proposed drive and parking in the front yard
2 does not affect the residential side of
3 West Smith.

4 Regarding the vinyl siding, the variance is
5 not substantial and the essential character of
6 the neighborhood will not be altered as
7 existing homes on the street are completely
8 clad in vinyl siding; and the spirit and intent
9 behind the zoning requirement will be observed
10 as the proposed vinyl board and batten siding
11 will have an improved appearance.

12 Thank you.

13 CHAIRMAN: Thank you.

14 Are the applicants present? Please
15 introduce yourselves with addresses.

16 MR. WASCAK: Yes.

17 David Wascak; 196 Marko Lane, Brooklyn Heights,
18 Ohio 44113.

19 CHAIRMAN: Thank you.

20 MR. LEACH: David Leach;
21 The Cornice Company, 3200 West Market Street,
22 Suite 6, Fairlawn, Ohio 44333.

23 CHAIRMAN: Thank you.

24 Any comments you wish to add to the
25 presentation?

1 MR. LEACH: I do have one
2 comment that was -- it was already mentioned,
3 too.

4 The reasoning for the house being where it
5 is set from the frontage is because it's in
6 line with the other -- the other duplex next
7 door. So we're trying to maintain that, so
8 that did slide it back a little bit, that puts
9 it closer to that -- thus that fourteen-foot --
10 fourteen-foot-five setback in the rear, but
11 that was our reasoning behind that, to try to
12 keep those in line with the other building.

13 CHAIRMAN: Yeah. Thanks.

14 Andrew, you did say the Planning Commission
15 approved, including the setback?

16 MR. DUTTON: So theirs was
17 just a transitional corridor overlay review, so
18 it's not a site plan or a use review. Their
19 review was basically aesthetics because it's in
20 an overlay district.

21 CHAIRMAN: Okay.

22 MR. DUTTON: So they're not
23 specifically looking at the setbacks, but I
24 guess that could be taken into their whole
25 review of does it fit in with the neighborhood,

1 is the architecture and placement appropriate.

2 CHAIRMAN: I thought it was
3 interesting they actually had, in effect, two
4 setback cases tonight, and they approved them
5 both, and they were both fairly substantial.

6 Any comments from neighbors? Any reported
7 objections?

8 MR. HAPP: Yes.

9 CHAIRMAN: Yes. Please,
10 will you go to the table and introduce
11 yourself, please.

12 MR. HAPP: Yes. My name
13 is Gregory Happ, and I'm an attorney;
14 311 East Washington Street, Medina, Ohio.

15 And I represent the Kalinas who own the
16 home to the west of the proposed request for
17 variance, and Mr. Kalina has asked me to
18 interject his objections because for a hundred
19 years this was a single-family lot. Now they
20 want to put a duplex on it with a five-foot
21 minimum to the -- the reason they're -- they
22 can get -- do this is very unique according to
23 what they've proposed, is that they're asking
24 you to give a variance to build an R-2 duplex
25 into a C-2 area and then apply the C-2 side

1 yard requirements, the backyard requirements,
2 and the front yard requirements, instead of the
3 R-2. So they're trying to maximize this lot to
4 something that really doesn't fit a duplex.

5 It's a smaller lot than what should be used
6 for a single-family residence, but they're
7 trying to use it for a duplex, which is then
8 going to put stress on the properties either
9 water-wise or that because we have -- there's
10 no elevation, so we don't know what the
11 elevations are to be able to do that.

12 But there's also that -- a large pipe that
13 runs on the west - the west side of the
14 proposed lot - that runs down to the creek,
15 that's an eighteen-inch pipe that drains from
16 West Smith Road.

17 We just think that this is too big of a
18 property for the size. They've showed no
19 practical difficulties of being able to develop
20 this property. They have to come before the
21 Board and show practical difficulties to be
22 able to get a variance. They haven't done
23 that. They've presented no evidence as to
24 practical difficulties that they can't develop
25 this lot in some other manner, and I believe

1 the Board has to -- you have to have evidence
2 of practical difficulties to grant a variance
3 and they haven't done that. They're only just
4 showing you a plan and saying "This is what we
5 want to do."

6 A variance is a variance. You have to --
7 from your plan, if you need to rezone it, then
8 it should be rezoned, not by some type of
9 variance that really doesn't comport to what's
10 going on in that neighborhood. And I would --
11 and would strenuously object to the Board
12 approving this in the manner it's done without
13 some evidence of practical difficulties of why
14 they can't develop this lot in some other
15 manner.

16 CHAIRMAN: Thank you.

17 I would think certainly you can't
18 spot-rezone. I don't believe our City does
19 that.

20 And I'm looking to Andrew for a thought
21 there.

22 MR. DUTTON: Yeah. I mean, in
23 this case, if we were going to do a rezoning,
24 it would probably be with all five of these
25 properties on the south side of West Smith,

1 which would be a little bit more involved.
2 We'd have to get those owners to -- at least
3 notify them or, you know, have conversations
4 with them on that.

5 They're currently all nonconforming uses
6 and most likely R-3 standards are probably more
7 appropriate. But having one property rezoned,
8 it can be done, but it may be a little bit of a
9 spot-zoning in this case for that rezone. We'd
10 probably take more of the whole -- that south
11 side there.

12 MR. ROSZAK: Andrew, what is
13 the history of the zoning C-2 for this area?
14 Did it used to be zoned residential and then it
15 was rezoned C-2? Was it the City's vision to
16 transform this corridor to a commercial
17 corridor rather than residential uses?

18 MR. DUTTON: Yeah, I'm not
19 sure when that occurred or if it's always been
20 commercial. It's a little bit of a challenging
21 area. You've got a mix of kind of industrial
22 and commercial and residential mixed together
23 there on West Smith, so it's difficult to find
24 one zoning classification that's going to work
25 for, you know, a whole corridor.

1 I don't know the history. Are there zoning
2 maps that I can find? They usually go back
3 about twenty years or so, thirty years, but I
4 haven't researched the zoning for the area.

5 MR. ROSZAK: Is it a vision
6 for the City to have this as a -- you know, a
7 commercial corridor for economic development,
8 or that's not on the radar at all?

9 MR. DUTTON: I don't believe
10 so. I mean, the zoning would, you know, show
11 that it's a commercial zoning and that's what
12 the intent is to be used for, but I don't see
13 redeveloping these as commercial in any kind of
14 short-term or immediate-term plans.

15 CHAIRMAN: Andrew, is the
16 pipe an issue or does it need to be reviewed by
17 the City Engineer?

18 MR. DUTTON: The City Engineer
19 will review all the homes for drainage and
20 utilities and things of that nature. Our GIS
21 does not show the pipe going back to the creek,
22 but it very well -- it may. I haven't
23 researched that either. It was just brought to
24 my attention this afternoon.

25 But it will be reviewed by the Engineer.

1 If an easement's needed, they'll get an
2 easement if it's not already there. It's my
3 understanding it's actually on -- the pipe
4 itself is on the neighbor's property, not the
5 subject property.

6 CHAIRMAN: But I question
7 whether there's a required setback away from
8 the pipe, or whatever, that maybe should be
9 reviewed before we --

10 MS. TOME: (Indicating.)

11 CHAIRMAN: Yes, Sarah?

12 MS. TOME: Bert, I can say
13 even though it's TV-OV and doesn't require it,
14 Engineering was allowed to take a look at the
15 Planning Commission case before the meeting,
16 and they had no objections or comments.

17 CHAIRMAN: Okay. Thank you.
18 Other questions, Board?

19 (No verbal response.)

20 CHAIRMAN: Anyone else in
21 the public in the audience wishing to comment
22 or question in any way?

23 (No verbal response.)

24 CHAIRMAN: Then let's come
25 back to the Board.

1 Andrew, any comments from neighbors - I'm
2 not sure that I asked that yet - other than
3 Attorney Happ?

4 MR. DUTTON: Yeah. In his --
5 I'm sorry, what's the gentleman you're
6 representing, the property owner you're
7 representing?

8 MR. HAPP: The Kalinas only.

9 MR. DUTTON: Yeah. I talked
10 to Mr. Kalina, who had some questions, and
11 back-and-forth, but he's represented here.

12 MR. ROSZAK: So am I correct
13 in assuming this is going to be two rental
14 units and not --

15 MR. WASCAK: Yeah.

16 MR. ROSZAK: -- not an
17 owner-occupied unit?

18 MR. WASCAK: Yeah, that's
19 correct.

20 MR. HAPP: I just want to --
21 if I may, I just want to stress to the Board
22 that I'm objecting that you're rezoning a lot
23 by variance. If -- and that's what I'm really
24 objecting to, is that you are trying to rezone
25 this. They need to rezone that whole street,

1 and just because it takes longer doesn't mean
2 that it shouldn't be done. You just shouldn't
3 be zoning by variance, and by being able to
4 sneak in under C-2 and being able to build a
5 building, you'd never be able to build if there
6 was an R-2 zoning.

7 That's my objection, is that you have to
8 look at the realities and the practicalities of
9 this, what they're really doing. They are
10 seeking in, under a C-2 zoning, about how your
11 side yard, backyard, or front yard and then --
12 but then they're asking you to rezone it to an
13 R-2 because they don't want to meet the R-2
14 requirements. If they were here meeting the
15 R-2 requirements, we may not be here objecting,
16 but they're trying to get you to rezone a lot
17 that's always been in the C-2 development, and
18 that's what I am objecting to and making sure
19 that the record reflects that.

20 Thank you.

21 CHAIRMAN: It's always been
22 a residence.

23 MR. HAPP: I'm sorry?

24 CHAIRMAN: I said that lot
25 apparently has always been a residential, it

1 has not been any commercial use, and I don't
2 see how you put a commercial use in the middle
3 of four other houses.

4 MR. HAPP: But it's been --
5 it's zoned C-2. It needs to be rezoned to an
6 R-2 where they could put -- they can meet the
7 R-2 requirements. That's my point. You
8 can't -- I agree that for a hundred years there
9 was a single-family residence on that property
10 until it was torn down, but it wasn't a duplex
11 and you weren't giving a five-foot side yard on
12 a piece of property where it's going to really
13 reflect how they're going to even build it
14 without trespassing on the next lots.

15 MR. DUTTON: So if it was
16 rezoned, it would probably be R-3. That's
17 what's directly to the south there on the map.
18 So the side yard setback in the R-3 is five
19 feet, the rear yard setback in the R-3 is fifty
20 feet - that's what you're applying here and
21 you're getting a variance for - and then the
22 front would just have to stay in line with the
23 other buildings, which it does.

24 So if we're talking about setbacks, the
25 only R-3 requirement it doesn't meet is the

1 rear setback, which they're asking for an area
2 variance for.

3 CHAIRMAN: And I think if
4 rezoning were an issue, I'd want the opinion of
5 the law director and ask for --

6 MR. DUTTON: Well, you're
7 reviewing your application that's before you.
8 This Board doesn't review rezoning.

9 MR. WILLIAMS: If I may
10 interrupt just for Attorney Happ.

11 My understanding of our mandate here is we
12 have been asked to consider a variance because
13 it's a conditional use in the zone by code. Is
14 that correct?

15 MR. DUTTON: No. It is not a
16 permitted use in the C-2 district, so it's not
17 permitted or conditional, so you have the use
18 variance with one set of standards; and then
19 the area variances, the setback, front yard
20 parking, and vinyl siding with a different set
21 of kind of standards applicable to use
22 variances or area variances.

23 MR. WILLIAMS: Second question I
24 would have for you. Did the previous home meet
25 the setback requirements?

1 MR. DUTTON: I don't know.

2 MR. WILLIAMS: Given that this
3 is set back fourteen-and-a-half feet from the
4 rear yard, I would be hard pressed to believe
5 it did.

6 MR. DUTTON: I'm not sure if
7 we can bring up the --

8 I guess that would be the previous home
9 (indicating). It looks like it was oriented
10 more on the east side of the property than the
11 west side.

12 And this is GIS, so this isn't exact, but
13 that measurement is thirty-five feet so, I
14 mean, unless it's off by fifteen feet, which I
15 don't think it is, I think it was probably
16 slightly in the rear setback.

17 MR. WILLIAMS: Okay. Thank you.

18 CHAIRMAN: Other thoughts,
19 Board?

20 MR. WILLIAMS: So for the
21 applicants, I'll be honest, my challenge here
22 is not putting a residential building on the
23 property, it's putting a duplex on the
24 property. It changes the use, not dramatically
25 as an apartment building. There's not enough

1 room for an apartment building on this lot. If
2 you were asking for a single-family residence,
3 I would have absolutely no objection because
4 that's what was there, that's what the
5 surrounding homes are. The duplex challenges
6 me on this, and I think Mr. Happ brings up some
7 valid points. So that is one of my challenges.

8 MR. ROSZAK: I feel the same
9 way.

10 CHAIRMAN: Let's do a motion
11 to deny.

12 (Whereupon, a discussion was held
13 amongst the board members out of the hearing of
14 the notary.)

15 MR. LEACH: May I make a
16 comment?

17 CHAIRMAN: Yeah, sure.

18 MR. LEACH: So when I review
19 this - and I see the situation that you're
20 talking about, I understand - the setback on
21 the side -- the one side that's in question and
22 the neighbor, we're looking -- that's only
23 eight feet. And then the neighbors right next
24 to them, it's a duplex as well, so we weren't
25 just bringing that out of thin air, there's

1 actually one that's right next door.

2 And we're trying to help this situation
3 where we have in line -- it's a new street,
4 redone all the sewers there. It's something
5 that would really add to the -- we think that
6 would add to the street, having a new property
7 there. And with it being a duplex right next
8 door, that's why we thought that this would be
9 something that would be appropriate in this
10 situation. That is where our reasoning came
11 from.

12 Thank you.

13 MR. WILLIAMS: Being the one
14 that spoke about the duplex, I can understand
15 that. My question is -- the reason it gives me
16 pause is you look at the lot sizes. The lot
17 size next door is significantly larger. I can
18 tell just by looking at it without pulling up a
19 GIS map. And the fact that it is a unique
20 property, I think to me putting a little too
21 much in a small package, that's where I'm
22 challenged by this.

23 And I think the most obvious stop in the
24 line is the fourteen-and-a-half feet when it's
25 got a fifty-foot setback. In no way do I think

1 fifty-foot setback is doable in that spot, but
2 I think fourteen feet on a fifty-foot setback
3 is probably too substantial for me to vote yes
4 on.

5 MR. LEACH: May I ask one
6 more question?

7 CHAIRMAN: Sure.

8 MR. LEACH: Okay. So if
9 something happened where if we moved to the
10 neighbors and we moved this property, this
11 house forward to get closer to that setback --
12 because the house right next door, their
13 setback is minimal, I mean, maybe only ten,
14 fifteen feet off the frontage. We thought that
15 would be pretty tight.

16 But is that something that the Zoning would
17 review and potentially accept if we moved it
18 forward to increase the setback in the rear of
19 the property?

20 MR. WILLIAMS: It would affect
21 my personal thoughts. I don't know how it is
22 for you guys. I don't know that it would be
23 the deal-killer.

24 I'll be honest. That was kind of where I
25 stopped on it. I would guess that you'd have

1 to do some consideration on how much driveway
2 you would need to have a duplex and two, three,
3 four cars that are going to be involved in
4 there, and it's a little different than a
5 single-family home where a short driveway you
6 could work together. You'd have to
7 realistically consider "Okay, you're going to
8 have a short driveway. What's the usability of
9 that?"

10 So I don't know how much forward you could
11 come, if that's answering your question-ish.

12 MR. LEACH: Yeah, it does.

13 If we look at a typical, you know, car or
14 car space, you know, you're looking at eighteen
15 feet, a parking lot space. So that would give
16 you an opportunity to bring this forward up to
17 thirteen, fourteen feet forward on the
18 property, increasing that setback to over
19 thirty feet, and then most likely meeting the
20 setback requirements at the far corner that we
21 have there, because everything is at this
22 angle.

23 MR. WILLIAMS: Andrew, my
24 guess is that would have to go back before
25 Planning Commission.

1 MR. DUTTON: Yeah, we would
2 probably bring it back to them. Just --
3 they're just looking at aesthetics, but
4 bringing something closer that much kind of
5 changes the feel a little bit, so take it back
6 as basically a revision.

7 MR. WILLIAMS: I'm sorry, could
8 you say those numbers again? I'm just trying
9 to get a grasp on what you were saying. Right
10 now you've got all thirty-two feet to the
11 sidewalk right-of-way.

12 MR. LEACH: Correct.

13 MR. WILLIAMS: You were talking
14 about advancing it to the street how far?

15 MR. LEACH: Well, if -- I
16 would say that we would have to have a minimum
17 of eighteen feet, because that's a typical
18 parking space.

19 So when I look at that, that means that we
20 could bring this forward about twelve feet.
21 The house adjacent is probably only, if I'm
22 looking at that, maybe ten feet back from the
23 sidewalk there, which is -- you know, that's
24 pretty close to the sidewalk at that time. So
25 this would still be set back, but then what

1 would happen is you create a staggering effect
2 potentially with these homes, because this one
3 is so far close to the road because it's been
4 there for so long, and then the duplex next
5 door, which has a wider lot because it has
6 garages on both sides, they do have it set back
7 a little bit further.

8 So you're looking at bringing it forward
9 about twelve feet at a minimum.

10 MR. ROSZAK: I think part of
11 your concern, Mark, was the mass of that
12 building on that size lot, which I think even
13 if the building were to move forward doesn't
14 alleviate that concern.

15 MR. WILLIAMS: That is true. I
16 just felt like maybe that wasn't our purview,
17 that was more of a Planning Commission issue,
18 and we have to vote on variances as requested.

19 So yes, if I was voting on that, it would
20 probably be an issue, but I don't think that's
21 something I can take into consideration.

22 CHAIRMAN: Do you suggest
23 we table the application then and they can
24 go back and revise their plan and do
25 Planning Commission?

1 MR. WILLIAMS: I think that
2 would be in the applicant's best interest. I
3 can't vote yes on this plan.

4 CHAIRMAN: Agreeable?
5 Willing to go back? And then we won't have to
6 pass any motion other than we table this for
7 Planning Commission review.

8 MR. WASCAK: Next month?

9 CHAIRMAN: It's your
10 schedule.

11 MR. LEACH: Do you meet every
12 month?

13 CHAIRMAN: Yes.

14 MR. LEACH: Unless something
15 happens?

16 CHAIRMAN: Yes, exactly
17 right.

18 MR. LEACH: Okay.

19 MR. HAPP: I just have
20 a question.

21 Will they go back to the Planning
22 Commission if they change what they
23 approved?

24 MR. DUTTON: Yeah. We'll go
25 back to the Planning Commission to -- again,

1 they'll meet right before the BZA, and it
2 was -- December 12th will be the next meeting.

3 MR. HAPP: Thank you.

4 MR. WILLIAMS: One last comment,
5 and I don't know if this has happened or not.

6 We've seen in the past where parties are
7 able to work together and maybe come up with
8 something they both hate equally, that
9 compromise thing, so I would suggest maybe
10 that's one way to go.

11 MR. WASCAK: May I ask a quick
12 question?

13 CHAIRMAN: Yes.

14 MR. WASCAK: So I guess if we
15 change where the house is sitting, is the size
16 of the building the problem? Which it seems
17 like it is. Because I don't want to go through
18 all that and we have to come back and we still
19 have the same issue, right? Because there's
20 transfers of ownership and money that are
21 involved with this lot, right?

22 I think it's going to be a challenge to
23 find someone who's going to want to purchase a
24 single-family lot to build a home here with
25 everything in that situation there, with the

1 creek in the back, with the duplex next door,
2 with the bar across the street, train tracks
3 across the street. I mean, you got a lot of
4 stuff going on here and I just don't see --

5 MR. WILLIAMS: Be careful. I
6 live in the neighborhood.

7 MR. WASCAK: Well,
8 realistically, the lot's been transferred a
9 few different times, it's zoned for commercial.
10 Again, so is a business going to build in
11 between two houses? Probably not. So it
12 brings us back to square one.

13 We're trying to develop this and make it
14 the best that we can. I just don't want to go
15 through -- there's other people that are
16 involved, right? Current landowners and things
17 like that that we're putting on hold. That's
18 my only consideration here. We're hoping to
19 try to come to some sort of resolution here.

20 MR. WILLIAMS: Understood.
21 We -- I would have to see a plan to be able to
22 approve it. I get all the other pieces and
23 moving parts that need to happen.

24 If it was me, I would split the difference
25 between the house on the west and the duplex on

1 the east - yep, that's the direction - as far
2 as how far it was staggered from the street.
3 That would give you, just at a guess, eight
4 more feet back from the property line. I think
5 it's really far back. I know that the house on
6 the west is far back. That's an existing
7 condition, we don't rule on that. But this
8 one, to me that's -- at least getting outside
9 that riparian area, that suggested setback, is
10 a move in the right direction.

11 Does that answer your question?

12 MR. WASCAK: It does. Thanks.

13 CHAIRMAN: Then the
14 application is tabled until Planning Commission
15 considers and brings it back to us.

16 MR. DUTTON: So is that a
17 request from the applicant to have it tabled
18 or -- either that or you need to make a
19 motion.

20 MR. LEACH: I think -- well,
21 I think we would appreciate a table at this
22 time and not a vote.

23 MR. DUTTON: Okay.

24 CHAIRMAN: All right. We
25 don't need another motion.

1 MS. TOME: No.

2 MR. DUTTON: Correct. And if
3 there is a revision, they'll need to go back to
4 the Planning Commission and Board of Zoning
5 Appeals.

6 CHAIRMAN: Very good. Thank
7 you much. I appreciate the conversation.

8 MR. HAPP: Thank you very
9 much.

10 (Case concluded.)

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1 STATE OF OHIO)
) ss:
2 COUNTY OF MEDINA.)

3 CERTIFICATE

4 I, Makenzie J. Sabo, RPR, Notary Public within
5 and for the State of Ohio, duly commissioned and
6 qualified, hereby certify that before the giving of
7 their testimony, all persons were first duly sworn
8 to testify to the truth, the whole truth, and
9 nothing but the truth in this case aforesaid.

10 I further certify that said hearing was held at
11 the time and place specified in the above case and
12 was concluded on the 14th day of November, 2024.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and affixed my seal of office at Medina, Ohio this
15 28th day of February, 2025.

16 *Makenzie J. Sabo*
17 -----

18 Makenzie J. Sabo, RPR
19 and Notary Public within and for
 the State of Ohio.
20 My commission expires 09/19/28.
21
22
23
24
25

0	2:5 advancing [1] - 24:14 aesthetics [2] - 8:19, 24:3 affect [2] - 7:2, 22:20 affected [1] - 4:21 affixed [1] - 31:14 aforsaid [1] - 31:9 afternoon [1] - 13:24 agree [1] - 17:8 agreeable [1] - 26:4 air [1] - 20:25 align [1] - 6:19 alleviate [1] - 25:14 allow [2] - 4:10, 4:13 allowed [1] - 14:14 altered [2] - 6:25, 7:6 Andrew [7] - 2:5, 8:14, 11:20, 12:12, 13:15, 15:1, 23:23 angle [1] - 23:22 answer [1] - 29:11 answering [1] - 23:11 apartment [2] - 19:25, 20:1 APPEALS [1] - 1:4 Appeals [4] - 1:12, 4:16, 6:11, 30:5 appearance [1] - 7:11 APPEARANCES [1] - 2:1 applicable [1] - 18:21 Applicant [1] - 2:7 applicant [3] - 4:15, 6:10, 29:17 applicant's [1] - 26:2 applicants [2] - 7:14, 19:21 application [3] - 18:7, 25:23, 29:14 apply [1] - 9:25 applying [1] - 17:20 appreciate [2] - 29:21, 30:7 appropriate [3] - 9:1, 12:7, 21:9 approve [1] - 28:22 approved [4] - 3:25, 8:15, 9:4, 26:23 approving [1] - 11:12 architecture [1] - 9:1 area [17] - 5:1, 5:14, 5:16, 5:20, 5:21, 5:24, 6:11, 6:16, 6:19, 9:25, 12:13, 12:21, 13:4, 18:1, 18:19, 18:22, 29:9 Assistant [1] - 2:5 assume [1] - 6:6	assuming [1] - 15:13 attention [1] - 13:24 attorney [1] - 9:13 Attorney [2] - 15:3, 18:10 audience [1] - 14:21 Avenue [1] - 1:16	C	24:4 code [1] - 18:13 commencing [1] - 1:12 comment [4] - 8:2, 14:21, 20:16, 27:4 comments [4] - 7:24, 9:6, 14:16, 15:1 commercial [12] - 3:13, 5:15, 6:24, 12:16, 12:20, 12:22, 13:7, 13:11, 13:13, 17:1, 17:2, 28:9 commercially [1] - 3:16 commission [1] - 31:19 Commission [11] - 3:23, 8:14, 14:15, 23:25, 25:17, 25:25, 26:7, 26:22, 26:25, 29:14, 30:4 Commission's [1] - 6:3 commissioned [1] - 31:5 Community [2] - 2:4, 2:5 Company [2] - 2:8, 7:21 completely [1] - 7:7 comport [1] - 11:9 compromise [1] - 27:9 concern [2] - 25:11, 25:14 concluded [2] - 30:10, 31:12 condition [2] - 4:17, 29:7 conditional [2] - 18:13, 18:17 consider [2] - 18:12, 23:7 consideration [3] - 23:1, 25:21, 28:18 considers [1] - 29:15 contains [1] - 4:19 conversation [1] - 30:7 conversations [1] - 12:3 corner [1] - 23:20 Cornice [2] - 2:8, 7:21 correct [4] - 15:12, 15:19, 18:14, 30:2 Correct [1] - 24:12 corridor [5] - 8:17, 12:16, 12:17, 12:25, 13:7 COUNTY [1] - 31:2
1	1,635 [1] - 4:7 1135.03 [1] - 4:12 1135.08(a) [1] - 5:15 1135.13(c)(1) [1] - 5:22 12th [1] - 27:2 132 [1] - 1:16 14th [2] - 1:11, 31:12 196 [1] - 7:17	B	C-2 [13] - 3:13, 4:10, 4:19, 5:3, 9:25, 12:13, 12:15, 16:4, 16:10, 16:17, 17:5, 18:16 car [3] - 4:7, 23:13, 23:14 careful [1] - 28:5 Carrie [1] - 2:11 cars [1] - 23:3 case [7] - 3:9, 11:23, 12:9, 14:15, 30:10, 31:9, 31:11 CASE [1] - 1:5 cases [1] - 9:4 center [1] - 4:4 central [2] - 3:13, 4:10 certainly [1] - 11:17 CERTIFICATE [1] - 31:3 certify [2] - 31:6, 31:10 CHAIRMAN [31] - 3:7, 7:13, 7:19, 7:23, 8:13, 8:21, 9:2, 9:9, 11:16, 13:15, 14:6, 14:11, 14:17, 14:20, 14:24, 16:21, 16:24, 18:3, 19:18, 20:10, 20:17, 22:7, 25:22, 26:4, 26:9, 26:13, 26:16, 27:13, 29:13, 29:24, 30:6 Chairman [1] - 2:2 challenge [2] - 19:21, 27:22 challenged [1] - 21:22 challenges [2] - 20:5, 20:7 challenging [1] - 12:20 change [4] - 6:7, 26:22, 27:15 changes [2] - 19:24, 24:5 character [2] - 6:24, 7:5 Christopher [1] - 2:11 CITY [1] - 1:4 City [7] - 1:12, 1:15, 2:4, 11:18, 13:6, 13:17, 13:18 City's [1] - 12:15 clad [1] - 7:8 classification [1] - 12:24 close [2] - 24:24, 25:3 closer [3] - 8:9, 22:11,	
2	2018 [1] - 3:20 2024 [2] - 1:11, 31:12 2025 [1] - 31:15 209 [1] - 1:23 28th [1] - 31:15	back-and-forth [1] - 15:11 backs [1] - 3:20 backyard [2] - 10:1, 16:11 bar [1] - 28:2 batten [2] - 6:2, 7:10 behalf [1] - 2:11 behind [3] - 6:16, 7:9, 8:11 beneficial [1] - 6:22 Bert [2] - 2:2, 14:12 best [2] - 26:2, 28:14 between [2] - 28:11, 28:25 big [1] - 10:17 bit [7] - 6:8, 8:8, 12:1, 12:8, 12:20, 24:5, 25:7 block [1] - 4:18 BOARD [1] - 1:4 board [3] - 6:2, 7:10, 20:13 Board [11] - 1:12, 4:25, 10:21, 11:1, 11:11, 14:18, 14:25, 15:21, 18:8, 19:19, 30:4 Brewery [1] - 3:18 bring [4] - 19:7, 23:16, 24:2, 24:20 bringing [3] - 20:25, 24:4, 25:8 brings [3] - 20:6, 28:12, 29:15 Broadway [1] - 1:23 Brooklyn [1] - 7:17 brought [1] - 13:23 build [6] - 9:24, 16:4, 16:5, 17:13, 27:24, 28:10 building [11] - 5:8, 6:1, 6:9, 8:12, 16:5, 19:22, 19:25, 20:1, 25:12, 25:13, 27:16 buildings [1] - 17:23 business [3] - 3:13, 4:10, 28:10 BZA [1] - 27:1		
3	311 [1] - 9:14 3200 [1] - 7:21 322 [2] - 1:6, 3:8 330 [1] - 1:24			
4	44113 [1] - 7:18 44256 [2] - 1:16, 1:24 44333 [1] - 7:22			
6	6 [1] - 7:22			
7	723-2482 [1] - 1:24 7:00 [1] - 1:13			
A	able [8] - 10:11, 10:19, 10:22, 16:3, 16:4, 16:5, 27:7, 28:21 absolutely [1] - 20:3 accept [1] - 22:17 according [1] - 9:22 actual [1] - 5:7 add [3] - 7:24, 21:5, 21:6 addresses [1] - 7:15 adjacent [2] - 4:20, 24:21 Administrative [1] -			

COURT ^[1] - 1:23 create ^[1] - 25:1 creates ^[1] - 6:13 creek ^[4] - 3:21, 10:14, 13:21, 28:1 current ^[1] - 28:16	23:2, 25:4, 28:1, 28:25 DUTTON ^[19] - 3:9, 8:16, 8:22, 11:22, 12:18, 13:9, 13:18, 15:4, 15:9, 17:15, 18:6, 18:15, 19:1, 19:6, 24:1, 26:24, 29:16, 29:23, 30:2 Dutton ^[1] - 2:5	February ^[1] - 31:15 feet ^[21] - 4:7, 5:5, 5:8, 17:19, 17:20, 19:3, 19:13, 19:14, 20:23, 21:24, 22:2, 22:14, 23:15, 23:17, 23:19, 24:10, 24:17, 24:20, 24:22, 25:9, 29:4 felt ^[1] - 25:16 few ^[1] - 28:9 fifteen ^[3] - 5:23, 19:14, 22:14 fifty ^[6] - 5:5, 5:6, 17:19, 21:25, 22:1, 22:2 fifty-foot ^[4] - 5:6, 21:25, 22:1, 22:2 first ^[4] - 4:8, 4:24, 5:2, 31:7 fit ^[2] - 8:25, 10:4 five ^[7] - 5:8, 8:10, 9:20, 11:24, 17:11, 17:18, 19:13 five-foot ^[2] - 9:20, 17:11 foot ^[8] - 5:6, 8:9, 8:10, 9:20, 17:11, 21:25, 22:1, 22:2 forth ^[1] - 15:11 forward ^[8] - 22:11, 22:18, 23:10, 23:16, 23:17, 24:20, 25:8, 25:13 four ^[2] - 17:3, 23:3 fourteen ^[7] - 5:8, 8:9, 8:10, 19:3, 21:24, 22:2, 23:17 fourteen-and-a-half ^[2] - 19:3, 21:24 fourteen-foot ^[1] - 8:9 fourteen-foot-five ^[1] - 8:10 front ^[10] - 5:17, 5:20, 6:1, 6:8, 6:21, 7:1, 10:2, 16:11, 17:22, 18:19 frontage ^[2] - 8:5, 22:14	guess ^[6] - 8:24, 19:8, 22:25, 23:24, 27:14, 29:3 guys ^[1] - 22:22	increased ^[1] - 6:20 increasing ^[1] - 23:18 indicating ^[1] - 14:10 indicating) ^[1] - 19:9 industrial ^[1] - 12:21 instead ^[1] - 10:2 intending ^[1] - 3:1 intent ^[3] - 6:16, 7:8, 13:12 interest ^[1] - 26:2 interesting ^[1] - 9:3 interject ^[1] - 9:18 interrupt ^[1] - 18:10 introduce ^[2] - 7:15, 9:10 involved ^[4] - 12:1, 23:3, 27:21, 28:16 ish ^[1] - 23:11 issue ^[5] - 13:16, 18:4, 25:17, 25:20, 27:19 itself ^[1] - 14:4
D	E	H	K	
David ^[4] - 2:8, 2:8, 7:17, 7:20 deal ^[1] - 22:23 deal-killer ^[1] - 22:23 December ^[1] - 27:2 demolished ^[1] - 3:20 deny ^[1] - 20:11 Department ^[1] - 2:4 develop ^[4] - 10:19, 10:24, 11:14, 28:13 Development ^[2] - 2:4, 2:5 development ^[2] - 13:7, 16:17 diagonally ^[1] - 5:7 difference ^[1] - 28:24 different ^[3] - 18:20, 23:4, 28:9 difficult ^[1] - 12:23 difficulties ^[5] - 10:19, 10:21, 10:24, 11:2, 11:13 direction ^[2] - 29:1, 29:10 directly ^[1] - 17:17 Director ^[1] - 2:5 director ^[1] - 18:5 discussion ^[1] - 20:12 displaying ^[1] - 3:9 district ^[5] - 3:23, 5:4, 5:15, 8:20, 18:16 doable ^[1] - 22:1 done ^[5] - 10:22, 11:3, 11:12, 12:8, 16:2 door ^[7] - 8:7, 21:1, 21:8, 21:17, 22:12, 25:5, 28:1 down ^[2] - 10:14, 17:10 drainage ^[1] - 13:19 drains ^[1] - 10:15 dramatically ^[1] - 19:24 drive ^[2] - 4:4, 7:1 driveway ^[4] - 5:19, 23:1, 23:5, 23:8 duly ^[2] - 31:5, 31:7 duplex ^[15] - 8:6, 9:20, 9:24, 10:4, 10:7, 17:10, 19:23, 20:5, 20:24, 21:7, 21:14,	easement ^[1] - 14:2 easement's ^[1] - 14:1 east ^[2] - 19:10, 29:1 East ^[1] - 9:14 economic ^[1] - 13:7 effect ^[2] - 9:3, 25:1 eight ^[2] - 20:23, 29:3 eighteen ^[3] - 10:15, 23:14, 24:17 eighteen-inch ^[1] - 10:15 either ^[3] - 10:8, 13:23, 29:18 elevation ^[1] - 10:10 elevations ^[1] - 10:11 Elmwood ^[1] - 1:16 Engineer ^[3] - 13:17, 13:18, 13:25 Engineering ^[1] - 14:14 enhance ^[1] - 6:18 equally ^[1] - 27:8 Esq ^[1] - 2:11 essential ^[2] - 6:24, 7:5 evidence ^[3] - 10:23, 11:1, 11:13 exact ^[1] - 19:12 exactly ^[1] - 26:16 existing ^[2] - 7:7, 29:6 expires ^[1] - 31:19	half ^[2] - 19:3, 21:24 Hall ^[1] - 1:15 hand ^[1] - 31:13 HAPP ^[9] - 9:8, 9:12, 15:8, 15:20, 16:23, 17:4, 26:19, 27:3, 30:8 Happ ^[5] - 2:11, 9:13, 15:3, 18:10, 20:6 hard ^[1] - 19:4 hardship ^[1] - 6:14 hate ^[1] - 27:8 Heads ^[1] - 3:17 hearing ^[2] - 20:13, 31:10 Heights ^[1] - 7:17 held ^[4] - 1:10, 1:15, 20:12, 31:10 help ^[1] - 21:2 hereby ^[1] - 31:6 hereunto ^[1] - 31:13 history ^[2] - 12:13, 13:1 hold ^[1] - 28:17 home ^[8] - 3:19, 4:3, 5:7, 9:16, 18:24, 19:8, 23:5, 27:24 homes ^[5] - 3:16, 7:7, 13:19, 20:5, 25:2 honest ^[2] - 19:21, 22:24 hoping ^[1] - 28:18 house ^[7] - 8:4, 22:11, 22:12, 24:21, 27:15, 28:25, 29:5 houses ^[2] - 17:3, 28:11 Humpal ^[1] - 2:2 hundred ^[2] - 9:18, 17:8	Kalina ^[3] - 2:11, 9:17, 15:10 Kalinas ^[2] - 9:15, 15:8 keep ^[1] - 8:12 killer ^[1] - 22:23 kind ^[8] - 4:4, 5:6, 5:18, 12:21, 13:13, 18:21, 22:24, 24:4	
F	G	I	L	
facing ^[2] - 5:24, 6:5 fact ^[1] - 21:19 Fairlawn ^[1] - 7:22 fairly ^[1] - 9:5 family ^[18] - 3:15, 3:19, 4:3, 4:6, 4:11, 4:13, 4:19, 4:21, 4:23, 9:19, 10:6, 17:9, 20:2, 23:5, 27:24 far ^[7] - 23:20, 24:14, 25:3, 29:1, 29:2, 29:5, 29:6	garages ^[2] - 4:7, 25:6 gentleman ^[1] - 15:5 GIS ^[3] - 13:20, 19:12, 21:19 given ^[1] - 19:2 grant ^[1] - 11:2 grasp ^[1] - 24:9 Gregory ^[2] - 2:11, 9:13	immediate ^[1] - 13:14 immediate-term ^[1] - 13:14 improved ^[1] - 7:11 IN ^[1] - 31:13 inch ^[1] - 10:15 inches ^[1] - 5:9 including ^[1] - 8:15 incorporate ^[1] - 6:19 increase ^[1] - 22:18	Lager ^[1] - 3:17 landowners ^[1] - 28:16 Lane ^[1] - 7:17 large ^[1] - 10:12 larger ^[1] - 21:17 last ^[1] - 27:4 law ^[1] - 18:5 Leach ^[2] - 2:8, 7:20 LEACH ^[13] - 7:20, 8:1, 20:15, 20:18, 22:5, 22:8, 23:12, 24:12, 24:15, 26:11, 26:14, 26:18, 29:20 least ^[2] - 12:2, 29:8 likely ^[2] - 12:6, 23:19 line ^[7] - 6:14, 8:6, 8:12, 17:22, 21:3, 21:24, 29:4 live ^[1] - 28:6 located ^[1] - 3:22 location ^[1] - 4:3 look ^[6] - 6:8, 14:14, 16:8, 21:16, 23:13,	

24:19 looking [8] - 8:23, 11:20, 20:22, 21:18, 23:14, 24:3, 24:22, 25:8 looks [1] - 19:9 lot's [1] - 28:8	move [2] - 25:13, 29:10 moved [3] - 22:9, 22:10, 22:17 moving [1] - 28:23 MR [70] - 3:9, 7:16, 7:20, 8:1, 8:16, 8:22, 9:8, 9:12, 11:22, 12:12, 12:18, 13:5, 13:9, 13:18, 15:4, 15:8, 15:9, 15:12, 15:15, 15:16, 15:18, 15:20, 16:23, 17:4, 17:15, 18:6, 18:9, 18:15, 18:23, 19:1, 19:2, 19:6, 19:17, 19:20, 20:8, 20:15, 20:18, 21:13, 22:5, 22:8, 22:20, 23:12, 23:23, 24:1, 24:7, 24:12, 24:13, 24:15, 25:10, 25:15, 26:1, 26:8, 26:11, 26:14, 26:18, 26:19, 26:24, 27:3, 27:4, 27:11, 27:14, 28:5, 28:7, 28:20, 29:12, 29:16, 29:20, 29:23, 30:2, 30:8 MS [3] - 14:10, 14:12, 30:1	31:18 note [2] - 4:9, 6:2 noted [1] - 6:22 nothing [1] - 31:9 notify [1] - 12:3 noting [2] - 4:16, 6:12 November [2] - 1:11, 31:12 numbers [1] - 24:8	P	24:24 previous [2] - 18:24, 19:8 previously [3] - 3:2, 3:18, 4:22 problem [1] - 27:16 PROCEEDINGS [1] - 3:5 Proceedings [1] - 1:10 project [1] - 3:24 properties [4] - 3:14, 6:15, 10:8, 11:25 Property [1] - 2:8 property [26] - 3:11, 3:17, 3:18, 4:9, 4:18, 4:22, 4:23, 6:14, 6:22, 10:18, 10:20, 12:7, 14:4, 14:5, 15:6, 17:9, 17:12, 19:10, 19:23, 19:24, 21:6, 21:20, 22:10, 22:19, 23:18, 29:4 proposed [6] - 6:23, 7:1, 7:10, 9:16, 9:23, 10:14 provided [2] - 4:15, 6:10 public [1] - 14:21 Public [3] - 1:14, 31:4, 31:18 pulling [1] - 21:18 purchase [1] - 27:23 purview [1] - 25:16 put [4] - 9:20, 10:8, 17:2, 17:6 puts [1] - 8:8 putting [4] - 19:22, 19:23, 21:20, 28:17
M		O		Q
maintain [1] - 8:7 majority [1] - 6:1 Makenzie [3] - 1:14, 31:4, 31:17 mandate [1] - 18:11 manner [3] - 10:25, 11:12, 11:15 map [2] - 17:17, 21:19 maps [1] - 13:2 Mark [2] - 2:2, 25:11 Market [1] - 7:21 Marko [1] - 7:17 mass [1] - 25:11 material [1] - 6:7 materials [1] - 5:22 maximize [1] - 10:3 mean [6] - 11:22, 13:10, 16:1, 19:14, 22:13, 28:3 means [1] - 24:19 measurement [1] - 19:13 MEDINA [3] - 1:4, 1:23, 31:2 Medina [7] - 1:12, 1:15, 1:16, 1:24, 2:4, 9:14, 31:14 meet [6] - 16:13, 17:6, 17:25, 18:24, 26:11, 27:1 meeting [4] - 14:15, 16:14, 23:19, 27:2 Member [2] - 2:2, 2:3 members [1] - 20:13 mentioned [1] - 8:2 middle [1] - 17:2 might [1] - 6:7 minimal [1] - 22:13 minimum [3] - 9:21, 24:16, 25:9 mirrored [1] - 4:5 mix [1] - 12:21 mixed [1] - 12:22 money [1] - 27:20 month [2] - 26:8, 26:12 most [3] - 12:6, 21:23, 23:19 motion [4] - 20:10, 26:6, 29:19, 29:25	N	oath [1] - 3:2 object [1] - 11:11 objecting [4] - 15:22, 15:24, 16:15, 16:18 objection [2] - 16:7, 20:3 objections [3] - 9:7, 9:18, 14:16 observed [2] - 6:17, 7:9 obvious [1] - 21:23 occupied [1] - 15:17 occurred [1] - 12:19 OF [4] - 1:4, 31:1, 31:2 office [1] - 31:14 office@crmedina. com [1] - 1:25 OHIO [1] - 31:1 Ohio [9] - 1:15, 1:16, 1:24, 7:18, 7:22, 9:14, 31:5, 31:14, 31:18 one [15] - 4:7, 8:1, 12:7, 12:24, 18:18, 20:7, 20:21, 21:1, 21:13, 22:5, 25:2, 27:4, 27:10, 28:12, 29:8 one-car [1] - 4:7 opinion [1] - 18:4 opportunity [1] - 23:16 oriented [1] - 19:9 outside [1] - 29:8 OV [2] - 3:22, 14:13 overlay [3] - 3:23, 8:17, 8:20 own [1] - 9:15 Owner [1] - 2:8 owner [2] - 15:6, 15:17 owner-occupied [1] - 15:17 owners [2] - 4:20, 12:2 ownership [1] - 27:20	p.m [1] - 1:13 package [1] - 21:21 packet [1] - 3:10 parking [7] - 5:16, 5:19, 6:21, 7:1, 18:20, 23:15, 24:18 part [1] - 25:10 particular [1] - 5:13 parties [1] - 27:6 parts [1] - 28:23 pass [1] - 26:6 past [1] - 27:6 Paul [1] - 2:3 pause [1] - 21:16 peaks [1] - 6:4 people [1] - 28:15 per [1] - 4:12 percent [1] - 5:23 permitted [3] - 5:17, 18:16, 18:17 personal [1] - 22:21 persons [1] - 31:7 piece [1] - 17:12 pieces [1] - 28:22 pipe [6] - 10:12, 10:15, 13:16, 13:21, 14:3, 14:8 place [1] - 31:11 placed [1] - 3:2 placement [1] - 9:1 plan [9] - 4:2, 5:6, 5:10, 8:18, 11:4, 11:7, 25:24, 26:3, 28:21 Planning [13] - 2:4, 3:23, 6:3, 8:14, 14:15, 23:25, 25:17, 25:25, 26:7, 26:21, 26:25, 29:14, 30:4 plans [2] - 5:25, 13:14 point [1] - 17:7 points [1] - 20:7 portion [1] - 3:24 potentially [2] - 22:17, 25:2 practical [5] - 10:19, 10:21, 10:24, 11:2, 11:13 practicalities [1] - 16:8 present [2] - 2:10, 7:14 presentation [1] - 7:25 presented [1] - 10:23 pressed [1] - 19:4 pretty [3] - 4:5, 22:15,	qualified [1] - 31:6 question-ish [1] - 23:11 questions [2] - 14:18, 15:10 quick [1] - 27:11
			R	
			R-2 [8] - 9:24, 10:3, 16:6, 16:13, 16:15, 17:6, 17:7 R-3 [5] - 12:6, 17:16, 17:18, 17:19, 17:25 radar [1] - 13:8 rather [1] - 12:17 realistically [2] - 23:7, 28:8	

realities [1] - 16:8
really [7] - 10:4, 11:9, 15:23, 16:9, 17:12, 21:5, 29:5
rear [12] - 5:2, 5:3, 5:5, 5:6, 6:13, 6:15, 8:10, 17:19, 18:1, 19:4, 19:16, 22:18
reason [2] - 9:21, 21:15
reasoning [3] - 8:4, 8:11, 21:10
recommendation [1] - 5:12
record [1] - 16:19
redeveloping [1] - 13:13
redone [1] - 21:4
reflect [1] - 17:13
reflects [1] - 16:19
regarding [3] - 6:11, 6:21, 7:4
rental [1] - 15:13
reported [1] - 9:6
REPORTERS [1] - 1:23
represent [1] - 9:15
represented [1] - 15:11
representing [2] - 15:6, 15:7
request [2] - 9:16, 29:17
requested [1] - 25:18
require [2] - 6:4, 14:13
required [3] - 4:13, 5:13, 14:7
requirement [5] - 5:11, 6:17, 6:24, 7:9, 17:25
requirements [8] - 10:1, 10:2, 16:14, 16:15, 17:7, 18:25, 23:20
researched [2] - 13:4, 13:23
residence [7] - 4:22, 4:23, 6:18, 10:6, 16:22, 17:9, 20:2
residences [2] - 4:20, 6:19
residential [9] - 4:11, 5:4, 6:23, 7:2, 12:14, 12:17, 12:22, 16:25, 19:22
resolution [1] - 28:19
response [2] - 14:19, 14:23
responses [2] - 4:15, 6:10

result [1] - 5:19
review [10] - 6:3, 8:17, 8:18, 8:19, 8:25, 13:19, 18:8, 20:18, 22:17, 26:7
reviewed [4] - 3:24, 13:16, 13:25, 14:9
reviewing [2] - 4:25, 18:7
revise [1] - 25:24
revision [2] - 24:6, 30:3
rezone [7] - 11:7, 11:18, 12:9, 15:24, 15:25, 16:12, 16:16
rezoned [5] - 11:8, 12:7, 12:15, 17:5, 17:16
rezoning [4] - 11:23, 15:22, 18:4, 18:8
right-of-way [3] - 5:24, 6:5, 24:11
rights [1] - 4:20
riparian [2] - 5:10, 29:9
ROAD [1] - 1:6
Road [3] - 3:8, 3:12, 10:16
road [1] - 25:3
Room [1] - 3:18
room [1] - 20:1
ROSZAK [6] - 12:12, 13:5, 15:12, 15:16, 20:8, 25:10
Roszak [1] - 2:3
RPR [3] - 1:14, 31:4, 31:17
rule [1] - 29:7
runs [2] - 10:13, 10:14

S

Sabo [3] - 1:14, 31:4, 31:17
Sarah [2] - 2:5, 14:11
schedule [1] - 26:10
seal [1] - 31:14
second [3] - 5:1, 5:14, 18:23
Section [2] - 4:12, 5:22
section [1] - 5:13
see [9] - 3:12, 5:5, 5:10, 5:25, 13:12, 17:2, 20:19, 28:4, 28:21
seeking [1] - 16:10
set [7] - 8:5, 18:18, 18:20, 19:3, 24:25, 25:6, 31:13

setback [28] - 5:2, 5:3, 5:6, 5:8, 5:10, 6:13, 6:15, 8:10, 8:15, 9:4, 14:7, 17:18, 17:19, 18:1, 18:19, 18:25, 19:16, 20:20, 21:25, 22:1, 22:2, 22:11, 22:13, 22:18, 23:18, 23:20, 29:9
setbacks [3] - 6:20, 8:23, 17:24
sewers [1] - 21:4
shake [1] - 6:4
shared [1] - 5:18
short [3] - 13:14, 23:5, 23:8
short-term [1] - 13:14
show [3] - 10:21, 13:10, 13:21
showed [1] - 10:18
showing [2] - 4:3, 11:4
shutters [1] - 6:4
side [15] - 3:11, 3:14, 6:20, 7:2, 9:25, 10:13, 11:25, 12:11, 16:11, 17:11, 17:18, 19:10, 19:11, 20:21
sides [2] - 4:5, 25:6
sidewalk [3] - 24:11, 24:23, 24:24
siding [5] - 6:4, 7:4, 7:8, 7:10, 18:20
significantly [1] - 21:17
single [12] - 3:15, 3:19, 4:4, 4:11, 4:19, 4:21, 9:19, 10:6, 17:9, 20:2, 23:5, 27:24
single-family [11] - 3:15, 3:19, 4:11, 4:19, 4:21, 9:19, 10:6, 10:6, 17:9, 20:2, 23:5, 27:24
site [2] - 4:2, 8:18
sitting [1] - 27:15
situation [4] - 20:19, 21:2, 21:10, 27:25
size [6] - 5:1, 5:14, 10:18, 21:17, 25:12, 27:15
sizes [1] - 21:16
slide [1] - 8:8
slightly [1] - 19:16
small [1] - 21:21
smaller [1] - 10:5
Smith [8] - 3:8, 3:12, 3:15, 6:6, 7:3, 10:16, 11:25, 12:23

SMITH [1] - 1:6
sneak [1] - 16:4
someone [1] - 27:23
sorry [3] - 15:5, 16:23, 24:7
sort [1] - 28:19
south [5] - 3:11, 3:14, 11:25, 12:10, 17:17
space [3] - 23:14, 23:15, 24:18
specifically [1] - 8:23
specified [1] - 31:11
spirit [2] - 6:16, 7:8
split [1] - 28:24
spot [3] - 11:18, 12:9, 22:1
spot-rezone [1] - 11:18
spot-zoning [1] - 12:9
square [2] - 4:7, 28:12
ss [1] - 31:1
staggered [1] - 29:2
staggering [1] - 25:1
standard [3] - 5:11, 5:18, 6:23
Standards [1] - 4:16
standards [3] - 12:6, 18:18, 18:21
STATE [1] - 31:1
State [3] - 1:15, 31:5, 31:18
states [1] - 5:23
stay [1] - 17:22
stems [1] - 4:17
still [2] - 24:25, 27:18
stop [1] - 21:23
stopped [1] - 22:25
Street [3] - 1:23, 7:21, 9:14
street [9] - 3:17, 7:7, 15:25, 21:3, 21:6, 24:14, 28:2, 28:3, 29:2
strenuously [1] - 11:11
stress [2] - 10:8, 15:21
structure [1] - 4:6
stuff [1] - 28:4
subject [1] - 14:5
substantial [4] - 6:13, 7:5, 9:5, 22:3
suggest [2] - 25:22, 27:9
suggested [1] - 29:9
Suite [1] - 7:22
surrounding [1] - 20:5
sworn [1] - 31:7

T

table [4] - 9:10, 25:23, 26:6, 29:21
tabled [2] - 29:14, 29:17
Tap [1] - 3:17
ten [2] - 22:13, 24:22
term [2] - 13:14
testify [2] - 3:2, 31:8
testimony [1] - 31:7
theirs [1] - 8:16
therefore [1] - 4:12
they've [3] - 9:23, 10:18, 10:23
thin [1] - 20:25
third [1] - 5:21
thirteen [1] - 23:17
thirty [4] - 13:3, 19:13, 23:19, 24:10
thirty-five [1] - 19:13
thirty-two [1] - 24:10
thoughts [2] - 19:18, 22:21
three [1] - 23:2
Thursday [1] - 1:10
tight [1] - 22:15
together [3] - 12:22, 23:6, 27:7
TOME [3] - 14:10, 14:12, 30:1
Tome [1] - 2:5
tonight [2] - 3:25, 9:4
torn [1] - 17:10
tracks [1] - 28:2
train [1] - 28:2
Transcript [1] - 1:10
transferred [1] - 28:8
transfers [1] - 27:20
transform [1] - 12:16
transitional [1] - 8:17
trespassing [1] - 17:14
true [1] - 25:15
truth [3] - 31:8, 31:9
try [2] - 8:11, 28:19
trying [8] - 8:7, 10:3, 10:7, 15:24, 16:16, 21:2, 24:8, 28:13
TV [2] - 3:22, 14:13
TV-OV [2] - 3:22, 14:13
twelve [2] - 24:20, 25:9
twenty [1] - 13:3
two [12] - 3:15, 4:3, 4:6, 4:11, 4:13, 4:19, 4:23, 9:3, 15:13, 23:2, 24:10, 28:11

two-family ^[7] - 3:15, 4:3, 4:6, 4:11, 4:13, 4:19, 4:23 type ^[5] - 4:8, 4:24, 5:1, 5:14, 11:8 typical ^[2] - 23:13, 24:17	27:11, 27:14, 28:7, 29:12 Washington ^[1] - 9:14 water ^[1] - 10:9 water-wise ^[1] - 10:9 West ^[8] - 3:8, 3:12, 3:15, 7:3, 7:21, 10:16, 11:25, 12:23 WEST ^[1] - 1:6 west ^[6] - 9:16, 10:13, 19:11, 28:25, 29:6 WHEREOF ^[1] - 31:13 whole ^[5] - 8:24, 12:10, 12:25, 15:25, 31:8 wider ^[1] - 25:5 WILLIAMS ^[15] - 18:9, 18:23, 19:2, 19:17, 19:20, 21:13, 22:20, 23:23, 24:7, 24:13, 25:15, 26:1, 27:4, 28:5, 28:20 Williams ^[1] - 2:2 willing ^[1] - 26:5 windows ^[1] - 6:5 wise ^[1] - 10:9 wish ^[1] - 7:24 wishing ^[1] - 14:21 WITNESS ^[1] - 31:13
U	
under ^[3] - 3:2, 16:4, 16:10 understood ^[1] - 28:20 unique ^[3] - 4:17, 9:22, 21:19 unit ^[1] - 15:17 units ^[1] - 15:14 unless ^[2] - 19:14, 26:14 up ^[6] - 3:20, 19:7, 20:6, 21:18, 23:16, 27:7 uptown ^[1] - 5:16 usability ^[1] - 23:8 uses ^[3] - 4:12, 12:5, 12:17 utilities ^[1] - 13:20	
V	
valid ^[1] - 20:7 variance ^[23] - 4:8, 4:9, 4:13, 4:17, 4:24, 5:12, 5:14, 5:21, 6:12, 7:4, 9:17, 9:24, 10:22, 11:2, 11:6, 11:9, 15:23, 16:3, 17:21, 18:2, 18:12, 18:18 variances ^[6] - 5:1, 6:12, 18:19, 18:22, 25:18 Variances ^[2] - 4:16, 6:11 verbal ^[2] - 14:19, 14:23 vinyl ^[7] - 5:24, 6:2, 6:6, 7:4, 7:8, 7:10, 18:20 vision ^[2] - 12:15, 13:5 vote ^[4] - 22:3, 25:18, 26:3, 29:22 voting ^[1] - 25:19	yard ^[15] - 5:17, 5:20, 6:15, 6:20, 6:21, 7:1, 10:1, 10:2, 16:11, 17:11, 17:18, 17:19, 18:19, 19:4 years ^[4] - 9:19, 13:3, 17:8 yourself ^[1] - 9:11 yourselves ^[1] - 7:15
	Y
	Z
	Z24-24 ^[2] - 1:5, 3:7 zone ^[1] - 18:13 zoned ^[7] - 3:12, 3:16, 4:9, 4:18, 12:14, 17:5, 28:9 ZONING ^[1] - 1:4 zoning ^[14] - 3:14, 5:4, 6:17, 7:9, 12:9, 12:13, 12:24, 13:1, 13:4, 13:10, 13:11, 16:3, 16:6, 16:10 Zoning ^[3] - 1:12, 22:16, 30:4
W	
Wascak ^[2] - 2:8, 7:17 WASCAK ^[8] - 7:16, 15:15, 15:18, 26:8,	

1
2
3
4
5
6
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CITY OF MEDINA BOARD OF ZONING APPEALS

CASE Z24-24

322 WEST SMITH ROAD

- - -

Transcript of Proceedings held on Thursday,
the 13th day of February, 2025, before the
City of Medina Board of Zoning Appeals, commencing
at approximately 7:00 p.m., as taken by
Makenzie J. Sabo, RPR, Notary Public within and for
the State of Ohio, and held in Medina City Hall,
132 North Elmwood Avenue, Medina, Ohio 44256.

- - -

MEDINA COURT REPORTERS
209 North Broadway Street
Medina, Ohio 44256
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office@crmedina.com

I N D E X

- - -

WITNESSES:

Applicant's:	Mr. Hanek	Mr. Happ
Leach; D.	14	26

- - -

APPEARANCES:

Bert Humpal, Chairman,
 Mark Williams, Member,
 Paul Roszak, Member,
 Logan Johnson, Member,
 Steven Cooper, Member.

City of Medina Planning and Community
 Development Department,
 Andrew Dutton, Community Development Director,
 Sarah Tome, Administrative Assistant.

Gregory A. Huber, City of Medina Law Director.

Applicant:

Meyers, Roman, Friedberg & Lewis
 by Nicholas J. Hanek, Esq.

David Wascak, Property Owner.
 David Leach, The Cornice Company.

Also present:

Gregory W. Happ, Esq.
 on behalf of Christopher and Carrie Kalina.

- - -

1 (Whereupon, all those intending to
2 testify were previously placed under oath by
3 the notary.)

4 - - -

5 PROCEEDINGS

6 - - -

7 CHAIRMAN: We begin
8 the agenda this evening with Z24-24,
9 322 West Smith.

10 Andrew, if you'd please.

11 MR. DUTTON: (Displaying case
12 packet.)

13 All right. This is the property that is
14 composed of .13 acres on the south side of
15 West Smith Road. Adjacent properties are zoned
16 C-2 to the north with the brewery and tap room;
17 to the east, zoned C-2 with a two-family
18 residence; the west, zoned C-2 with a
19 single-family residence; and to the south, R-3
20 with a single-family residence.

21 The property previously contained a
22 single-family home, which was demolished in
23 2018. The request is for a two-story duplex
24 with 1,635-square-foot units, each with a
25 garage.

1 So this is an application you've
2 heard before. On November 14th the
3 Planning Commission also heard a TC-OV
4 application which they conditionally approved.
5 The Commission also reheard a revised
6 application for the project this evening and
7 conditionally approved it as well.

8 On the 14th, the Board of Zoning Appeals
9 also reviewed four variances; one for
10 prohibited two-family use, one to allow a
11 structure in the rear yard setback, one for
12 parking in the front yard, and one for vinyl
13 siding facing the right-of-way. After
14 discussion, the Board accepted a request of the
15 applicant to table the application.

16 So since that time there have been a number
17 of additions and revisions to the application
18 that I'd like to go over. They include
19 elevations incorporating the Commission's
20 conditions, correction of applicable rear yard
21 setback, two options for the location of the
22 structure, Engineering and Service Department
23 information, documentation of a storm sewer
24 near the property line, the Future Land Use Map
25 in the Comprehensive Plan, letters of support,

1 additional responses to variance criteria, and
2 documentation from the neighboring property
3 owner's attorney.

4 So as noted, the Planning Commission
5 approved the TC-OV application with the
6 condition to incorporate shutters and shake
7 siding.

8 So here we have the original application -
9 this is from November - and here we have the
10 revised elevations. Obviously the changes are
11 in the front building elevation in the
12 upper-left, which would incorporate shutters,
13 shake siding, and multiple colors.

14 The variance to the vinyl requirement,
15 Section 1135.08(a), is still necessary as the
16 front face is more than fifteen percent vinyl
17 siding.

18 Also at the November meeting the rear
19 setback was noted at fifty feet. When a
20 property in the C-2 district abuts a
21 residential district, the C-2 property's rear
22 setback is equal to the rear setback of the
23 residential district.

24 So here we have an adjacent residential
25 district of an R-3 zoning, which has a rear

1 setback of thirty feet; therefore, the actual
2 setback for the subject property is thirty feet
3 rather than previously indicated fifty feet.

4 At the November meeting there was a
5 discussion regarding the front and rear
6 setbacks. As such, the applicant has provided
7 two options for the setback of the building.

8 Here you have the original option, option
9 number one, with a front setback of thirty-one
10 feet, eight inches and a rear setback of
11 fourteen feet, five inches.

12 An additional option has been proposed
13 moving the building closer to West Smith Road
14 with a setback of nineteen feet, eleven inches
15 for the front setback and twenty-five feet for
16 the rear setback.

17 So both options will still require
18 variances to allow the structure within the
19 thirty-foot rear yard setback and to allow
20 parking in the front yard.

21 In addition, Section 1145.10(d) has been
22 identified, which requires that two-family
23 dwellings that access a collector or arterial
24 street must have forward movement onto the
25 street. So put differently, a car in the

1 driveway must have an option to turn around on
2 the site rather than backing onto the street.

3 This section applies as West Smith Road is
4 designated as a collector street in the
5 Comprehensive Plan. As such, either a method
6 allowing a vehicle to turn around on the site
7 would need to be incorporated in the site plan
8 or a variance would be needed to Section
9 1145.10(d). At the Planning Commission, the
10 applicant has indicated that they will provide
11 a method for a vehicle to turn around on, that
12 will be the option they'll go with.

13 There was also discussion at the November
14 meeting regarding the presence of the storm
15 sewer and related structures adjacent to the
16 site. So as shown on the plan sheet, there is
17 a storm sewer on the adjacent property at
18 328 West Smith Road. The City has easements of
19 at least five feet on both sides of the common
20 property line allowing access, repair, and
21 maintenance of the storm sewer.

22 Drainage was also a topic of discussion.
23 When plans are submitted to the City's Building
24 Department for a new two-family dwelling, a
25 Lot Improvement Plan must also be submitted to

1 the City's Engineering Department. The
2 Lot Improvement Plan must include information
3 on how stormwater will be managed and include
4 elevations, drainage details, and other
5 relevant items. The plan is reviewed to ensure
6 stormwater management complies with City
7 regulations and does not result in negative
8 impacts on area properties.

9 The plan also shows a creek to the rear of
10 the properties at 322 and 328 West Smith Road
11 which has been maintained by the City. To
12 perform maintenance, the City has accessed the
13 creek at South Huntington, the house on -- the
14 South Huntington Street bridge and worked
15 westward to the bridge on West Smith Road, so
16 on the plan it will be right to left along the
17 creek.

18 The applicant has provided information
19 referencing the City's Comprehensive Plan
20 regarding future land use. The Future Land Use
21 Map is meant to guide the pattern and character
22 of future growth in Medina. So the subject
23 property is designated as urban residential
24 land use, which includes single-family
25 residential, multifamily residential, and

1 community facilities.

2 You also have letters of support from
3 Shannon Rush, a resident at 316 West Smith
4 Road, which is the duplex to the east;
5 Matt Kiene, a business owner of Lager Heads
6 at 325 West Smith Road; and Leslie Burns from
7 M.C. Real Estate, the listing agent for
8 322 West Smith Road.

9 Information has also been provided,
10 including additional justification for the
11 variances from the applicant's attorney,
12 Nicholas Hanek, which have been included in
13 your packet.

14 In addition, earlier this afternoon a
15 document was submitted by Greg Happ
16 representing Chris Kalina, owner of
17 328 West Smith Road. You have a copy of this
18 document before you for your consideration.

19 Thank you.

20 CHAIRMAN: Thank you.

21 Is the applicant present?

22 MR. HANEK: (Indicating.)

23 CHAIRMAN: Please introduce
24 yourself and add any comments that you wish.

25 MR. HANEK: Thank you,

1 Mr. Chairman.

2 My name is Nicholas Hanek, attorney
3 representing the applicant, and I'm going to
4 give you some overview, some issues, and then
5 I'm going to have the builder speak in more
6 depth about a few of those issues as well, and
7 happy to entertain any questions and responses.
8 I'd also ask that the information provided, you
9 know, be included in the record for this
10 evening.

11 So first I want to -- I know that many of
12 the Board is familiar with this case, at least
13 the members that were here last time, and I
14 want to go through some of the issues and
15 changes that have resolved, talk a little bit
16 about the use application and then the area
17 variances.

18 So first off, the size of the building is
19 not a part of the issue here. This is -- the
20 size of this building, despite being a duplex,
21 is within the size permissible as a building.
22 A single home would be the same footprint. And
23 I would just correct and make sure that the
24 square footage of the home, including the
25 second floor, is not the same as the footprint.

1 The footprint of this home is not that large
2 compared to the -- that -- compared to the
3 property itself. And those two numbers are
4 getting conflated a little bit in some of the
5 materials provided.

6 This type of building -- and what I
7 included - the land use plan and the urban
8 residential - this district is meant to serve
9 as somewhat of a transition district between
10 what's more suburban and a more-dense downtown
11 square area. So the uses that are preferred
12 here are these types of multifamily uses,
13 according to the land use plan and according to
14 what can be in the C-2 district if it were
15 possible.

16 This is an ability to have a duplex next to
17 a duplex on a residential street, and it's also
18 in a close proximity to the Lager Heads Brewing
19 Company across the way. There is no feasible
20 way to use this parcel for anything other than
21 a residential use. There are a number of
22 reasons as to why. The C-2 district, parking
23 has to be in the back of a building.

24 Multifamily use like this would be permissible
25 if business was next to it and associated with

1 it, and that is not possible given the
2 uniqueness of this parcel with the creek
3 running through the back and situated with two
4 residential uses on either side.

5 So I also want to address the drainage
6 issue, which I believe has been really nicely,
7 summarily worked on in the packet that you
8 have. There is an easement -- just to
9 reiterate, there's an easement on both sides of
10 the property line, five foot one way, five foot
11 another. The City of Medina has the ability to
12 access and deal with any water issues.

13 Secondarily, the applicant is going to
14 comply with all the Engineering requirements
15 and codes of the City of Medina following
16 approval. They have to. That's going to have
17 to be part of what goes forward. And that
18 includes that the water leaving this parcel is
19 not going to impede on another property.

20 The reality is, the drainage for this house
21 is likely to improve water flow rather than
22 detract from it, as this is a modern, new
23 building with the ability to manage water.

24 In addition, I believe, as you can see in
25 the packet, that those issues I think are

1 hopefully and substantially resolved. I will
2 have the builder discuss more about the
3 turnaround, but as mentioned by Mr. Dutton, the
4 turnaround requirement we're going to meet so a
5 car can turn around and face forward. None of
6 the other houses on the block have that because
7 they were built prior to that requirement, I
8 believe, but we will have that requirement --
9 meet that requirement rather than ask for a
10 variance.

11 And overall in the big picture I think this
12 fits in with what -- the elegant land use plan
13 the future of Medina wants to do. You want
14 more dense housing and sort of a -- a multiuse
15 is really nice and appropriate here. This
16 parcel makes all the C-2 uses impossible. The
17 primary uses are not possible. The applicant
18 did not create that situation and it is totally
19 appropriate to ask for a use variance in a
20 residential block for a residential use.

21 The property is -- the parcel -- there is
22 not another parcel in the C-2 district in the
23 City of Medina with a creek in the back sitting
24 between two residential parcels, so there is a
25 very much uniqueness and -- to this -- to this

1 property.

2 I'd like to turn it over to the builder and
3 I'd like to address a few different questions.
4 One, if I could ask him a couple questions to
5 start, and then I'm going to have him present
6 briefly about the changes if that's okay,
7 Mr. Chairman.

8 CHAIRMAN: Name and address,
9 please.

10 MR. LEACH: David Leach;
11 The Cornice Company, 3200 West Market Street,
12 Suite 6, Fairlawn, Ohio 44333.

13 CHAIRMAN: Thank you.

14 MR. HANEK: If I may just ask
15 a couple questions as a guide, and then I'm
16 going to turn it over.

17 - - -

18 Whereupon, the Applicant, to
19 maintain the issues to be maintained by them,
20 called one DAVID LEACH, who, after having been
21 previously sworn, was examined and testified as
22 follows:

23 DIRECT-EXAMINATION OF DAVID LEACH

24 BY MR. HANEK:

25 Q One, could you go through your background; what

1 exactly it is you do at your company, what types of
2 buildings and what types of work.

3 A Well, our company does both commercial and
4 residential work. We build ground-up construction,
5 additions on homes. We also do commercial ground-up
6 construction as well. So this is a project that's
7 very well within our wheelhouse of what we do.

8 Q And have you had the opportunity and are you
9 familiar with the types of uses that are permitted in
10 the C-2 district in Medina?

11 A I am. And I have reviewed those that were on
12 that list as well. I do not see any feasible way of
13 having any of those types of buildings with the size
14 of this lot that's here.

15 Q And one of the variances that are today
16 involves park -- you know, a variance -- area
17 variance -- the area variance about allowing parking
18 in the front yard. Is there -- and the reason
19 there's an area variance is because in the C-2
20 parking is not normally permitted in a business use
21 in the front. Would you be able to put parking in
22 the back of it given this lot?

23 A At this time, no.

24 Q In your opinion, is there any viable use for
25 this lot other than residential?

1 A No.

2 Q Second, I -- and I'll turn it over to you to
3 explain the turnaround in a second, but as far as the
4 drainage issues, could you briefly address, do you
5 believe there would be any issues in working with the
6 City of Medina to comply with their requirements
7 regarding drainage?

8 A No. We'd be happy to comply with their
9 drainage requirements.

10 In fact, we've worked for Medina
11 previously and with Mr. Patton, so we know the
12 requirements that -- and what he requires to make
13 sure that these things happen, and we'd be happy to
14 work with him and comply.

15 Q And just before we do the turnaround, this type
16 of building, this type of duplex, is this something
17 that you see frequently in this type of market?

18 A I'm beginning to see more and more of these
19 in this type of market as it's something that's
20 needed.

21 Q And is there a high demand from what -- from
22 your experience?

23 A I believe there is.

24 Q And could you go through with the Board about
25 the vehicle turnaround and how that might work? And

1 we understand the applicant -- we are willing to
2 comply with that, so there's no issue with that as
3 far as the variance. If you could, explain that --
4 explain that.

5 A So what we --- what we could propose in this
6 situation is, midway down the driveway on the one
7 side, we would put in a small turnaround, about
8 eight -- eight by ten feet, so a -- much like in
9 another residential situation where someone has a
10 little backup spot so they can turn around. And
11 that's what we could propose in that situation.

12 If you look at the spot that's next to
13 the -- we put it on the area that's next to the
14 duplex to the right of the building. We put about an
15 eight-by-ten-foot turnaround there so a car can back
16 up and then pull out.

17 MR. HANEK: Okay. I'm going
18 to go back and address a few other things, and
19 then I would like to reserve if I need to
20 respond to any comments as necessary. To the
21 extent that it is necessary, I would like to be
22 able to do that.

23 So first, as far as the use variance goes,
24 as far as use variance, laid out the factors.
25 I know that the Board -- being a part of the

1 Board of Zoning Appeals, that you're familiar
2 with those factors and you have to deal with
3 that. The application packet lays out your
4 zoning code and the sub-factors I think very
5 well and the application process here is very
6 smooth regarding it.

7 Just what it -- this is a very unique
8 parcel created both by where it's located, how
9 the parcel is shaped. That has nothing to do
10 with this applicant. There is no other -- as
11 you heard, there's no other possible build for
12 what could be here. This parcel has been
13 vacant for a long time without any known other
14 potential uses, but this proposed use is very
15 close to what the C-2 might allow, but what is
16 allowed in C-2 is not allowed, so this is sort
17 of the same intention, which is to have
18 multifamily in close proximity to businesses to
19 allow for some sort of commercial and
20 residential transition towards your downtown
21 and away from some of the more-suburban,
22 traditional uses, and I think this project fits
23 that and works towards that.

24 I'd also look -- as far as the use
25 variances, there is no -- there's no detriment

1 known to this area of including a duplex next
2 to a duplex on what is a residential block.
3 There's not -- this is actually in conformity
4 with the area, and this is a new building that
5 will likely raise and help property values near
6 it and will help improve -- improve the block.

7 And there is no -- and you're going to
8 hear - because I was at the Planning Commission
9 meeting earlier - an attack on this type of
10 housing to suggest that duplexes are not
11 appropriate, that this type of housing should
12 have more green space. Again, the size of this
13 building is not being asked for a variance. A
14 single-family building would take up the same
15 amount. This type of housing is in great -- is
16 in great demand, is encouraged through the
17 land use plan for Medina, and allows for
18 something that allows for more residents in
19 proximity of the business.

20 And as we talked about, the business is in
21 support across the street, and the neighbors to
22 the east, both the residents wrote a letter of
23 support. This enhances the area. This
24 enhances the area and fits with what the City
25 is trying to do and what they're trying to do

1 in the area. This type of housing, without as
2 much green space, is widely used throughout
3 Medina and widely used throughout Medina County
4 in the urban cities.

5 And there's a high demand; these go
6 quickly. You see them building up everywhere.
7 So this is not -- the asked use variance is not
8 substantial. All we're asking for is the
9 residential use.

10 And as far as the three area variances, a
11 lot of them fall into what is -- you know, once
12 you get to a residential use, some of them fall
13 in.

14 The vinyl the Planning Commission dealt
15 with and added some conditions, which we're
16 going to meet, which they made some
17 recommendations as to how they see the vinyl
18 and the shutters. We've accepted that, we're
19 going to work with that, we're good with
20 that. Those conditions we accepted, and the
21 Planning Commission approved it five-to-oh
22 earlier tonight.

23 Secondarily, parking in the front yard,
24 there's no -- the C-2 district is parking in
25 the backyard if it were a business up front.

1 That's not going to work here. I would ask
2 that you take a look at the model that's up
3 there where the duplex aligns with the duplex
4 next to it, because that would be a little more
5 aligned with what we see with the urban
6 residential land plan. We see the duplexes
7 lined up, we see the houses together, allows
8 for that pedestrian access up front easier,
9 allows for the type of mixed use experience
10 that makes sense without having a mixed use.
11 You -- just so -- that would be the other
12 thing, was the -- as far as the parking in the
13 back.

14 And the final -- the final one that falls
15 through it, you know, is to allow the rear yard
16 setback. Again, as noted, it's not fifty feet,
17 it's thirty feet, and the one there's only a
18 five-foot difference there. The nature of the
19 creek makes this something that's certainly
20 practical.

21 And you can see the building to the west.
22 That is way into any -- if that were a new
23 build, that would be way farther into that
24 setback.

25 I think it becomes a really -- you know, a

1 way to use this parcel in a way that fits into
2 what Medina is looking to do and what was --
3 appears to be an elegant, thought-out land use
4 future plan, a transitional overlay district,
5 and despite this being a C-2 district, this
6 fits into what I think the intentions are and
7 the only way that it can be -- only use it can
8 be here.

9 So I'll be happy to address any questions,
10 anything that would come up, either the
11 applicant or have the builder, if we need to
12 get any specifics, or questions I'm happy to
13 entertain at this time. I'd also like the
14 opportunity, as needed, to rebut any comments
15 that are -- are to come next.

16 Thank you.

17 CHAIRMAN: Thank you.

18 We'll move to public comment first.

19 MR. HAPP: Well, it's not
20 public. I have the right to cross-examine as
21 the attorney for opposing Mr. Chris Kalina.
22 I'm an attorney. I'm Greg Happ, I'm attorney
23 for Chris Kalina, and I'd like to ask questions
24 and then present evidence. I have that right.

25 CHAIRMAN: I want to ask our

1 legal counsel if that's appropriate procedure.

2 MR. HUBER: That is. We're
3 basically having a hearing. The court reporter
4 is putting it down. The -- if this case ends
5 up in a common pleas court, the judge would be
6 interested in cross-examining the applicant.

7 CHAIRMAN: Very well.
8 Proceed, counsel.

9 MR. HAPP: Yes.

10 I'm sorry, I didn't catch your name. You
11 were -- I'm hard of hearing and you were
12 looking the other way.

13 MR. LEACH: Me?

14 MR. HAPP: Well, the
15 attorney can't testify.

16 MR. HANEK: Mr. Chairman, if
17 I may --

18 MR. HAPP: I would also
19 just --

20 MR. HANEK: Excuse me.
21 Mr. Happ -- Mr. Happ, excuse me.

22 MR. HAPP: I'm sorry?

23 MR. HANEK: Mr. Happ, excuse
24 me.

25 Just for the record, I would -- I just want

1 to note an objection, because we're writing
2 with the court reporter at this point. I do
3 not necessarily think it's appropriate for the
4 cross-examination. I understand the position
5 of the law director to allow procedures in, and
6 if the -- if Mr. Happ feels it's full and fair,
7 but I would also object to his statement that
8 the attorney cannot testify. I certainly put
9 in the record that there is information
10 provided that can be considered and evidence
11 that is before this Board and it was submitted
12 properly to this.

13 And I would also caution Mr. Happ. In the
14 last hearing there was information that was not
15 provided to the applicant that you attempted to
16 present. I would appreciate a copy of anything
17 up front. I don't think, you know, it's
18 professionally appropriate to try to sneak
19 stuff up there, so if I could just have a copy,
20 I would very much appreciate it.

21 Thank you.

22 MR. HAPP: I do have a
23 question for you, counsel. Were you sworn in?
24 I don't remember watch -- I watched. I didn't
25 see you swear to tell the truth.

1 MR. HANEK: I actually did.

2 MR. HAPP: I didn't see you.

3 MR. HANEK: Oh, I did.

4 MR. HAPP: I just want to
5 make sure the record is clear that you were
6 giving sworn testimony as an attorney.

7 MR. HANEK: I did not give
8 sworn testimony as an attorney, and I do not
9 appreciate -- I'm sorry. I understand that
10 you're attempting to put me -- or make me
11 question an ethical situation. I do not
12 appreciate it. I put my hand up because they
13 asked everybody to do it. I did not -- I was
14 an attorney, and I am acting as an attorney.
15 I'm not going to say otherwise. That is for
16 their consideration.

17 They can certainly consider what I said.
18 They can consider the legal arguments just as
19 much as yours have been in consideration. I do
20 not appreciate --

21 MR. HAPP: Then I have --

22 MR. HANEK: Mr. Happ, I do
23 not appreciate it.

24 Thank you.

25 MR. HAPP: Then I have a

1 right to cross-examine you, too.

2 MR. HANEK: If you think
3 cross-examining --

4 MR. HUBER: All right, let's
5 stop.

6 Greg.

7 MR. HAPP: Yes.

8 MR. HUBER: He's not
9 testified yet, and he's acted as an attorney,
10 so you don't have the right to cross-examine
11 him, so don't go down that path. If you have a
12 question for the contractor or the applicant,
13 that's fine, but that's where we're going to
14 stop.

15 Is that clear?

16 MR. HAPP: Yes. I'll go
17 forward with my questions.

18 MR. HANEK: Yes. Thank you.

19 CROSS-EXAMINATION OF DAVID LEACH

20 BY MR. HAPP:

21 Q Dave, first of all, you will admit that
22 your plan as submitted does not comply with
23 Section 1145.110 -- 10(d), right, for a turnaround?
24 In other words, the -- let me rephrase that.

25 The way you submitted the plan right now,

1 people have to back out onto West Smith Road,
2 correct?

3 A (No response.)

4 Q I'm asking you about the plan that you
5 submitted.

6 A The plan -- that plan that is submitted does
7 not currently have the turnaround potential written
8 on that drawing as it was submitted right now.

9 Q And you testified that there's only going to be
10 one turnaround for two side-by-side drives, correct?

11 A The decision to do that was to give
12 consideration to the neighbor who's on the west side,
13 because I know that they were concerned about
14 increasing and getting closer to their property.

15 Q So you're saying that only one drive has a
16 turnaround?

17 A We'd be happy to do two; however, your client
18 expressed concern about us approaching their property
19 line.

20 Q No concern has been -- I'm asking you, are you
21 going to plan on two turnarounds?

22 A That would be decided based off of what
23 the Zoning would like us to do and the
24 Engineering Department.

25 Q And so the Board cannot determine what, if any,

1 that you complied with the code by looking at that
2 drawing and determining whether or not those
3 turnarounds will meet the requirements that are in
4 the code about turnarounds and parking in the front
5 of the building in C-2 district, does it?

6 A This is something that was presented as an
7 opportunity in good faith. We can present this just
8 as it is without a turnaround and see if the Zoning
9 would approve it without it.

10 Q Okay. And let me ask you this question.
11 You've testified that nothing else could be built on
12 this lot. Can a single-family residence be built on
13 this lot?

14 A A residence could be built on this lot, just
15 like it is now.

16 Q So it doesn't have to be a duplex, right?
17 The -- a single residence could be built on this
18 property?

19 A A duplex or a single residence, but that's not
20 the intent of this meeting or the discussion that
21 we're having.

22 Q Well, but your intent is what's at issue. You
23 want -- a single residence will not generate what you
24 want, correct, from a business standpoint?

25 A That is not my part to say.

1 Q Could you build a duplex that does not have
2 three bedrooms in it on this property?

3 A A duplex could be built; however, that is not
4 the intent.

5 Q It's not your economic intent, correct?

6 A That is not for me to say.

7 Q Did you look at any of the other surrounding
8 businesses in Medina County that have a single-family
9 residence attached to an office or other some type of
10 business and their configurations of whether they
11 could be put on that lot?

12 A That was not something that I was requested to
13 do.

14 Q So you didn't do that? You're not testifying
15 that you compared anything else within the C-2 to
16 that lot, correct?

17 A What we're doing here is not a testimony
18 per se. You're cross-examining me for something
19 that -- for a lot that -- we are supposed to be
20 talking about this lot in particular.

21 Q Okay. But your testimony is not -- that
22 there's no other use for this lot based upon your
23 examination of other C-2 uses in Medina, correct?

24 A By my review of this lot, from the size it is,
25 this seems to be the most practical use for this lot

1 and, therefore, that is what can be built here.

2 Q Are you an architect?

3 A I am not an architect.

4 Q And are you experienced in design work?

5 A Some design work.

6 Q So you really don't have the qualifications of
7 an architect to be able to tell that nothing could be
8 built on that lot, correct?

9 A In the State of Ohio you're not required to
10 have an architect for residential buildings.

11 Q But for commercial you would, correct?

12 A For commercial you do.

13 MR. HAPP: That's all I have
14 on cross-examination. Thank you for allowing
15 me to do that. I appreciate it.

16 CHAIRMAN: Let's open for
17 public comment and question.

18 Anyone wishing to question or discuss in
19 any manner?

20 MR. KALINA: Hi. My name is
21 Christopher Kalina. I am the neighboring
22 property owner.

23 CHAIRMAN: Go ahead. Your
24 address, please.

25 MR. KALINA: Yes. My address

1 is 4773 Forest Grove Drive in Brunswick, Ohio
2 44212.

3 CHAIRMAN: Thank you.

4 MR. KALINA: I have some
5 information I'm going to hand out to the Board.

6 CHAIRMAN: All right.

7 MR. HANEK: Again, I would
8 request a copy.

9 MR. KALINA: Absolutely.

10 (Providing document.)

11 CHAIRMAN: Did you provide a
12 copy to the desk?

13 MR. KALINA: Who else would
14 like one?

15 MR. DUTTON: We got one.

16 MR. KALINA: Okay. Thank you.

17 Okay. I'm just going to walk through this
18 a little bit as an outline, and I would like to
19 take this opportunity to provide some history
20 and facts pertaining to the proposed structure,
21 322 West Smith Road, and touch on basically
22 three main areas; the zoning code, drainage,
23 and erroneous information that's been provided
24 to this Board.

25 CHAIRMAN: Can you keep

1 within five minutes, please?

2 MR. KALINA: I will do my
3 best. I was successful last time, but I have
4 to provide a little bit more information.

5 The revised application that was submitted
6 notes that this is not a typical parcel that
7 would be suitable for mixed-use development but
8 would be suitable for urban residential.
9 The 11/14/24 BZA minutes states, "Mr. Dutton
10 noted a rezoning request would most likely
11 change the zoning to R-3, which was the zoning
12 district of the adjacent residential
13 properties." And so then my question I would
14 be asking is, why does the applicant completely
15 ignore the single-family use option when this
16 property was used for that for one hundred
17 years?

18 Next, when you start looking at the
19 application itself, the "Zoning code variance
20 requested: to use R-2 construction in a C-2
21 zoned property" - that's a quote right from
22 the application - and the Comprehensive Plan,
23 which we've already established, recommends
24 residential -- urban residential or R-3
25 zoning.

1 Now, if you look at what that zoning
2 actually is, so if the City rezoned the
3 property, which is what the Comprehensive Plan,
4 the guiding document is stating, the R-2
5 requires a nine-thousand-square-foot lot for a
6 single-family detached dwelling, and R-3
7 requires an eight-thousand-square-foot lot for
8 a single-family detached dwelling, and eighteen
9 thousand/fourteen thousand respectively for
10 each of those.

11 The subject lot is 5,702 square feet
12 including a portion located inside Champion
13 Creek. That information was obtained directly
14 from the Medina County Auditor's website.

15 Chapter 113 (sic), legal nonconforming lots
16 would permit a detached single-family dwelling
17 without a variance if rezoned urban residential
18 based on the Comprehensive Plan. And that's
19 right in the code. They would not need a
20 variance for that.

21 So there was a question that was brought up
22 at the last meeting regarding the size of the
23 lot in comparison. Now, what the Board
24 received was information based on essentially
25 dimensions of the houses, but the lot sizes

1 were not provided, so I'm providing you with
2 this chart here which specifically looks at the
3 other two, two-family homes that are located
4 within the 300 block, and you will see a great
5 difference between the size of the lot for each
6 of the other two-family homes and this one.

7 And Board of Zoning Appeals member
8 Mr. Williams previously noted at that meeting
9 that the concern with the duplex was due to the
10 lot size, which that chart clearly displays. I
11 provided you with a larger copy of that chart
12 so you can see that -- what that looks like a
13 little better up close.

14 Moving on to Page 2, "The applicant states
15 that the hardship condition is not created by
16 the actions of the applicant 'The property has
17 remained vacant without any use since 2018.'"

18 I'd like to point out that the lot last
19 sold on 9/23 of '21 for twenty thousand
20 dollars. It was appraised by the County for
21 \$20,500. The lot was not placed back up for
22 sale until 7/15 of '24 for 49,900, which was
23 more than twice the prior price the lot sold
24 for with no improvements and double the
25 appraised value.

1 Now, while it's true the lot has remained
2 vacant, it was the choice of the owners who did
3 not list the property for sale for many years.

4 "The variance sought is the minimum which
5 will afford relief to the applicant." The
6 applicant has made no mention of a
7 single-family use option, which was the
8 grandfathered use of the lot for decades, and
9 the below graph clearly demonstrates the
10 applicant's requesting the highest and most
11 intensive use of the property based on the lot
12 size.

13 And the reason I point that out is because
14 bedroom number generally correlates with family
15 size. The common guideline is two per bedroom.
16 The subject property provides the smallest yard
17 for children and family activities and should
18 be a safety consideration given the heavy
19 industrial traffic along Smith Road.

20 And I have a second handout regarding the
21 parking; however, it looks like that's going to
22 be addressed separately, but I will point out
23 that the average traffic count on Smith Road is
24 7,614 vehicles, and that was per Mr. Patton.

25 So if you look at that chart, that chart is

1 specifically pointing out the size of the
2 bedrooms, which is going to dictate how many
3 people move into that property and how many
4 people are residing there and the size of the
5 lot. And I broke that down. Again, each are
6 compared by the number of bedrooms and the
7 square foot.

8 Moving on to the next bullet point, "The
9 burden of proof for variances and appeals shall
10 be on the applicant." The listing agent
11 advertised the lot as a "rare opportunity to
12 build your dream home." While misleading as
13 the nonconforming use was discontinued more
14 than two years ago, a public records request
15 had produced e-mails noting that the applicants
16 were aware of the current zoning, which is
17 attached. And the design-build, utilizing a
18 clean-slate empty lot, which makes it
19 undeniable the applicant is creating their own
20 unnecessary hardship in addition to requesting
21 a more intensive use of the property than other
22 less substantial variance options, such as
23 single-family.

24 "The applicant states that the proposed
25 building fits into the overall intention

1 expressed in the Zoning Code regarding the
2 TC-OV district." And I'll just quote
3 Chapter 116.02 (sic), and that's "Effect of
4 Underlying Zone Designation." That states,
5 "An Overlay District shall not be used to add
6 to the specific permitted uses of the
7 underlying district."

8 Now, I'd also like to address some of the
9 misleading information that the listing agent
10 provided, who is currently under contract to
11 sell the lot. I'll advise you that our LLC has
12 purchased several properties in the City of
13 Medina this year alone and no offer was written
14 to purchase this lot. We would like to see the
15 property developed. If we wanted to purchase
16 the lot, we would have purchased it. I would
17 not have developed it. I would like to see it
18 developed, so I'm just going on record to tell
19 you that. We'd like to see something happen
20 with the lot to try and improve the area.
21 We're in favor of some form of development.

22 West Smith Road has been surveyed multiple
23 times during the reconstruction and replacement
24 of the Champion Creek bridge. The property
25 marker pins at 328 West Smith Road were

1 removed, which is illegal, and new pins were
2 placed several feet into the established
3 property line. It's a long-established
4 property line. These could have been moved by
5 a survey company or someone looking for
6 additional room to build. Regardless, several
7 feet of the east side of the property would
8 have been claimed by the applicant had
9 necessary steps not been taken to protect the
10 established property line.

11 And that's exactly what I did. I made the
12 right phone calls regarding that and we were
13 obviously very concerned at the location of
14 those pins. I will say that the company did
15 correct that after that was brought to their
16 attention, but I'm shocked it happened in the
17 first place, and I don't know why that
18 happened.

19 Information supplied to the Board notes
20 that water intrusion on our property, "which
21 was built in 1897 ... seems to pertain more
22 directly to the condition of the home rather
23 than the proposed development on the
24 neighboring lot." And that's a quote, so I'm
25 just providing the quote.

1 The basement at 328 West Smith Road remains
2 dry, and we want to continue to make sure that
3 happens for the protection of our property and,
4 also, the health and safety of our residents.
5 We recently spent the past several years
6 restoring the A.T. Spitzer house, which is
7 located at 402 West Washington Street. This
8 house is now one of the more historically
9 accurate homes in Banker's Row, and we have
10 received praise from the Historical Society for
11 that restoration. In fact, we were invited to
12 participate in this year's home tour.

13 That house has the original 1880 stone
14 foundation, and I will tell you it's absolutely
15 bone dry, and so the insinuation that the age
16 of the home in Medina indicates whether or not
17 a basement can be dry when drainage is working
18 properly is completely inaccurate. We have
19 owned, and we continue to own, many historic
20 homes that have dry basements when the drainage
21 is working.

22 So the next part is the drainage claims.
23 I'm going to go on record - I went on the
24 record at the Planning Commission - we greatly
25 appreciate the efforts and the many efforts

1 that the City of Medina, Nino Piccoli,
2 Pat Patton have made to improve drainage on
3 West Smith Road. What they have done has
4 worked, and they've done a lot.

5 I'd like to talk a little bit about the
6 collaborative efforts we've made to participate
7 in that so that you understand our concerns
8 about any development. "The owners --" which
9 is us "-- spent \$10,000 to shorten the garage
10 at West Smith Road ..."

11 So we actually shortened our garage so that
12 Champion Creek could be widened, which has
13 improved the water flow in the area.

14 Water backing up on that street has been a
15 continuous issue for residents. The original
16 proposal for this was supposed to have the
17 drain on the lot line, it was supposed to go
18 right down the property line, and my
19 recollection of what happened - and I never had
20 any conversations with the neighbor at that
21 time - but they were not allowing that, so then
22 the drainage ended up on our property.

23 However, when it was installed, the company
24 that the City hired actually tore up our drains
25 that we had replaced, and we paid for that to

1 be repaired ourself. But the drains that are
2 there right now are located on both the east
3 and west side of our property.

4 I will tell you that we did a three-year
5 renovation of that house. It was
6 all-the-way-to-the studs renovation. It
7 included upgrades to the foundation, and it
8 was very dry for many years until the
9 reconstruction of West Smith Road when the
10 drainage was negatively impacted by the
11 contractors. So we have had this happen
12 before, hence our concerns. We are planning on
13 other updates to the property, but we are
14 waiting to see essentially what happens here.

15 And I did have a conversation with
16 Jim Smith. He's the district tech for the
17 Medina County Soil & Water Conservation
18 District. He noted that the lot and elevation
19 drop into Champion Creek create some unique
20 issues. The Medina County Soil & Water
21 Conservation District offered a complete site
22 investigation, a soil type review, and provide
23 recommendations for when impermeable surface
24 greatly increases, and his quote was a "lack of
25 infiltration increases flooding potential."

1 The City of Medina code requires that no
2 concentration of water will flow onto adjoining
3 property and where there's a lot graded to a
4 higher level than the adjacent property,
5 protection must be provided to preserve the
6 elevation of the adjacent property.

7 Considering the variance request is to
8 build the largest two-family building on the
9 smallest lot, it would appear that the
10 long-established permeable surfaces will be
11 impacted and should be investigated by experts
12 before any development, and I just considered
13 that similar to a traffic study.

14 CHAIRMAN: Can you wind up,
15 please?

16 MR. KALINA: Yes.

17 The drainage easement -- the drainage
18 easement that was provided to this Board claims
19 that Exhibit C is an easement of a combined
20 ten-foot-wide that is on both 322 West Smith
21 Road and 328 West Smith Road. In fact, that
22 easement that was submitted as Exhibit C is a
23 completely unrelated highway easement located
24 on the opposite side of the property.

25 So what I will tell you is that as property

1 owners here in the City of Medina living in
2 both single- and two-family homes ranging from
3 modern to beautifully restored historic homes
4 and a little bit of everything in between,
5 we've resided and love the City of Medina and
6 we appreciate the members of the Board who we
7 have dealt with in the past who have stood
8 behind this code. We want to share with the
9 Board the reason Medina Zoning smartly
10 differentiates between single-family and other
11 uses.

12 CHAIRMAN: You're at ten
13 minutes. Please would you respect the time?

14 MR. KALINA: Thank you.

15 I will just sum it up real quick that
16 two-family properties bring multiples of
17 everything. I know that because we own some,
18 and that means that you have two patios, two
19 sets of swing sets, two sheds, two grills. You
20 have two of everything that ends up going on
21 that property. So it is an entirely different
22 impact than a single-family home. You have
23 twice the number of vehicles, you have twice
24 the number of everything that those families
25 are bringing to that property. And I know that

1 because we own several two-family homes in the
2 City of Medina, and I understand the difference
3 between my single-family properties and my
4 two-family properties.

5 And so in your handout you have a copy of
6 some concerns that we had about the backing out
7 onto the property. They are addressing that
8 right now. I provided you with traffic counts,
9 and we also provided you with some of the
10 public records request.

11 And then a photograph of myself and a
12 photograph of the -- the photograph of myself
13 was to show you that we've been very diligent
14 with addressing drainage on this property, and
15 the last photograph provides a picture of what
16 happens when drainage is not appropriately
17 addressed and how it can negatively impact our
18 property.

19 CHAIRMAN: Thank you.

20 Any other public questions? Comments?

21 MR. HAPP: Yes. As the
22 attorney, I do have the right to make a final
23 argument and I -- argument, but I presented --
24 because the Board has the obligation to look at
25 each and every one of the standards that are

1 required for the variances, you just -- the
2 summations that are being made are not
3 addressing the requirements that the applicant
4 has to prove by clear and convincing evidence.
5 They have to present evidence that every one of
6 those standards, all of those standards have
7 been met to be able to grant the variance.

8 First of all, to be able to grant a use
9 variance, yes, they have to show by clear and
10 convincing evidence - one of the highest civil
11 standards of proof - that there is unnecessary
12 hardship in this property. But the law in Ohio
13 is, the person who buys property, who knows of
14 that the property -- that what his desire to
15 build there does not -- is not permitted in
16 that district, is not allowed to seek a
17 variance for use. That is the Supreme Court
18 ruling, and they're doing exactly that.

19 They do not own this property. They're not
20 someone who owns the property that's saying
21 "Hey, things have changed. I need a change."

22 CHAIRMAN: Have you provided
23 legal citation to any of the boards, cases that
24 you're referring --

25 MR. HAPP: Yes.

1 CHAIRMAN: -- to?

2 MR. HAPP: I -- I gave the
3 citation to -- the court cases are presented to
4 you in the document that I gave you with the
5 quotes.

6 The other concern that I have is that they
7 did not comply with the impact study that is
8 required in -- required in the C-2 district you
9 have -- for the adjacent roadway or street on
10 West Smith. There's no impact statement, and
11 it has -- I have no knowledge that it's been
12 waived. If it's been waived, they don't have
13 to do it. If they do -- if it's not waived,
14 then I have seen no waiver that they have to
15 give an impact, how this property is going to
16 impact West Smith Road.

17 And it's critical, because what they're
18 talking about are side-by-side drives in a
19 property that's going -- now they're saying
20 they're going to let people, you know, have --
21 that takes up -- they're going to have
22 turnarounds. There goes all of the front of
23 that property. And there are restrictions on
24 how you can use your front property in that
25 district.

1 You know, they want -- they want R-2 zoned
2 use, but they don't want any of the standard --
3 the lot development standards of R-2. They're
4 trying to then turn around and say "Well, we
5 can use all the C-2, but we don't like the C-2
6 because -- because we're going to use a new
7 loop, we've got all of these practical
8 difficulties." So their use is creating their
9 own practical difficulties under the law. They
10 can't -- what they're doing is not permissible
11 by Ohio law or the code. It does not permit
12 it.

13 My last statement is safety. Look at this
14 lot. You're going to have two, three-bedroom
15 homes that are going to -- that they're hoping
16 to fill with families. And they have what?
17 They want 14.5 feet, and some of that is in the
18 creek that floods. Where is the recreation and
19 leisure area? This Board should look at that
20 and say -- you know, you have an obligation to
21 look at the safety.

22 CHAIRMAN: Would you explain
23 to me, please, while you're commenting --

24 MR. HAPP: Yes.

25 CHAIRMAN: -- where in our

1 City zoning code those issues are covered on
2 safety?

3 MR. HAPP: It's one of the
4 requirements that they have to prove, that it
5 will not jeopardize the safety of the public.
6 There's -- one of the requirements, they have
7 to prove by clear and convincing evidence that
8 this will not jeopardize the safety of the
9 public.

10 And I can tell you that -- where are you
11 going to have the kids play? They're going to
12 play next to West Smith Road. But they've not
13 offered one shred of evidence, they just say
14 "Well, we don't see any." That's not an answer
15 to how you're going to protect the public,
16 because if you have kids and you have traffic
17 going into West Smith, which is -- anybody that
18 goes West Smith is going to know that it has a
19 lot of semis. Where is the safety? They
20 haven't proved that this is safe for the
21 public, for the drivers on West Smith or the
22 tenant -- the potential tenants, and I think
23 the Board has to look at that. They have --
24 because they can't -- they have not proved
25 that it is not a detriment to the public

1 safety.

2 And in that I think the Board should
3 deny the application, but they have to --
4 it's my position that since they have not
5 met the standards, they have not met the
6 Section 1145.10, they have not met 1135.11,
7 which calls for a traffic study, they haven't
8 met either of those, and yet they want you to
9 vote on this without examining those. I don't
10 know how you can vote on something you don't
11 know the answer to.

12 Thank you.

13 CHAIRMAN: Thank you.

14 Anyone else wishing to comment?

15 MR. HUBER: (Indicating.)

16 CHAIRMAN: Yes, counsel?

17 MR. HUBER: Greg, what
18 section in the zoning code are you relying on
19 where you're presenting this safety argument?

20 MR. HAPP: It's one -- it's
21 one of the conditions.

22 MR. HUBER: Well, take some
23 time and tell me what code section, because I
24 want to know.

25 MR. HAPP: Okay. It's the

1 standards for variances. It's one of the
2 standards.

3 And they've answered it. If you look, the
4 "Standards Application (sic) to Use ...
5 unnecessary hardship," it's (D) in your thing.
6 "The granting of the variance will not
7 adversely affect the public health, safety or
8 general welfare."

9 MR. HUBER: Okay. Thank you.

10 MR. HAPP: And that's one of
11 the code sections.

12 MR. DUTTON: (Indicating.)

13 CHAIRMAN: Andrew, yes?

14 MR. DUTTON: And just to
15 comment on 1135.11(b), which is the traffic
16 impact study, that was waived. It's not
17 required for a project of this scale. That's
18 more of a large-scale development. So I had
19 consulted with the City Engineer. That is not
20 required for a two-family residence.

21 CHAIRMAN: Thank you.

22 Anyone else wishing to public comment?

23 (No verbal response.)

24 CHAIRMAN: Then it's closed.

25 At this session, Board, I suggest we go to

1 executive session.

2 MR. WILLIAMS: I would make a
3 motion that we move to executive session for
4 purposes of conferring with counsel at his
5 discretion, our Board as well as himself, and
6 possibly Mr. Dutton.

7 CHAIRMAN: Is there a
8 second?

9 MR. ROSZAK: Second.

10 CHAIRMAN: And, Sarah, would
11 you call the roll on the motion.

12 MS. TOME: Humpal?

13 CHAIRMAN: Yes.

14 MS. TOME: Johnson?

15 MR. JOHNSON: Yes.

16 MS. TOME: Roszak?

17 MR. ROSZAK: Yes.

18 MS. TOME: Williams?

19 MR. WILLIAMS: Yes.

20 MS. TOME: Cooper?

21 MR. COOPER: Yes.

22 MS. TOME: Motion carried.

23 CHAIRMAN: We are going to
24 go into an executive session with counsel. It
25 may be five or ten minutes or fifteen. We will

1 come back and resume the discussion, so relax
2 for a few minutes, if you would, please, and
3 bear with us.

4 Thank you.

5 (Whereupon, the proceedings stood in
6 recess while the Board went into executive
7 session.)

8 CHAIRMAN: We can come back
9 to order. Sorry for the time it's taken, but
10 I'm glad you're all still here.

11 Following a conversation with legal
12 counsel, we are going to go direct to anyone
13 wishing to make a motion on the applications.

14 MR. WILLIAMS: I make a motion
15 that we grant the variance for the use variance
16 to Section 1107.08(i)(2), because, (A), the
17 variance requested stems from a condition which
18 is unique to the property at issue and not
19 ordinarily found in the same zone or district;

20 (B), the granting of the variance will not
21 adversely affect public health, safety, or
22 general welfare;

23 And (E), the variance will be consistent
24 with the general spirit and intent of the
25 ordinance.

1 CHAIRMAN: Is there a
2 second?
3 MR. COOPER: Second.
4 CHAIRMAN: Moved and
5 seconded.
6 MS. TOME: Johnson?
7 MR. JOHNSON: Yes.
8 MS. TOME: Roszak?
9 MR. ROSZAK: Yes.
10 MS. TOME: Williams?
11 MR. WILLIAMS: Yes.
12 MS. TOME: Cooper?
13 MR. COOPER: Yes.
14 MS. TOME: Humpal?
15 CHAIRMAN: Yes.
16 MS. TOME: Motion carried.
17 CHAIRMAN: And to continue
18 with further motions.
19 MR. ROSZAK: I make a motion
20 pertaining to the area or size type variance to
21 approve the variance in that the essential
22 character of the neighborhood would not be
23 substantially altered, and the variance would
24 not adversely affect the delivery of government
25 services, and the spirit and intent behind the

1 zoning requirement would be observed and
2 substantial justice done by granting the
3 variance.

4 CHAIRMAN: And a second?

5 MR. WILLIAMS: Second.

6 CHAIRMAN: Moved and
7 seconded.

8 Sarah, please.

9 MS. TOME: Roszak?

10 MR. ROSZAK: Yes.

11 MS. TOME: Williams?

12 MR. WILLIAMS: Yes.

13 MS. TOME: Cooper?

14 MR. COOPER: Yes.

15 MS. TOME: Humpal?

16 MR. HUMPAL: Yes.

17 MS. TOME: Johnson?

18 MR. JOHNSON: No.

19 MS. TOME: Okay. Motion
20 carried.

21 CHAIRMAN: And I think that
22 covers the entire application.

23 (Case concluded.)

24 - - -

25

1 STATE OF OHIO)
) ss:
2 COUNTY OF MEDINA.)

3 CERTIFICATE

4 I, Makenzie J. Sabo, RPR, Notary Public within
5 and for the State of Ohio, duly commissioned and
6 qualified, hereby certify that before the giving of
7 their testimony, all persons were first duly sworn
8 to testify to the truth, the whole truth, and
9 nothing but the truth in this case aforesaid.

10 I further certify that said hearing was held at
11 the time and place specified in the above case and
12 was concluded on the 13th day of February, 2025.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and affixed my seal of office at Medina, Ohio this
15 6th day of March, 2025.

16 *Makenzie J. Sabo*

17 -----
18 Makenzie J. Sabo, RPR
19 and Notary Public within and for
20 the State of Ohio.
21 My commission expires 09/19/28.
22
23
24
25

\$	9:17, 37:25, 39:1, 42:21	6:12, 9:10, 38:6	4:8, 18:1, 34:7	Assistant [1] - 2:13
\$10,000 [1] - 40:9	330 [1] - 1:24	additions [2] - 4:17, 15:5	appear [1] - 42:9	associated [1] - 11:25
\$20,500 [1] - 34:21	4	address [9] - 12:5, 14:3, 14:8, 16:4, 17:18, 22:9, 30:24, 30:25, 37:8	APPEARANCES [1] - 2:8	attached [2] - 29:9, 36:17
'	402 [1] - 39:7	addressed [2] - 35:22, 44:17	applicable [1] - 4:20	attack [1] - 19:9
'21 [1] - 34:19	44212 [1] - 31:2	addressing [3] - 44:7, 44:14, 45:3	applicant [24] - 4:15, 6:6, 7:10, 8:18, 9:21, 10:3, 12:13, 13:17, 17:1, 18:10, 22:11, 23:6, 24:15, 26:12, 32:14, 34:14, 34:16, 35:5, 35:6, 36:10, 36:19, 36:24, 38:8, 45:3	attempted [1] - 24:15
'24 [1] - 34:22	44256 [2] - 1:16, 1:24	adjacent [8] - 3:15, 5:24, 7:15, 7:17, 32:12, 42:4, 42:6, 46:9	Applicant [2] - 2:16, 14:18	attempting [1] - 25:10
'The [1] - 34:16	44333 [1] - 14:12	adjoining [1] - 42:2	applicant's [2] - 9:11, 35:10	attention [1] - 38:16
0	4773 [1] - 31:1	Administrative [1] - 2:13	Applicant's [1] - 2:4	attorney [14] - 5:3, 9:11, 10:2, 22:21, 22:22, 23:15, 24:8, 25:6, 25:8, 25:14, 26:9, 44:22
09/19/28 [1] - 55:19	49,900 [1] - 34:22	admit [1] - 26:21	applicants [1] - 36:15	Auditor's [1] - 33:14
1	5	adversely [3] - 50:7, 52:21, 53:24	Application [1] - 50:4	Avenue [1] - 1:16
1,635-square-foot [1] - 3:24	5,702 [1] - 33:11	advertised [1] - 36:11	application [15] - 4:1, 4:4, 4:6, 4:15, 4:17, 5:5, 5:8, 10:16, 18:3, 18:5, 32:5, 32:19, 32:22, 49:3, 54:22	average [1] - 35:23
10(d) [1] - 26:23	6	advise [1] - 37:11	applications [1] - 52:13	aware [1] - 36:16
11/14/24 [1] - 32:9	6 [1] - 14:12	affect [3] - 50:7, 52:21, 53:24	applies [1] - 7:3	B
1107.08(i)(2) [1] - 52:16	7	affected [1] - 55:14	appraised [2] - 34:20, 34:25	background [1] - 14:25
113 [1] - 33:15	7,614 [1] - 35:24	afford [1] - 35:5	appreciate [9] - 24:16, 24:20, 25:9, 25:12, 25:20, 25:23, 30:15, 39:25, 43:6	backing [3] - 7:2, 40:14, 44:6
1135.08(a) [1] - 5:15	7/15 [1] - 34:22	aforesaid [1] - 55:9	approaching [1] - 27:18	backup [1] - 17:10
1135.11 [1] - 49:6	723-2482 [1] - 1:24	afternoon [1] - 9:14	appropriate [6] - 13:15, 13:19, 19:11, 23:1, 24:3, 24:18	backyard [1] - 20:25
1135.11(b) [1] - 50:15	7:00 [1] - 1:13	age [1] - 39:15	appropriately [1] - 44:16	Banker's [1] - 39:9
1145.10 [1] - 49:6	9	agenda [1] - 3:8	approval [1] - 12:16	based [5] - 27:22, 29:22, 33:18, 33:24, 35:11
1145.10(d) [1] - 6:21	9/23 [1] - 34:19	agent [3] - 9:7, 36:10, 37:9	approve [2] - 28:9, 53:21	basement [2] - 39:1, 39:17
1145.10(d) [1] - 7:9	A	ago [1] - 36:14	approved [4] - 4:4, 4:7, 5:5, 20:21	basements [1] - 39:20
1145.110 [1] - 26:23	A.T [1] - 39:6	ahead [1] - 30:23	architect [4] - 30:2, 30:3, 30:7, 30:10	bear [1] - 52:3
116.02 [1] - 37:3	ability [3] - 11:16, 12:11, 12:23	aligns [1] - 21:3	area [17] - 8:8, 10:16, 11:11, 15:16, 15:17, 15:19, 17:13, 19:1, 19:4, 19:23, 19:24, 20:1, 20:10, 37:20, 40:13, 47:19, 53:20	beautifully [1] - 43:3
13 [1] - 3:14	abuts [1] - 5:20	allow [7] - 4:10, 6:18, 6:19, 18:15, 18:19, 21:15, 24:5	areas [1] - 31:22	becomes [1] - 21:25
132 [1] - 1:16	accepted [3] - 4:14, 20:18, 20:20	allowed [3] - 18:16, 45:16	argument [3] - 44:23, 49:19	bedroom [3] - 35:14, 35:15, 47:14
13th [1] - 1:11	access [4] - 6:23, 7:20, 12:12, 21:8	allowing [5] - 7:6, 7:20, 15:17, 30:14, 40:21	arguments [1] - 25:18	bedrooms [3] - 29:2, 36:2, 36:6
14 [1] - 2:5	accessed [1] - 8:12	allows [4] - 19:17, 19:18, 21:7, 21:9	arterial [1] - 6:23	begin [1] - 3:7
14.5 [1] - 47:17	according [2] - 11:13	alone [1] - 37:13		beginning [1] - 16:18
14th [3] - 4:2, 4:8, 55:12	accurate [1] - 39:9	amount [1] - 19:15		behalf [1] - 2:22
1880 [1] - 39:13	acres [1] - 3:14	Andrew [3] - 2:13, 3:10, 50:13		behind [2] - 43:8, 53:25
1897 [1] - 38:21	acted [1] - 26:9	answer [2] - 48:14, 49:11		below [1] - 35:9
2	acting [1] - 25:14	answered [1] - 50:3		Bert [1] - 2:9
2 [1] - 34:14	actions [1] - 34:16	appeals [1] - 36:9		best [1] - 32:3
2018 [2] - 3:23, 34:17	activities [1] - 35:17	APPEALS [1] - 1:4		better [1] - 34:13
2024 [1] - 55:12	actual [1] - 6:1	Appeals [4] - 1:12,		between [6] - 11:9, 13:24, 34:5, 43:4, 43:10, 44:3
2025 [2] - 1:11, 55:15	add [2] - 9:24, 37:5			big [1] - 13:11
209 [1] - 1:23	added [1] - 20:15			bit [6] - 10:15, 11:4, 31:18, 32:4, 40:5, 43:4
26 [1] - 2:5	addition [4] - 6:21, 9:14, 12:24, 36:20			block [5] - 13:6, 13:20, 19:2, 19:6, 34:4
28th [1] - 55:15	additional [4] - 5:1,			BOARD [1] - 1:4
3				Board [24] - 1:12, 4:8,
300 [1] - 34:4				
316 [1] - 9:3				
3200 [1] - 14:11				
322 [6] - 1:6, 3:9, 8:10, 9:8, 31:21, 42:20				
325 [1] - 9:6				
328 [6] - 7:18, 8:10,				

4:14, 10:12, 16:24,
17:25, 18:1, 24:11,
27:25, 31:5, 31:24,
33:23, 34:7, 38:19,
42:18, 43:6, 43:9,
44:24, 47:19, 48:23,
49:2, 50:25, 51:5,
52:6
boards [1] - 45:23
bone [1] - 39:15
brewery [1] - 3:16
Brewing [1] - 11:18
bridge [3] - 8:14, 8:15,
37:24
briefly [2] - 14:6, 16:4
bring [1] - 43:16
bringing [1] - 43:25
Broadway [1] - 1:23
broke [1] - 36:5
brought [2] - 33:21,
38:15
Brunswick [1] - 31:1
build [9] - 15:4, 18:11,
21:23, 29:1, 36:12,
36:17, 38:6, 42:8,
45:15
builder [4] - 10:5,
13:2, 14:2, 22:11
building [19] - 5:11,
6:7, 6:13, 10:18,
10:20, 10:21, 11:6,
11:23, 12:23, 16:16,
17:14, 19:4, 19:13,
19:14, 20:6, 21:21,
28:5, 36:25, 42:8
Building [1] - 7:23
buildings [3] - 15:2,
15:13, 30:10
built [9] - 13:7, 28:11,
28:12, 28:14, 28:17,
29:3, 30:1, 30:8,
38:21
bullet [1] - 36:8
burden [1] - 36:9
Burns [1] - 9:6
business [8] - 9:5,
11:25, 15:20, 19:19,
19:20, 20:25, 28:24,
29:10
businesses [2] -
18:18, 29:8
buys [1] - 45:13
BY [2] - 14:24, 26:20
BZA [1] - 32:9

C

C-2 [22] - 3:16, 3:17,
3:18, 5:20, 5:21,
11:14, 11:22, 13:16,

13:22, 15:10, 15:19,
18:15, 18:16, 20:24,
22:5, 28:5, 29:15,
29:23, 32:20, 46:8,
47:5
cannot [2] - 24:8,
27:25
car [3] - 6:25, 13:5,
17:15
carried [3] - 51:22,
53:16, 54:20
CASE [1] - 1:5
case [5] - 3:11, 10:12,
23:4, 55:9, 55:11
Case [1] - 54:23
cases [2] - 45:23, 46:3
catch [1] - 23:10
caution [1] - 24:13
certainly [3] - 21:19,
24:8, 25:17
CERTIFICATE [1] -
55:3
certify [2] - 55:6,
55:10
Chairman [4] - 2:9,
10:1, 14:7, 23:16
CHAIRMAN [38] - 3:7,
9:20, 9:23, 14:8,
14:13, 22:17, 22:25,
23:7, 30:16, 30:23,
31:3, 31:6, 31:11,
31:25, 42:14, 43:12,
44:19, 45:22, 46:1,
47:22, 47:25, 49:13,
49:16, 50:13, 50:21,
50:24, 51:7, 51:10,
51:13, 51:23, 52:8,
53:1, 53:4, 53:15,
53:17, 54:4, 54:6,
54:21
Champion [4] - 33:12,
37:24, 40:12, 41:19
change [2] - 32:11,
45:21
changed [1] - 45:21
changes [3] - 5:10,
10:15, 14:6
Chapter [2] - 33:15,
37:3
character [2] - 8:21,
53:22
chart [5] - 34:2, 34:10,
34:11, 35:25
children [1] - 35:17
choice [1] - 35:2
Chris [3] - 9:16, 22:21,
22:23
Christopher [2] - 2:22,
30:21
citation [2] - 45:23,

46:3
cities [1] - 20:4
CITY [1] - 1:4
City [23] - 1:12, 1:15,
2:12, 2:14, 7:18, 8:6,
8:11, 8:12, 12:11,
12:15, 13:23, 16:6,
19:24, 33:2, 37:12,
40:1, 40:24, 42:1,
43:1, 43:5, 44:2,
48:1, 50:19
City's [3] - 7:23, 8:1,
8:19
civil [1] - 45:10
claimed [1] - 38:8
claims [2] - 39:22,
42:18
clean [1] - 36:18
clean-slate [1] - 36:18
clear [5] - 25:5, 26:15,
45:4, 45:9, 48:7
clearly [2] - 34:10,
35:9
client [1] - 27:17
close [4] - 11:18,
18:15, 18:18, 34:13
closed [1] - 50:24
closer [2] - 6:13,
27:14
Code [1] - 37:1
code [13] - 18:4, 28:1,
28:4, 31:22, 32:19,
33:19, 42:1, 43:8,
47:11, 48:1, 49:18,
49:23, 50:11
codes [1] - 12:15
collaborative [1] -
40:6
collector [2] - 6:23,
7:4
colors [1] - 5:13
combined [1] - 42:19
commencing [1] -
1:12
comment [5] - 22:18,
30:17, 49:14, 50:15,
50:22
commenting [1] -
47:23
comments [4] - 9:24,
17:20, 22:14, 44:20
commercial [5] - 15:3,
15:5, 18:19, 30:11,
30:12
Commission [8] - 4:3,
4:5, 5:4, 7:9, 19:8,
20:14, 20:21, 39:24
commission [1] -
55:19
Commission's [1] -

4:19
commissioned [1] -
55:5
common [3] - 7:19,
23:5, 35:15
Community [2] - 2:12,
2:13
community [1] - 9:1
company [5] - 15:1,
15:3, 38:5, 38:14,
40:23
Company [3] - 2:19,
11:19, 14:11
compared [4] - 11:2,
29:15, 36:6
comparison [1] -
33:23
complete [1] - 41:21
completely [3] -
32:14, 39:18, 42:23
complied [1] - 28:1
complies [1] - 8:6
comply [7] - 12:14,
16:6, 16:8, 16:14,
17:2, 26:22, 46:7
composed [1] - 3:14
Comprehensive [6] -
4:25, 7:5, 8:19,
32:22, 33:3, 33:18
concentration [1] -
42:2
concern [4] - 27:18,
27:20, 34:9, 46:6
concerned [2] - 27:13,
38:13
concerns [3] - 40:7,
41:12, 44:6
concluded [2] - 54:23,
55:12
condition [4] - 5:6,
34:15, 38:22, 52:17
conditionally [2] - 4:4,
4:7
conditions [4] - 4:20,
20:15, 20:20, 49:21
conferring [1] - 51:4
configurations [1] -
29:10
conflated [1] - 11:4
conformity [1] - 19:3
Conservation [2] -
41:17, 41:21
consider [2] - 25:17,
25:18
consideration [5] -
9:18, 25:16, 25:19,
27:12, 35:18
considered [2] -
24:10, 42:12
considering [1] - 42:7

consistent [1] - 52:23
construction [3] -
15:4, 15:6, 32:20
consulted [1] - 50:19
contained [1] - 3:21
continue [3] - 39:2,
39:19, 53:17
continuous [1] - 40:15
contract [1] - 37:10
contractor [1] - 26:12
contractors [1] -
41:11
conversation [2] -
41:15, 52:11
conversations [1] -
40:20
convincing [3] - 45:4,
45:10, 48:7
COOPER [4] - 51:21,
53:3, 53:13, 54:14
Cooper [4] - 2:11,
51:20, 53:12, 54:13
copy [7] - 9:17, 24:16,
24:19, 31:8, 31:12,
34:11, 44:5
Cornice [2] - 2:19,
14:11
correct [10] - 10:23,
27:2, 27:10, 28:24,
29:5, 29:16, 29:23,
30:8, 30:11, 38:15
correction [1] - 4:20
correlates [1] - 35:14
counsel [7] - 23:1,
23:8, 24:23, 49:16,
51:4, 51:24, 52:12
count [1] - 35:23
counts [1] - 44:8
COUNTY [1] - 55:2
County [6] - 20:3,
29:8, 33:14, 34:20,
41:17, 41:20
couple [2] - 14:4,
14:15
court [4] - 23:3, 23:5,
24:2, 46:3
Court [1] - 45:17
COURT [1] - 1:23
covered [1] - 48:1
covers [1] - 54:22
create [2] - 13:18,
41:19
created [2] - 18:8,
34:15
creating [2] - 36:19,
47:8
creek [7] - 8:9, 8:13,
8:17, 12:2, 13:23,
21:19, 47:18
Creek [4] - 33:13,

<p>37:24, 40:12, 41:19 criteria [1] - 5:1 critical [1] - 46:17 CROSS [1] - 26:19 cross [8] - 22:20, 23:6, 24:4, 26:1, 26:3, 26:10, 29:18, 30:14 CROSS- EXAMINATION [1] - 26:19 cross-examination [2] - 24:4, 30:14 cross-examine [3] - 22:20, 26:1, 26:10 cross-examining [3] - 23:6, 26:3, 29:18 current [1] - 36:16</p>	<p>detract [1] - 12:22 detriment [2] - 18:25, 48:25 developed [3] - 37:15, 37:17, 37:18 Development [2] - 2:12, 2:13 development [7] - 32:7, 37:21, 38:23, 40:8, 42:12, 47:3, 50:18 dictate [1] - 36:2 difference [3] - 21:18, 34:5, 44:2 different [2] - 14:3, 43:21 differentiates [1] - 43:10 differently [1] - 6:25 difficulties [2] - 47:8, 47:9 diligent [1] - 44:13 dimensions [1] - 33:25 DAVID [3] - 14:20, 14:23, 26:19 deal [2] - 12:12, 18:2 dealt [2] - 20:14, 43:7 decades [1] - 35:8 decided [1] - 27:22 decision [1] - 27:11 delivery [1] - 53:24 demand [3] - 16:21, 19:16, 20:5 demolished [1] - 3:22 demonstrates [1] - 35:9 dense [2] - 11:10, 13:14 deny [1] - 49:3 Department [5] - 2:12, 4:22, 7:24, 8:1, 27:24 depth [1] - 10:6 design [3] - 30:4, 30:5, 36:17 design-build [1] - 36:17 designated [2] - 7:4, 8:23 Designation [1] - 37:4 desire [1] - 45:14 desk [1] - 31:12 despite [2] - 10:20, 22:5 detached [3] - 33:6, 33:8, 33:16 details [1] - 8:4 determine [1] - 27:25 determining [1] - 28:2</p>	<p>D</p> <p>Dave [1] - 26:21 David [3] - 2:18, 2:19, 14:10 DAVID [3] - 14:20, 14:23, 26:19 deal [2] - 12:12, 18:2 dealt [2] - 20:14, 43:7 decades [1] - 35:8 decided [1] - 27:22 decision [1] - 27:11 delivery [1] - 53:24 demand [3] - 16:21, 19:16, 20:5 demolished [1] - 3:22 demonstrates [1] - 35:9 dense [2] - 11:10, 13:14 deny [1] - 49:3 Department [5] - 2:12, 4:22, 7:24, 8:1, 27:24 depth [1] - 10:6 design [3] - 30:4, 30:5, 36:17 design-build [1] - 36:17 designated [2] - 7:4, 8:23 Designation [1] - 37:4 desire [1] - 45:14 desk [1] - 31:12 despite [2] - 10:20, 22:5 detached [3] - 33:6, 33:8, 33:16 details [1] - 8:4 determine [1] - 27:25 determining [1] - 28:2</p>	<p>done [3] - 40:3, 40:4, 54:2 double [1] - 34:24 down [5] - 17:6, 23:4, 26:11, 36:5, 40:18 downtown [2] - 11:10, 18:20 drain [1] - 40:17 drainage [18] - 7:22, 8:4, 12:5, 12:20, 16:4, 16:7, 16:9, 31:22, 39:17, 39:20, 39:22, 40:2, 40:22, 41:10, 42:17, 44:14, 44:16 drains [2] - 40:24, 41:1 drawing [2] - 27:8, 28:2 dream [1] - 36:12 Drive [1] - 31:1 drive [1] - 27:15 drivers [1] - 48:21 drives [2] - 27:10, 46:18 driveway [2] - 7:1, 17:6 drop [1] - 41:19 dry [5] - 39:2, 39:15, 39:17, 39:20, 41:8 due [1] - 34:9 duly [2] - 55:5, 55:7 duplex [16] - 3:23, 9:4, 10:20, 11:16, 11:17, 16:16, 17:14, 19:1, 19:2, 21:3, 28:16, 28:19, 29:1, 29:3, 34:9 duplexes [2] - 19:10, 21:6 during [1] - 37:23 Dutton [4] - 2:13, 13:3, 32:9, 51:6 DUTTON [4] - 3:11, 31:15, 50:12, 50:14 dwelling [4] - 7:24, 33:6, 33:8, 33:16 dwelling [1] - 6:23</p>	<p>E</p> <p>e-mails [1] - 36:15 easement [7] - 12:8, 12:9, 42:17, 42:18, 42:19, 42:22, 42:23 easements [1] - 7:18 easier [1] - 21:8 east [5] - 3:17, 9:4, 19:22, 38:7, 41:2 economic [1] - 29:5</p>	<p>Effect [1] - 37:3 efforts [3] - 39:25, 40:6 eight [5] - 6:10, 17:8, 17:15, 33:7 eight-by-ten-foot [1] - 17:15 eight-thousand- square-foot [1] - 33:7 eighteen [1] - 33:8 either [4] - 7:5, 12:4, 22:10, 49:8 elegant [2] - 13:12, 22:3 elevation [3] - 5:11, 41:18, 42:6 elevations [3] - 4:19, 5:10, 8:4 eleven [1] - 6:14 Elmwood [1] - 1:16 empty [1] - 36:18 encouraged [1] - 19:16 ended [1] - 40:22 ends [2] - 23:4, 43:20 Engineer [1] - 50:19 Engineering [4] - 4:22, 8:1, 12:14, 27:24 enhances [2] - 19:23, 19:24 ensure [1] - 8:5 entertain [2] - 10:7, 22:13 entire [1] - 54:22 entirely [1] - 43:21 equal [1] - 5:22 erroneous [1] - 31:23 Esq [2] - 2:17, 2:21 essential [1] - 53:21 essentially [2] - 33:24, 41:14 established [5] - 32:23, 38:2, 38:3, 38:10, 42:10 Estate [1] - 9:7 ethical [1] - 25:11 evening [3] - 3:8, 4:6, 10:10 everywhere [1] - 20:6 evidence [7] - 22:24, 24:10, 45:4, 45:5, 45:10, 48:7, 48:13 exactly [3] - 15:1, 38:11, 45:18 examination [3] - 24:4, 29:23, 30:14 EXAMINATION [2] - 14:23, 26:19</p>	<p>examine [3] - 22:20, 26:1, 26:10 examined [1] - 14:21 examining [4] - 23:6, 26:3, 29:18, 49:9 excuse [3] - 23:20, 23:21, 23:23 executive [4] - 51:1, 51:3, 51:24, 52:6 Exhibit [2] - 42:19, 42:22 experience [2] - 16:22, 21:9 experienced [1] - 30:4 experts [1] - 42:11 expires [1] - 55:19 explain [4] - 16:3, 17:3, 17:4, 47:22 expressed [2] - 27:18, 37:1 extent [1] - 17:21</p>	<p>F</p> <p>face [2] - 5:16, 13:5 facilities [1] - 9:1 facing [1] - 4:13 fact [3] - 16:10, 39:11, 42:21 factors [3] - 17:24, 18:2, 18:4 facts [1] - 31:20 fair [1] - 24:6 Fairlawn [1] - 14:12 faith [1] - 28:7 fall [2] - 20:11, 20:12 falls [1] - 21:14 familiar [3] - 10:12, 15:9, 18:1 families [2] - 43:24, 47:16 family [30] - 3:17, 3:19, 3:20, 3:22, 4:10, 6:22, 7:24, 8:24, 19:14, 28:12, 29:8, 32:15, 33:6, 33:8, 33:16, 34:3, 34:6, 35:7, 35:14, 35:17, 36:23, 42:8, 43:2, 43:10, 43:16, 43:22, 44:1, 44:3, 44:4, 50:20 far [7] - 16:3, 17:3, 17:23, 17:24, 18:24, 20:10, 21:12 favor [1] - 37:21 feasible [2] - 11:19, 15:12 February [2] - 1:11, 55:15</p>
--	--	--	--	--	---	--	---

<p>feet ^[16] - 5:19, 6:1, 6:2, 6:3, 6:10, 6:11, 6:14, 6:15, 7:19, 17:8, 21:16, 21:17, 33:11, 38:2, 38:7, 47:17</p> <p>few ^[4] - 10:6, 14:3, 17:18, 52:2</p> <p>fifteen ^[2] - 5:16, 51:25</p> <p>fifty ^[3] - 5:19, 6:3, 21:16</p> <p>fill ^[1] - 47:16</p> <p>final ^[3] - 21:14, 44:22</p> <p>fine ^[1] - 26:13</p> <p>first ^[8] - 10:11, 10:18, 17:23, 22:18, 26:21, 38:17, 45:8, 55:7</p> <p>fits ^[6] - 13:12, 18:22, 19:24, 22:1, 22:6, 36:25</p> <p>five ^[9] - 6:11, 6:15, 7:19, 12:10, 20:21, 21:18, 32:1, 51:25</p> <p>five-foot ^[1] - 21:18</p> <p>five-to-oh ^[1] - 20:21</p> <p>flooding ^[1] - 41:25</p> <p>floods ^[1] - 47:18</p> <p>floor ^[1] - 10:25</p> <p>flow ^[3] - 12:21, 40:13, 42:2</p> <p>following ^[2] - 12:15, 52:11</p> <p>follows ^[1] - 14:22</p> <p>foot ^[9] - 6:19, 12:10, 17:15, 21:18, 33:5, 33:7, 36:7, 42:20</p> <p>footage ^[1] - 10:24</p> <p>footprint ^[3] - 10:22, 10:25, 11:1</p> <p>Forest ^[1] - 31:1</p> <p>form ^[1] - 37:21</p> <p>forward ^[4] - 6:24, 12:17, 13:5, 26:17</p> <p>foundation ^[2] - 39:14, 41:7</p> <p>four ^[1] - 4:9</p> <p>fourteen ^[1] - 6:11</p> <p>frequently ^[1] - 16:17</p> <p>Friedberg ^[1] - 2:17</p> <p>front ^[16] - 4:12, 5:11, 5:16, 6:5, 6:9, 6:15, 6:20, 15:18, 15:21, 20:23, 20:25, 21:8, 24:17, 28:4, 46:22, 46:24</p> <p>full ^[1] - 24:6</p> <p>future ^[4] - 8:20, 8:22, 13:13, 22:4</p> <p>Future ^[2] - 4:24, 8:20</p>	<p style="text-align: center;">G</p> <p>garage ^[3] - 3:25, 40:9, 40:11</p> <p>general ^[3] - 50:8, 52:22, 52:24</p> <p>generally ^[1] - 35:14</p> <p>generate ^[1] - 28:23</p> <p>given ^[3] - 12:1, 15:22, 35:18</p> <p>glad ^[1] - 52:10</p> <p>government ^[1] - 53:24</p> <p>graded ^[1] - 42:3</p> <p>grandfathered ^[1] - 35:8</p> <p>grant ^[3] - 45:7, 45:8, 52:15</p> <p>granting ^[3] - 50:6, 52:20, 54:2</p> <p>graph ^[1] - 35:9</p> <p>great ^[3] - 19:15, 19:16, 34:4</p> <p>greatly ^[2] - 39:24, 41:24</p> <p>green ^[2] - 19:12, 20:2</p> <p>Greg ^[4] - 9:15, 22:22, 26:6, 49:17</p> <p>Gregory ^[2] - 2:14, 2:21</p> <p>grills ^[1] - 43:19</p> <p>ground ^[2] - 15:4, 15:5</p> <p>ground-up ^[2] - 15:4, 15:5</p> <p>Grove ^[1] - 31:1</p> <p>growth ^[1] - 8:22</p> <p>guide ^[2] - 8:21, 14:15</p> <p>guideline ^[1] - 35:15</p> <p>guiding ^[1] - 33:4</p> <p style="text-align: center;">H</p> <p>Hall ^[1] - 1:15</p> <p>hand ^[3] - 25:12, 31:5, 55:13</p> <p>handout ^[2] - 35:20, 44:5</p> <p>HANEK ^[15] - 9:22, 9:25, 14:14, 14:24, 17:17, 23:16, 23:20, 23:23, 25:1, 25:3, 25:7, 25:22, 26:2, 26:18, 31:7</p> <p>Hanek ^[4] - 2:4, 2:17, 9:12, 10:2</p> <p>HAPP ^[22] - 22:19, 23:9, 23:14, 23:18, 23:22, 24:22, 25:2, 25:4, 25:21, 25:25, 26:7, 26:16, 26:20,</p>	<p>30:13, 44:21, 45:25, 46:2, 47:24, 48:3, 49:20, 49:25, 50:10</p> <p>Happ ^[10] - 2:4, 2:21, 9:15, 22:22, 23:21, 23:23, 24:6, 24:13, 25:22</p> <p>happy ^[6] - 10:7, 16:8, 16:13, 22:9, 22:12, 27:17</p> <p>hard ^[1] - 23:11</p> <p>hardship ^[4] - 34:15, 36:20, 45:12, 50:5</p> <p>Heads ^[2] - 9:5, 11:18</p> <p>health ^[3] - 39:4, 50:7, 52:21</p> <p>hear ^[1] - 19:8</p> <p>heard ^[3] - 4:2, 4:3, 18:11</p> <p>hearing ^[4] - 23:3, 23:11, 24:14, 55:10</p> <p>heavy ^[1] - 35:18</p> <p>held ^[3] - 1:10, 1:15, 55:10</p> <p>help ^[2] - 19:5, 19:6</p> <p>hence ^[1] - 41:12</p> <p>hereby ^[1] - 55:6</p> <p>hereunto ^[1] - 55:13</p> <p>hi ^[1] - 30:20</p> <p>high ^[2] - 16:21, 20:5</p> <p>higher ^[1] - 42:4</p> <p>highest ^[2] - 35:10, 45:10</p> <p>highway ^[1] - 42:23</p> <p>himself ^[1] - 51:5</p> <p>hired ^[1] - 40:24</p> <p>historic ^[2] - 39:19, 43:3</p> <p>Historical ^[1] - 39:10</p> <p>historically ^[1] - 39:8</p> <p>history ^[1] - 31:19</p> <p>home ^[9] - 3:22, 10:22, 10:24, 11:1, 36:12, 38:22, 39:12, 39:16, 43:22</p> <p>homes ^[9] - 15:5, 34:3, 34:6, 39:9, 39:20, 43:2, 43:3, 44:1, 47:15</p> <p>hopefully ^[1] - 13:1</p> <p>hoping ^[1] - 47:15</p> <p>house ^[6] - 8:13, 12:20, 39:6, 39:8, 39:13, 41:5</p> <p>houses ^[3] - 13:6, 21:7, 33:25</p> <p>housing ^[5] - 13:14, 19:10, 19:11, 19:15, 20:1</p> <p>HUBER ^[7] - 23:2,</p>	<p>26:4, 26:8, 49:15, 49:17, 49:22, 50:9</p> <p>Huber ^[1] - 2:14</p> <p>Humpal ^[4] - 2:9, 51:12, 53:14, 54:15</p> <p>HUMPAL ^[1] - 54:16</p> <p>hundred ^[1] - 32:16</p> <p>Huntington ^[2] - 8:13, 8:14</p> <p style="text-align: center;">I</p> <p>identified ^[1] - 6:22</p> <p>ignore ^[1] - 32:15</p> <p>illegal ^[1] - 38:1</p> <p>impact ^[7] - 43:22, 44:17, 46:7, 46:10, 46:15, 46:16, 50:16</p> <p>impacted ^[2] - 41:10, 42:11</p> <p>impacts ^[1] - 8:8</p> <p>impede ^[1] - 12:19</p> <p>impermeable ^[1] - 41:23</p> <p>impossible ^[1] - 13:16</p> <p>improve ^[5] - 12:21, 19:6, 37:20, 40:2</p> <p>improved ^[1] - 40:13</p> <p>Improvement ^[2] - 7:25, 8:2</p> <p>improvements ^[1] - 34:24</p> <p>IN ^[1] - 55:13</p> <p>inaccurate ^[1] - 39:18</p> <p>inches ^[3] - 6:10, 6:11, 6:14</p> <p>include ^[3] - 4:18, 8:2, 8:3</p> <p>included ^[4] - 9:12, 10:9, 11:7, 41:7</p> <p>includes ^[2] - 8:24, 12:18</p> <p>including ^[4] - 9:10, 10:24, 19:1, 33:12</p> <p>incorporate ^[2] - 5:6, 5:12</p> <p>incorporated ^[1] - 7:7</p> <p>incorporating ^[1] - 4:19</p> <p>increases ^[2] - 41:24, 41:25</p> <p>increasing ^[1] - 27:14</p> <p>indicated ^[2] - 6:3, 7:10</p> <p>indicates ^[1] - 39:16</p> <p>indicating ^[3] - 9:22, 49:15, 50:12</p> <p>industrial ^[1] - 35:19</p> <p>infiltration ^[1] - 41:25</p> <p>information ^[14] -</p>	<p>4:23, 8:2, 8:18, 9:9, 10:8, 24:9, 24:14, 31:5, 31:23, 32:4, 33:13, 33:24, 37:9, 38:19</p> <p>inside ^[1] - 33:12</p> <p>insinuation ^[1] - 39:15</p> <p>installed ^[1] - 40:23</p> <p>intending ^[1] - 3:1</p> <p>intensive ^[2] - 35:11, 36:21</p> <p>intent ^[6] - 28:20, 28:22, 29:4, 29:5, 52:24, 53:25</p> <p>intention ^[2] - 18:17, 36:25</p> <p>intentions ^[1] - 22:6</p> <p>interested ^[1] - 23:6</p> <p>introduce ^[1] - 9:23</p> <p>intrusion ^[1] - 38:20</p> <p>investigated ^[1] - 42:11</p> <p>investigation ^[1] - 41:22</p> <p>invited ^[1] - 39:11</p> <p>involves ^[1] - 15:16</p> <p>issue ^[6] - 10:19, 12:6, 17:2, 28:22, 40:15, 52:18</p> <p>issues ^[10] - 10:4, 10:6, 10:14, 12:12, 12:25, 14:19, 16:4, 16:5, 41:20, 48:1</p> <p>items ^[1] - 8:5</p> <p>itself ^[2] - 11:3, 32:19</p> <p style="text-align: center;">J</p> <p>jeopardize ^[2] - 48:5, 48:8</p> <p>Jim ^[1] - 41:16</p> <p>JOHNSON ^[3] - 51:15, 53:7, 54:18</p> <p>Johnson ^[4] - 2:10, 51:14, 53:6, 54:17</p> <p>judge ^[1] - 23:5</p> <p>justice ^[1] - 54:2</p> <p>justification ^[1] - 9:10</p> <p style="text-align: center;">K</p> <p>KALINA ^[9] - 30:20, 30:25, 31:4, 31:9, 31:13, 31:16, 32:2, 42:16, 43:14</p> <p>Kalina ^[5] - 2:22, 9:16, 22:21, 22:23, 30:21</p> <p>Karen ^[1] - 2:22</p> <p>keep ^[1] - 31:25</p> <p>kids ^[2] - 48:11, 48:16</p>
--	---	--	---	---

<p>Kiene ^[1] - 9:5 knowledge ^[1] - 46:11 known ^[2] - 18:13, 19:1 knows ^[1] - 45:13</p>	<p>Logan ^[1] - 2:10 long-established ^[2] - 38:3, 42:10 look ^[12] - 17:12, 18:24, 21:2, 29:7, 33:1, 35:25, 44:24, 47:13, 47:19, 47:21, 48:23, 50:3 looking ^[5] - 22:2, 23:12, 28:1, 32:18, 38:5 looks ^[3] - 34:2, 34:12, 35:21 loop ^[1] - 47:7 love ^[1] - 43:5</p>	<p>member ^[1] - 34:7 Member ^[4] - 2:9, 2:10, 2:10, 2:11 members ^[2] - 10:13, 43:6 mention ^[1] - 35:6 mentioned ^[1] - 13:3 met ^[5] - 45:7, 49:5, 49:6, 49:8 method ^[2] - 7:5, 7:11 Meyers ^[1] - 2:17 midway ^[1] - 17:6 might ^[2] - 16:25, 18:15 minimum ^[1] - 35:4 minutes ^[5] - 32:1, 32:9, 43:13, 51:25, 52:2 misleading ^[2] - 36:12, 37:9 mixed ^[3] - 21:9, 21:10, 32:7 mixed-use ^[1] - 32:7 model ^[1] - 21:2 modern ^[2] - 12:22, 43:3 more-dense ^[1] - 11:10 more-suburban ^[1] - 18:21 most ^[3] - 29:25, 32:10, 35:10 motion ^[8] - 51:3, 51:11, 51:22, 52:13, 52:14, 53:16, 53:19, 54:19 motions ^[1] - 53:18 move ^[3] - 22:18, 36:3, 51:3 moved ^[3] - 38:4, 53:4, 54:6 movement ^[1] - 6:24 moving ^[3] - 6:13, 34:14, 36:8 MR ^[78] - 3:11, 9:22, 9:25, 14:10, 14:14, 14:24, 17:17, 22:19, 23:2, 23:9, 23:13, 23:14, 23:16, 23:18, 23:20, 23:22, 23:23, 24:22, 25:1, 25:2, 25:3, 25:4, 25:7, 25:21, 25:22, 25:25, 26:2, 26:4, 26:7, 26:8, 26:16, 26:18, 26:20, 30:13, 30:20, 30:25, 31:4, 31:7, 31:9, 31:13, 31:15, 31:16, 32:2, 42:16, 43:14, 44:21, 45:25,</p>	<p>46:2, 47:24, 48:3, 49:15, 49:17, 49:20, 49:22, 49:25, 50:9, 50:10, 50:12, 50:14, 51:2, 51:9, 51:15, 51:17, 51:19, 51:21, 52:14, 53:3, 53:7, 53:9, 53:11, 53:13, 53:19, 54:5, 54:10, 54:12, 54:14, 54:16, 54:18 MS ^[18] - 51:12, 51:14, 51:16, 51:18, 51:20, 51:22, 53:6, 53:8, 53:10, 53:12, 53:14, 53:16, 54:9, 54:11, 54:13, 54:15, 54:17, 54:19 multifamily ^[4] - 8:25, 11:12, 11:24, 18:18 multiple ^[2] - 5:13, 37:22 multiples ^[1] - 43:16 multiuse ^[1] - 13:14 must ^[5] - 6:24, 7:1, 7:25, 8:2, 42:5</p>	<p>nicely ^[1] - 12:6 Nicholas ^[3] - 2:17, 9:12, 10:2 nine ^[1] - 33:5 nine-thousand-square-foot ^[1] - 33:5 nineteen ^[1] - 6:14 Nino ^[1] - 40:1 nonconforming ^[2] - 33:15, 36:13 none ^[1] - 13:5 normally ^[1] - 15:20 North ^[2] - 1:16, 1:23 north ^[1] - 3:16 notary ^[1] - 3:3 Notary ^[3] - 1:14, 55:4, 55:18 note ^[1] - 24:1 noted ^[6] - 5:4, 5:19, 21:16, 32:10, 34:8, 41:18 notes ^[2] - 32:6, 38:19 nothing ^[4] - 18:9, 28:11, 30:7, 55:9 noting ^[1] - 36:15 November ^[6] - 4:2, 5:9, 5:18, 6:4, 7:13, 55:12 number ^[7] - 4:16, 6:9, 11:21, 35:14, 36:6, 43:23, 43:24 numbers ^[1] - 11:3</p>
<p>L</p> <p>lack ^[1] - 41:24 Lager ^[2] - 9:5, 11:18 laid ^[1] - 17:24 Land ^[2] - 4:24, 8:20 land ^[8] - 8:20, 8:24, 11:7, 11:13, 13:12, 19:17, 21:6, 22:3 large ^[2] - 11:1, 50:18 large-scale ^[1] - 50:18 larger ^[1] - 34:11 largest ^[1] - 42:8 last ^[7] - 10:13, 24:14, 32:3, 33:22, 34:18, 44:15, 47:13 Law ^[1] - 2:14 law ^[4] - 24:5, 45:12, 47:9, 47:11 lays ^[1] - 18:3 Leach ^[3] - 2:5, 2:19, 14:10 LEACH ^[5] - 14:10, 14:20, 14:23, 23:13, 26:19 least ^[2] - 7:19, 10:12 leaving ^[1] - 12:18 left ^[2] - 5:12, 8:16 legal ^[5] - 23:1, 25:18, 33:15, 45:23, 52:11 leisure ^[1] - 47:19 Leslie ^[1] - 9:6 less ^[1] - 36:22 letter ^[1] - 19:22 letters ^[2] - 4:25, 9:2 level ^[1] - 42:4 Lewis ^[1] - 2:17 likely ^[3] - 12:21, 19:5, 32:10 line ^[9] - 4:24, 7:20, 12:10, 27:19, 38:3, 38:4, 38:10, 40:17, 40:18 lined ^[1] - 21:7 list ^[2] - 15:12, 35:3 listing ^[3] - 9:7, 36:10, 37:9 living ^[1] - 43:1 LLC ^[1] - 37:11 located ^[6] - 18:8, 33:12, 34:3, 39:7, 41:2, 42:23 location ^[2] - 4:21, 38:13</p>	<p>M</p> <p>M.C ^[1] - 9:7 mails ^[1] - 36:15 main ^[1] - 31:22 maintain ^[1] - 14:19 maintained ^[2] - 8:11, 14:19 maintenance ^[2] - 7:21, 8:12 Makenzie ^[3] - 1:14, 55:4, 55:17 manage ^[1] - 12:23 managed ^[1] - 8:3 management ^[1] - 8:6 manner ^[1] - 30:19 Map ^[2] - 4:24, 8:21 Mark ^[1] - 2:9 marker ^[1] - 37:25 Market ^[1] - 14:11 market ^[2] - 16:17, 16:19 materials ^[1] - 11:5 Matt ^[1] - 9:5 means ^[1] - 43:18 meant ^[2] - 8:21, 11:8 MEDINA ^[3] - 1:4, 1:23, 55:2 Medina ^[32] - 1:12, 1:15, 1:16, 1:24, 2:12, 2:14, 8:22, 12:11, 12:15, 13:13, 13:23, 15:10, 16:6, 16:10, 19:17, 20:3, 22:2, 29:8, 29:23, 33:14, 37:13, 39:16, 40:1, 41:17, 41:20, 42:1, 43:1, 43:5, 43:9, 44:2, 55:14 meet ^[4] - 13:4, 13:9, 20:16, 28:3 meeting ^[7] - 5:18, 6:4, 7:14, 19:9, 28:20, 33:22, 34:8</p>	<p>N</p> <p>name ^[4] - 10:2, 14:8, 23:10, 30:20 nature ^[1] - 21:18 near ^[2] - 4:24, 19:5 necessarily ^[1] - 24:3 necessary ^[4] - 5:15, 17:20, 17:21, 38:9 need ^[5] - 7:7, 17:19, 22:11, 33:19, 45:21 needed ^[3] - 7:8, 16:20, 22:14 negative ^[1] - 8:7 negatively ^[2] - 41:10, 44:17 neighbor ^[2] - 27:12, 40:20 neighborhood ^[1] - 53:22 neighboring ^[3] - 5:2, 30:21, 38:24 neighbors ^[1] - 19:21 never ^[1] - 40:19 new ^[6] - 7:24, 12:22, 19:4, 21:22, 38:1, 47:6 next ^[11] - 11:16, 11:25, 17:12, 17:13, 19:1, 21:4, 22:15, 32:18, 36:8, 39:22, 48:12 nice ^[1] - 13:15</p>	<p>O</p> <p>oath ^[1] - 3:2 object ^[1] - 24:7 objection ^[1] - 24:1 obligation ^[2] - 44:24, 47:20 observed ^[1] - 54:1 obtained ^[1] - 33:13 obviously ^[2] - 5:10, 38:13 OF ^[6] - 1:4, 14:23, 26:19, 55:1, 55:2 offer ^[1] - 37:13 offered ^[2] - 41:21, 48:13 office ^[2] - 29:9, 55:14 office@crmedina.com ^[1] - 1:25 OHIO ^[1] - 55:1 Ohio ^[11] - 1:15, 1:16, 1:24, 14:12, 30:9, 31:1, 45:12, 47:11, 55:5, 55:14, 55:18 once ^[1] - 20:11 one ^[31] - 4:9, 4:10,</p>	

4:11, 4:12, 6:9,
12:10, 14:4, 14:20,
14:25, 15:15, 17:6,
21:14, 21:17, 27:10,
27:15, 31:14, 31:15,
32:16, 34:6, 39:8,
44:25, 45:5, 45:10,
48:3, 48:6, 48:13,
49:20, 49:21, 50:1,
50:10
open [1] - 30:16
opinion [1] - 15:24
opportunity [5] - 15:8,
22:14, 28:7, 31:19,
36:11
opposing [1] - 22:21
opposite [1] - 42:24
option [7] - 6:8, 6:12,
7:1, 7:12, 32:15,
35:7
options [4] - 4:21, 6:7,
6:17, 36:22
order [1] - 52:9
ordinance [1] - 52:25
ordinarily [1] - 52:19
original [4] - 5:8, 6:8,
39:13, 40:15
otherwise [1] - 25:15
ourself [1] - 41:1
outline [1] - 31:18
OV [3] - 4:3, 5:5, 37:2
overall [2] - 13:11,
36:25
Overlay [1] - 37:5
overlay [1] - 22:4
overview [1] - 10:4
own [6] - 36:19, 39:19,
43:17, 44:1, 45:19,
47:9
owned [1] - 39:19
owner [3] - 9:5, 9:16,
30:22
Owner [1] - 2:18
owner's [1] - 5:3
owners [3] - 35:2,
40:8, 43:1
owns [1] - 45:20

P

p.m [1] - 1:13
packet [5] - 3:12, 9:13,
12:7, 12:25, 18:3
Page [1] - 34:14
paid [1] - 40:25
parcel [11] - 11:20,
12:2, 12:18, 13:16,
13:21, 13:22, 18:8,
18:9, 18:12, 22:1,
32:6

parcels [1] - 13:24
park [1] - 15:16
parking [11] - 4:12,
6:20, 11:22, 15:17,
15:20, 15:21, 20:23,
20:24, 21:12, 28:4,
35:21
part [5] - 10:19, 12:17,
17:25, 28:25, 39:22
participate [2] - 39:12,
40:6
particular [1] - 29:20
past [2] - 39:5, 43:7
Pat [1] - 40:2
path [1] - 26:11
patis [1] - 43:18
pattern [1] - 8:21
Patton [3] - 16:11,
35:24, 40:2
Paul [1] - 2:10
pedestrian [1] - 21:8
people [4] - 27:1,
36:3, 36:4, 46:20
per [3] - 29:18, 35:15,
35:24
percent [1] - 5:16
perform [1] - 8:12
permeable [1] - 42:10
permissible [3] -
10:21, 11:24, 47:10
permit [2] - 33:16,
47:11
permitted [4] - 15:9,
15:20, 37:6, 45:15
person [1] - 45:13
persons [1] - 55:7
pertain [1] - 38:21
pertaining [2] - 31:20,
53:20
phone [1] - 38:12
photograph [4] -
44:11, 44:12, 44:15
Piccoli [1] - 40:1
picture [2] - 13:11,
44:15
pins [3] - 37:25, 38:1,
38:14
place [2] - 38:17,
55:11
placed [3] - 3:2, 34:21,
38:2
Plan [8] - 4:25, 7:5,
7:25, 8:2, 8:19,
32:22, 33:3, 33:18
plan [17] - 7:7, 7:16,
8:5, 8:9, 8:16, 11:7,
11:13, 13:12, 19:17,
21:6, 22:4, 26:22,
26:25, 27:4, 27:6,
27:21

planning [1] - 41:12
Planning [8] - 2:12,
4:3, 5:4, 7:9, 19:8,
20:14, 20:21, 39:24
plans [1] - 7:23
play [2] - 48:11, 48:12
pleas [1] - 23:5
point [5] - 24:2, 34:18,
35:13, 35:22, 36:8
pointing [1] - 36:1
portion [1] - 33:12
position [2] - 24:4,
49:4
possible [4] - 11:15,
12:1, 13:17, 18:11
possibly [1] - 51:6
potential [4] - 18:14,
27:7, 41:25, 48:22
practical [4] - 21:20,
29:25, 47:7, 47:9
praise [1] - 39:10
preferred [1] - 11:11
presence [1] - 7:14
present [7] - 2:20,
9:21, 14:5, 22:24,
24:16, 28:7, 45:5
presented [3] - 28:6,
44:23, 46:3
presenting [1] - 49:19
preserve [1] - 42:5
previously [6] - 3:2,
3:21, 6:3, 14:21,
16:11, 34:8
price [1] - 34:23
primary [1] - 13:17
procedure [1] - 23:1
procedures [1] - 24:5
proceed [1] - 23:8
Proceedings [1] -
1:10
PROCEEDINGS [1] -
3:5
proceedings [1] - 52:5
process [1] - 18:5
produced [1] - 36:15
professionally [1] -
24:18
prohibited [1] - 4:10
project [4] - 4:6, 15:6,
18:22, 50:17
proof [2] - 36:9, 45:11
properly [2] - 24:12,
39:18
properties [8] - 3:15,
8:8, 8:10, 32:13,
37:12, 43:16, 44:3,
44:4
Property [1] - 2:18
property [61] - 3:13,
3:21, 4:24, 5:2, 5:20,

6:2, 7:17, 7:20, 8:23,
11:3, 12:10, 12:19,
13:21, 14:1, 19:5,
27:14, 27:18, 28:18,
29:2, 30:22, 32:16,
32:21, 33:3, 34:16,
35:3, 35:11, 35:16,
36:3, 36:21, 37:15,
37:24, 38:3, 38:4,
38:7, 38:10, 38:20,
39:3, 40:18, 40:22,
41:3, 41:13, 42:3,
42:4, 42:6, 42:24,
42:25, 43:21, 43:25,
44:7, 44:14, 44:18,
45:12, 45:13, 45:14,
45:19, 45:20, 46:15,
46:19, 46:23, 46:24,
52:18
property's [1] - 5:21
proposal [1] - 40:16
propose [2] - 17:5,
17:11
proposed [5] - 6:12,
18:14, 31:20, 36:24,
38:23
protect [2] - 38:9,
48:15
protection [2] - 39:3,
42:5
prove [3] - 45:4, 48:4,
48:7
proved [2] - 48:20,
48:24
provide [5] - 7:10,
31:11, 31:19, 32:4,
41:22
provided [16] - 6:6,
8:18, 9:9, 10:8, 11:5,
24:10, 24:15, 31:23,
34:1, 34:11, 37:10,
42:5, 42:18, 44:8,
44:9, 45:22
provides [2] - 35:16,
44:15
providing [3] - 31:10,
34:1, 38:25
proximity [3] - 11:18,
18:18, 19:19
public [14] - 22:18,
22:20, 30:17, 36:14,
44:10, 44:20, 48:5,
48:9, 48:15, 48:21,
48:25, 50:7, 50:22,
52:21
Public [3] - 1:14, 55:4,
55:18
pull [1] - 17:16
purchase [2] - 37:14,
37:15

purchased [2] - 37:12,
37:16
purposes [1] - 51:4
put [9] - 6:25, 15:21,
17:7, 17:13, 17:14,
24:8, 25:10, 25:12,
29:11
putting [1] - 23:4

Q

qualifications [1] -
30:6
qualified [1] - 55:6
questions [9] - 10:7,
14:3, 14:4, 14:15,
22:9, 22:12, 22:23,
26:17, 44:20
quick [1] - 43:15
quickly [1] - 20:6
quote [5] - 32:21,
37:2, 38:24, 38:25,
41:24
quotes [1] - 46:5

R

R-2 [4] - 32:20, 33:4,
47:1, 47:3
R-3 [5] - 3:19, 5:25,
32:11, 32:24, 33:6
raise [1] - 19:5
ranging [1] - 43:2
rare [1] - 36:11
rather [5] - 6:3, 7:2,
12:21, 13:9, 38:22
Real [1] - 9:7
real [1] - 43:15
reality [1] - 12:20
really [4] - 12:6, 13:15,
21:25, 30:6
rear [12] - 4:11, 4:20,
5:18, 5:21, 5:22,
5:25, 6:5, 6:10, 6:16,
6:19, 8:9, 21:15
reason [3] - 15:18,
35:13, 43:9
reasons [1] - 11:22
rebut [1] - 22:14
received [2] - 33:24,
39:10
recently [1] - 39:5
recess [1] - 52:6
recollection [1] -
40:19
recommendations [2]
- 20:17, 41:23
recommends [1] -
32:23
reconstruction [2] -

37:23, 41:9
record [7] - 10:9, 23:25, 24:9, 25:5, 37:18, 39:23, 39:24
records [2] - 36:14, 44:10
recreation [1] - 47:18
referencing [1] - 8:19
referring [1] - 45:24
regarding [9] - 6:5, 7:14, 8:20, 16:7, 18:6, 33:22, 35:20, 37:1, 38:12
regardless [1] - 38:6
regulations [1] - 8:7
reheard [1] - 4:5
reiterate [1] - 12:9
related [1] - 7:15
relax [1] - 52:1
relevant [1] - 8:5
relief [1] - 35:5
relying [1] - 49:18
remained [2] - 34:17, 35:1
remains [1] - 39:1
remember [1] - 24:24
removed [1] - 38:1
renovation [2] - 41:5, 41:6
repair [1] - 7:20
repaired [1] - 41:1
rephrase [1] - 26:24
replaced [1] - 40:25
replacement [1] - 37:23
reporter [2] - 23:3, 24:2
REPORTERS [1] - 1:23
representing [2] - 9:16, 10:3
request [7] - 3:23, 4:14, 31:8, 32:10, 36:14, 42:7, 44:10
requested [3] - 29:12, 32:20, 52:17
requesting [2] - 35:10, 36:20
require [1] - 6:17
required [6] - 30:9, 45:1, 46:8, 50:17, 50:20
requirement [6] - 5:14, 13:4, 13:7, 13:8, 13:9, 54:1
requirements [8] - 12:14, 16:6, 16:9, 16:12, 28:3, 45:3, 48:4, 48:6
requires [5] - 6:22,

16:12, 33:5, 33:7, 42:1
reserve [1] - 17:19
resided [1] - 43:5
residence [10] - 3:18, 3:19, 3:20, 28:12, 28:14, 28:17, 28:19, 28:23, 29:9, 50:20
resident [1] - 9:3
residential [27] - 5:21, 5:23, 5:24, 8:23, 8:25, 11:8, 11:17, 11:21, 12:4, 13:20, 13:24, 15:4, 15:25, 17:9, 18:20, 19:2, 20:9, 20:12, 21:6, 30:10, 32:8, 32:12, 32:24, 33:17
residents [4] - 19:18, 19:22, 39:4, 40:15
residing [1] - 36:4
resolved [2] - 10:15, 13:1
respect [1] - 43:13
respectively [1] - 33:9
respond [1] - 17:20
response [2] - 27:3, 50:23
responses [2] - 5:1, 10:7
restoration [1] - 39:11
restored [1] - 43:3
restoring [1] - 39:6
restrictions [1] - 46:23
result [1] - 8:7
resume [1] - 52:1
review [2] - 29:24, 41:22
reviewed [3] - 4:9, 8:5, 15:11
revised [3] - 4:5, 5:10, 32:5
revisions [1] - 4:17
rezoned [2] - 33:2, 33:17
rezoning [1] - 32:10
right-of-way [1] - 4:13
ROAD [1] - 1:6
Road [24] - 3:15, 6:13, 7:3, 7:18, 8:10, 8:15, 9:4, 9:6, 9:8, 9:17, 27:1, 31:21, 35:19, 35:23, 37:22, 37:25, 39:1, 40:3, 40:10, 41:9, 42:21, 46:16, 48:12
roadway [1] - 46:9
roll [1] - 51:11
Roman [1] - 2:17
room [2] - 3:16, 38:6

Roszak [4] - 2:10, 51:16, 53:8, 54:9
ROSZAK [5] - 51:9, 51:17, 53:9, 53:19, 54:10
Row [1] - 39:9
RPR [3] - 1:14, 55:4, 55:17
ruling [1] - 45:18
running [1] - 12:3
Rush [1] - 9:3

S

Sabo [3] - 1:14, 55:4, 55:17
safe [1] - 48:20
safety [12] - 35:18, 39:4, 47:13, 47:21, 48:2, 48:5, 48:8, 48:19, 49:1, 49:19, 50:7, 52:21
sale [2] - 34:22, 35:3
Sarah [3] - 2:13, 51:10, 54:8
scale [2] - 50:17, 50:18
se [1] - 29:18
seal [1] - 55:14
second [10] - 10:25, 16:2, 16:3, 35:20, 51:8, 51:9, 53:2, 53:3, 54:4, 54:5
secondarily [2] - 12:13, 20:23
seconded [2] - 53:5, 54:7
section [3] - 7:3, 49:18, 49:23
Section [6] - 5:15, 6:21, 7:8, 26:23, 49:6, 52:16
sections [1] - 50:11
see [20] - 12:24, 15:12, 16:17, 16:18, 20:6, 20:17, 21:5, 21:6, 21:7, 21:21, 24:25, 25:2, 28:8, 34:4, 34:12, 37:14, 37:17, 37:19, 41:14, 48:14
seek [1] - 45:16
sell [1] - 37:11
semis [1] - 48:19
sense [1] - 21:10
separately [1] - 35:22
serve [1] - 11:8
Service [1] - 4:22
services [1] - 53:25
session [5] - 50:25, 51:1, 51:3, 51:24,

52:7
set [1] - 55:13
setback [16] - 4:11, 4:21, 5:19, 5:22, 6:1, 6:2, 6:7, 6:9, 6:10, 6:14, 6:15, 6:16, 6:19, 21:16, 21:24
setbacks [1] - 6:6
sets [2] - 43:19
several [5] - 37:12, 38:2, 38:6, 39:5, 44:1
sewer [4] - 4:23, 7:15, 7:17, 7:21
shake [2] - 5:6, 5:13
shall [2] - 36:9, 37:5
Shannon [1] - 9:3
shaped [1] - 18:9
share [1] - 43:8
sheds [1] - 43:19
sheet [1] - 7:16
shocked [1] - 38:16
shorten [1] - 40:9
shortened [1] - 40:11
show [2] - 44:13, 45:9
shown [1] - 7:16
shows [1] - 8:9
shred [1] - 48:13
shutters [3] - 5:6, 5:12, 20:18
sic [3] - 33:15, 37:3, 50:4
side [11] - 3:14, 12:4, 17:7, 27:10, 27:12, 38:7, 41:3, 42:24, 46:18
side-by-side [2] - 27:10, 46:18
sides [2] - 7:19, 12:9
siding [4] - 4:13, 5:7, 5:13, 5:17
similar [1] - 42:13
single [21] - 3:19, 3:20, 3:22, 8:24, 10:22, 19:14, 28:12, 28:17, 28:19, 28:23, 29:8, 32:15, 33:6, 33:8, 33:16, 35:7, 36:23, 43:2, 43:10, 43:22, 44:3
single-family [16] - 3:19, 3:20, 3:22, 8:24, 19:14, 28:12, 29:8, 32:15, 33:6, 33:8, 33:16, 35:7, 36:23, 43:10, 43:22, 44:3
site [5] - 7:2, 7:6, 7:7, 7:16, 41:21
sitting [1] - 13:23

situated [1] - 12:3
situation [5] - 13:18, 17:6, 17:9, 17:11, 25:11
size [14] - 10:18, 10:20, 10:21, 15:13, 19:12, 29:24, 33:22, 34:5, 34:10, 35:12, 35:15, 36:1, 36:4, 53:20
sizes [1] - 33:25
slate [1] - 36:18
small [1] - 17:7
smallest [2] - 35:16, 42:9
smartly [1] - 43:9
SMITH [1] - 1:6
Smith [30] - 3:9, 3:15, 6:13, 7:3, 7:18, 8:10, 8:15, 9:3, 9:6, 9:8, 9:17, 27:1, 31:21, 35:19, 35:23, 37:22, 37:25, 39:1, 40:3, 40:10, 41:9, 41:16, 42:20, 42:21, 46:10, 46:16, 48:12, 48:17, 48:18, 48:21
smooth [1] - 18:6
sneak [1] - 24:18
Society [1] - 39:10
Soil [2] - 41:17, 41:20
soil [1] - 41:22
sold [2] - 34:19, 34:23
someone [3] - 17:9, 38:5, 45:20
somewhat [1] - 11:9
sorry [4] - 23:10, 23:22, 25:9, 52:9
sort [3] - 13:14, 18:16, 18:19
sought [1] - 35:4
South [2] - 8:13, 8:14
south [2] - 3:14, 3:19
space [2] - 19:12, 20:2
specific [1] - 37:6
specifically [2] - 34:2, 36:1
specifics [1] - 22:12
specified [1] - 55:11
spent [2] - 39:5, 40:9
spirit [2] - 52:24, 53:25
Spitzer [1] - 39:6
spot [2] - 17:10, 17:12
square [6] - 10:24, 11:11, 33:5, 33:7, 33:11, 36:7
ss [1] - 55:1
standard [1] - 47:2
Standards [1] - 50:4

standards [8] - 44:25, 45:6, 45:11, 47:3, 49:5, 50:1, 50:2 standpoint [1] - 28:24 start [2] - 14:5, 32:18 State [4] - 1:15, 30:9, 55:5, 55:18 STATE [1] - 55:1 statement [3] - 24:7, 46:10, 47:13 states [4] - 32:9, 34:14, 36:24, 37:4 stating [1] - 33:4 stems [1] - 52:17 steps [1] - 38:9 Steven [1] - 2:11 still [3] - 5:15, 6:17, 52:10 stone [1] - 39:13 stood [2] - 43:7, 52:5 stop [2] - 26:5, 26:14 storm [4] - 4:23, 7:14, 7:17, 7:21 stormwater [2] - 8:3, 8:6 story [1] - 3:23 street [8] - 6:24, 6:25, 7:2, 7:4, 11:17, 19:21, 40:14, 46:9 Street [4] - 1:23, 8:14, 14:11, 39:7 structure [4] - 4:11, 4:22, 6:18, 31:20 structures [1] - 7:15 studs [1] - 41:6 study [4] - 42:13, 46:7, 49:7, 50:16 stuff [1] - 24:19 sub [1] - 18:4 sub-factors [1] - 18:4 subject [4] - 6:2, 8:22, 33:11, 35:16 submitted [11] - 7:23, 7:25, 9:15, 24:11, 26:22, 26:25, 27:5, 27:6, 27:8, 32:5, 42:22 substantial [3] - 20:8, 36:22, 54:2 substantially [2] - 13:1, 53:23 suburban [2] - 11:10, 18:21 successful [1] - 32:3 suggest [2] - 19:10, 50:25 suitable [2] - 32:7, 32:8 Suite [1] - 14:12 sum [1] - 43:15	summarily [1] - 12:7 summations [1] - 45:2 supplied [1] - 38:19 support [4] - 4:25, 9:2, 19:21, 19:23 supposed [3] - 29:19, 40:16, 40:17 Supreme [1] - 45:17 surface [1] - 41:23 surfaces [1] - 42:10 surrounding [1] - 29:7 survey [1] - 38:5 surveyed [1] - 37:22 swear [1] - 24:25 swing [1] - 43:19 sworn [5] - 14:21, 24:23, 25:6, 25:8, 55:7	20:3 Thursday [1] - 1:10 today [1] - 15:15 together [1] - 21:7 Tome [1] - 2:13 TOME [18] - 51:12, 51:14, 51:16, 51:18, 51:20, 51:22, 53:6, 53:8, 53:10, 53:12, 53:14, 53:16, 54:9, 54:11, 54:13, 54:15, 54:17, 54:19 tonight [1] - 20:22 topic [1] - 7:22 tore [1] - 40:24 totally [1] - 13:18 touch [1] - 31:21 tour [1] - 39:12 towards [2] - 18:20, 18:23 traditional [1] - 18:22 traffic [7] - 35:19, 35:23, 42:13, 44:8, 48:16, 49:7, 50:15 Transcript [1] - 1:10 transition [2] - 11:9, 18:20 transitional [1] - 22:4 true [1] - 35:1 truth [4] - 24:25, 55:8, 55:9 try [2] - 24:18, 37:20 trying [3] - 19:25, 47:4 turn [9] - 7:1, 7:6, 7:11, 13:5, 14:2, 14:16, 16:2, 17:10, 47:4 turnaround [12] - 13:3, 13:4, 16:3, 16:15, 16:25, 17:7, 17:15, 26:23, 27:7, 27:10, 27:16, 28:8 turnarounds [4] - 27:21, 28:3, 28:4, 46:22 twenty [2] - 6:15, 34:19 twenty-five [1] - 6:15 twice [3] - 34:23, 43:23 two [30] - 3:17, 3:23, 4:10, 4:21, 6:7, 6:22, 7:24, 11:3, 12:3, 13:24, 27:10, 27:17, 27:21, 34:3, 34:6, 35:15, 36:14, 42:8, 43:2, 43:16, 43:18, 43:19, 43:20, 44:1, 44:4, 47:14, 50:20 two-family [12] - 3:17,	4:10, 6:22, 7:24, 34:3, 34:6, 42:8, 43:2, 43:16, 44:1, 44:4, 50:20 two-story [1] - 3:23 type [13] - 11:6, 16:15, 16:16, 16:17, 16:19, 19:9, 19:11, 19:15, 20:1, 21:9, 29:9, 41:22, 53:20 types [5] - 11:12, 15:1, 15:2, 15:9, 15:13 typical [1] - 32:6	13:19, 15:16, 15:17, 15:19, 17:3, 17:23, 17:24, 19:13, 20:7, 32:19, 33:17, 33:20, 35:4, 36:22, 42:7, 45:7, 45:9, 45:17, 50:6, 52:15, 52:17, 52:20, 52:23, 53:20, 53:21, 53:23, 54:3 variances [10] - 4:9, 6:18, 9:11, 10:17, 15:15, 18:25, 20:10, 36:9, 45:1, 50:1 vehicle [3] - 7:6, 7:11, 16:25 vehicles [2] - 35:24, 43:23 verbal [1] - 50:23 viable [1] - 15:24 vinyl [5] - 4:12, 5:14, 5:16, 20:14, 20:17 vote [2] - 49:9, 49:10
U				
undeniable [1] - 36:19 under [3] - 3:2, 37:10, 47:9 Underlying [1] - 37:4 underlying [1] - 37:7 unique [3] - 18:7, 41:19, 52:18 uniqueness [2] - 12:2, 13:25 units [1] - 3:24 unnecessary [3] - 36:20, 45:11, 50:5 unrelated [1] - 42:23 up [24] - 15:4, 15:5, 17:16, 19:14, 20:6, 20:25, 21:2, 21:7, 21:8, 22:10, 23:5, 24:17, 24:19, 25:12, 33:21, 34:13, 34:21, 40:14, 40:22, 40:24, 42:14, 43:15, 43:20, 46:21 updates [1] - 41:13 upgrades [1] - 41:7 upper [1] - 5:12 upper-left [1] - 5:12 urban [7] - 8:23, 11:7, 20:4, 21:5, 32:8, 32:24, 33:17 uses [11] - 11:11, 11:12, 12:4, 13:16, 13:17, 15:9, 18:14, 18:22, 29:23, 37:6, 43:11 utilizing [1] - 36:17				
V				
vacant [3] - 18:13, 34:17, 35:2 value [1] - 34:25 values [1] - 19:5 variance [33] - 5:1, 5:14, 7:8, 13:10,				
W				
waiting [1] - 41:14 waived [4] - 46:12, 46:13, 50:16 waiver [1] - 46:14 walk [1] - 31:17 wants [1] - 13:13 Wascak [1] - 2:18 Washington [1] - 39:7 watch [1] - 24:24 watched [1] - 24:24 Water [2] - 41:17, 41:20 water [8] - 12:12, 12:18, 12:21, 12:23, 38:20, 40:13, 40:14, 42:2 website [1] - 33:14 welfare [2] - 50:8, 52:22 west [4] - 3:18, 21:21, 27:12, 41:3 WEST [1] - 1:6 West [29] - 3:9, 3:15, 6:13, 7:3, 7:18, 8:10, 8:15, 9:3, 9:6, 9:8, 9:17, 14:11, 27:1, 31:21, 37:22, 37:25, 39:1, 39:7, 40:3, 40:10, 41:9, 42:20, 42:21, 46:10, 46:16, 48:12, 48:17, 48:18, 48:21 westward [1] - 8:15 wheelhouse [1] - 15:7 WHEREOF [1] - 55:13				

whole ^[1] - 55:8
wide ^[1] - 42:20
widely ^[2] - 20:2, 20:3
widened ^[1] - 40:12
WILLIAMS ^[6] - 51:2,
 51:19, 52:14, 53:11,
 54:5, 54:12
Williams ^[5] - 2:9,
 34:8, 51:18, 53:10,
 54:11
willing ^[1] - 17:1
wind ^[1] - 42:14
wish ^[1] - 9:24
wishing ^[4] - 30:18,
 49:14, 50:22, 52:13
WITNESS ^[1] - 55:13
WITNESSES ^[1] - 2:3
words ^[1] - 26:24
works ^[1] - 18:23
writing ^[1] - 24:1
written ^[2] - 27:7,
 37:13
wrote ^[1] - 19:22

Y

yard ^[9] - 4:11, 4:12,
 4:20, 6:19, 6:20,
 15:18, 20:23, 21:15,
 35:16
year ^[2] - 37:13, 41:4
year's ^[1] - 39:12
years ^[5] - 32:17, 35:3,
 36:14, 39:5, 41:8
yourself ^[1] - 9:24

Z

Z24-24 ^[2] - 1:5, 3:8
Zone ^[1] - 37:4
zone ^[1] - 52:19
zoned ^[5] - 3:15, 3:17,
 3:18, 32:21, 47:1
ZONING ^[1] - 1:4
zoning ^[11] - 5:25,
 18:4, 31:22, 32:11,
 32:25, 33:1, 36:16,
 48:1, 49:18, 54:1
Zoning ^[9] - 1:12, 4:8,
 18:1, 27:23, 28:8,
 32:19, 34:7, 37:1,
 43:9