



CITY OF OLMSTED FALLS
PLANNING AND ZONING COMMISSION
MINUTES
JANUARY 15, 2020
7:30 PM
COUNCIL CHAMBERS

Commission Members Present: Brett Iafigliola, Gary Pehanic, Garry Thompson, Peter Carpenter, Michelle Hawkins Cornel Munteanu and Dave Fenderbosch. Others Present: Andy Bemmer, Law Director. Audience: 10

Chairman Brett Iafigliola called the meeting to order at 7:30 p.m.

ELECTION OF CHAIRMAN

Mr. Pehanic moved to **re-elect** Brett Iafigliola as the Chairman for the calendar year 2020; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

ELECTION OF VICE-CHAIRMAN

Mr. Munteanu moved to **re-elect** Garry Thompson as the Vice-Chairman for the calendar year 2020; Mr. Pehanic **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

1. **Planning & Zoning Case #01-2020** - A request made by Robert Craft, owner of 25880 Cook Road, PP#281-02-002 for approval of a side yard setback variance of 5 feet to Section 1240.09(a)(1) to permit a side yard setback of 10 feet in lieu of the required 15 feet; a building area variance of 20 square feet to Section 1240.09(a)(3)(A) to permit a garage 900 square feet in area in lieu of the maximum permitted 880 square feet, and two height variances to Section 1240.07(b) of 3 feet in overall height and 3 feet in side wall height to permit the construction of 30 x 30 x 12 pole barn that is 18 feet in height in lieu of the permitted 15 feet and has side walls 12 feet in height in lieu of the permitted 9 feet.

Mr. Iafigliola administered the oath.

Mr. Iafigliola asked if Mr. Craft was previously before the Commission for a similar approval. Mr. Craft replied he was but his height variance request for the walls and peak was not correct. Mr. Iafigliola asked Mr. Craft what his previous approval was. Mr. Craft replied a 30x30x15 barn with eight foot walls. Mr. Iafigliola indicated that he is now requesting 12 foot walls and an 18 foot peak. Mr. Craft replied yes.

Mr. Iafigliola indicated that on Page 8 of Mr. Craft's application the drawing shows 30 x 30 with 12 foot sidewalls and 18 foot peak, but the side dimension is not correct. Mr. Craft replied that is correct. Mr. Iafigliola asked where the man door would be located because there is a discrepancy within the drawing. Mr. Craft replied that the man door would be located to the far left of the structure.

Mr. Smerigan stated that as he recalls the Commission granted the small area variance for the garage and the setback variance previously. He would note that if the garage was at 880 he could be 10 feet off the side property line but since he has the extra 20 square feet

that he has to be 15 feet off the side property line. The area and setback variances do not seem unreasonable to him. He does have concerns regarding the height variance because unless there is something unique or special that requires the heights variance. The height variance is substantial moving from a nine foot wall to a 12 foot wall is a 1/3 increase.

Mr. lafigliola indicated that there is a property to the east of Mr. Craft's property but not very close. Mr. Craft indicated that the empty lot will be a pumping station for the sewer project.

Mr. lafigliola indicated that the City Planner has concerns regarding the height of the structure and asked Mr. Craft if he could explain why he would like the structure to be tall. Mr. Craft stated that if places a boat in his garage and takes out the motor he would need more height and work undercover. Other than that, he will be using it for his vehicles.

Mr. Munteanu asked what the exterior of the building would look like. Mr. Craft replied that he will have a steel exterior with a metal roof.

Mr. lafigliola indicated that the Commission had a similar request in the past couple of months and approved the request but later it was determined that the garage was very big relative to the neighborhood and a lot of objections and complaints were received. Very similar to tonight there was no one to object at the time of the hearing but once built the complaints were received. Mr. Craft indicated that his neighbor has a similar pole barn to what he is proposing and similar in height. His proposed barn will be smaller than his neighbor.

Mr. lafigliola asked if Mr. Craft could describe the properties to the east, north and west of his property. Mr. Craft stated that the barn will be built on the northeast corner of his property. Behind his property, which is north, is the Columbia Trailer Park with woods between the properties; also behind him is the German Club; across the street is a bicycle shop; and east of his property is a vacant lot that will be used for a pumping station; and west is his neighbor Phil who has no objections to the barn. He also spoke to the individuals who live on the other side of the property that will house the pumping station who had no issues.

Mr. Pehanic indicated that there is a difference between the two requests, the one on Lantern was a large building on a postage stamp lot, Mr. Craft has a much larger lot with woods behind him. This is a similar situation but much different set of circumstances. Mr. lafigliola indicated that the lot is 70x160, which is not very big, but the difference is that there are no neighbor's behind or next to him.

Mr. lafigliola stated that there is no neighbor input regarding this request and even though the applicant is under oath the Commission has no written correspondence from his neighbor's although he has indicated that they do support his proposal. He believes the Commission would be within its rights to ask the applicant to submit signed letters from his neighbor's showing support for the proposed structure. Mr. Craft replied that he has no problem asking his neighbors for such a letter. Mr. Fenderbosch indicated that he understands the size of the proposed structure and suggested a compromise of 10 feet

sidewalls as opposed to 12. This proposed structure will be higher than Mr. Craft's residence as proposed. Mr. Bemmer believes that this request is reasonable.

Mr. Iafigliola would like to request that Mr. Craft ask his immediate neighbor to the west, east and the neighbor across the street. Mr. Craft replied that this is a reasonable request.

Mr. Iafigliola moved to **table** Planning and Zoning Case #01-2020 a request made by Robert Craft until such time as the applicant deems fit to return with additional information for the Commission's consideration, specifically, letters of support from his immediate neighbor's; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

2. Planning & Zoning Case #02-2020 – A request made by Olmsted Falls BTS Retail, LLC, pursuant to Section 1232.06 for final development plan approval for a Dollar General store to be located at 9736 Columbia Road.

Mr. Bruce Rinker indicated that he is with the firm of Mansour Gavin, 1001 Lakeside Avenue, Suite 1400, in Cleveland. With him tonight is Mark Zawadski who is the project manager from the Zaremba Group as well as Katie Cheu the Architect who will get into more detail with the site plan. He would like to give an overview. You will recall, he was not present at that time, but the last time for preliminary plan review was back in September 18, 2019. There were a number of points that the Commission wanted addressed, but apart from that procedural we had to go to ABR. We had three different meetings with ABR and knows that the chairman was at two of those meetings, pretty extensive discussion consistent with the code, dealing with the siding, lighting, landscaping, overall really the aesthetics for the site. We went through a couple of discussions, first dealing with the color and ultimately the color was selected, the siding materials so all of the physical attributes, sign location. We looked at a gabling approach for the front entry and the board members decided that they really did not want that. We really tried to look at a lot of different alternatives.

Three things that he is aware that this Commission had looked at, traffic, lighting and the screening capacity especially on the south boundary because even though this is zoned for commercial there is a residential property immediately to the south and is relatively close. He would point out that there are no variances everything is code complaint. We are aware that from the traffic stand point subsequent to the meeting here we provided a traffic study analysis and Don Sheehy, the City Engineer, reviewed it and signed off on that he believes back in November. As to the lighting, this was a discussion we had with ABR, the parking lot lights were at 20 feet but have been reduced in height down to 16 1/2. All of the lighting has been cut off and one thing Mr. Zawadski will go over the perimeter lighting, especially to the south, very soft, the building blocks a certain amount of the light. The field of lighting really is for the parking lot to the North, a little to the east, the front of the lot because it is a rectangular east to west lot. One of the things we were able to do subsequent to this meeting, and subsequent to ABR, was to narrow slightly the drive isle that runs along the north side of the property and that gave an extra two feet which does not sound like a whole lot but ultimately that provided enough space to plant rather than shrubbery which was originally the plan and those will be Evergreen trees and will start out at four feet but they are designed to grow up to 20 feet; they are sturdier stock; more densely planted. The

goal is that between the house and the six-foot-high privacy fence that basically approximates the length of the building itself, again code complaint, there will be Evergreen trees in that area. The goal here is to provide not just that physical barrier with the fencing but ultimately a green screen and we know that has been a concern consistent throughout all of our discussions with officials. There was a lot of discussion about parking space, he knows Mr. Martin, who is here tonight from ABR, was very thoughtful in looking at a way that there might be an adjustment to it. He will be very frank for a retail operation for Dollar General its not the number of spaces it's the location and proximity. The fact of the matter is two spaces he thinks to meet code could still be potentially reduced, the problem is those are right in the front of the store. The parking field and Mr. Smerigan can address more fully, to our knowledge is fully code complaint. There are no variances required, we have addressed the lighting, screening, and traffic. We are asking for, again subject to the discussion with the experts here, final approval.

Mark Zawadski with Zaremba Group, 14600 Detroit Avenue in Lakewood, Ohio thanked the Commission for reviewing the final development plan for the Dollar General project. Since receiving the preliminary site plan approval from the Commission this past September we have been working with the Architectural Review Board, the City's architectural consultant, the City's Planner and the City Engineer. We have received excellent comments and feedback from all of those groups which helped us come to the plan that we are presenting this evening. We believe that this is a project that is now consistent with the character of Olmsted Falls and is also compliant with the City's codes and ordinances. He would like to highlight the significant changes that were made to the plans since the original site plan was presented to the Commission this past September. Most recently, which Mr. Rinker touched on, based on the ABR feedback we worked on maximizes the setback and the buffering between the residential property located directly to the south. We were able to reduce the width of the driveway located on the north side by two feet and that allowed us to push the building further away from the southern property line by two feet and also increase the planting area between the residence and the parking field by two feet and that allowed us to replace some of the shrubs that we had planned in this area with arborvitae trees. We now have a total of 17 arborvitae trees that are planned for this area. The type of variety of these trees at majority will grow to a height of approximately 20 feet and eight feet wide, so that will create a very nice thick dense green privacy screen that is in compliance with the city's codes and ordinances. In addition, we extended the privacy fence to the rear corner of the building, we have a whole six foot privacy fence that runs from the rear corner of the building to the front corner of the building. From the front corner of the building, in accordance with the city's ordinance, that fence reduces to three feet approximately 70 feet and terminates near the front property line. Other changes that we made while working with the ABR included adding additional landscaping along Columbia Road so we added additional trees and shrubs. As Mr. Rinker mentioned we re-designed the lighting plan, changes include fewer light fixtures on the building, fewer light fixtures in the parking lot as well as shorter light fixtures in the parking lot, we eliminated a number of hot spots and we are utilizing full cut off fixtures throughout the project. These changes reduce lighting levels substantially to blend into the City rather than stand out. The building design is another aspect that we worked very hard on. Over the past few months we completed and presented a total of four different building designs based on Planning Commission and ABR feedback. The ABR selected the design tonight which includes

horizontal cement board siding with a brick base and decorative row lock sills, so the bricks are turned on their side. The ABR hand selected the building color for the horizontal siding and choose the brick color from a number of samples that were provided to them. The building design also includes a decorative eaves cornice and black fabric awnings. The fabric awnings were specifically selected by the ABR. This results in a design that is a very classic design and is appropriate for the historic residential character of Olmsted Falls. As you can see by the effort that the design team has put into this project it is our goal to develop the project into something that both the City is proud of as well as the tenant Dollar General.

Christina Collier, 9766 Columbia Road stated that she is only allowed to say that the landing question is currently the subject of a court case filed in Cuyahoga County and all concerned parties will be notified if they have not been notified as of yet. Mr. lafigliola asked if she had a case number. Ms. Collier indicated that she has been instructed that she is not allowed to speak anymore until everything has been settled. Mr. lafigliola asked if Ms. Collier was aware that the Commission is under no such notification. Ms. Collier replied that you should be receiving it shortly, the owner of the property should have received the paperwork already, if not, it will be in the next day or two. Mr. lafigliola stated that the Commission will have to act either for or against it and he knows that Ms. Collier are the immediate southern property owner. So, he will ask does she have any comments on what is proposed. Ms. Collier stated that this project butts up literally right against her house, there is no protecting us from the lights, the fence, everything. The whole point of that area, and her family has lived on this property for 60 years, they have pack ratted every document, every historic thing about that area of town. It is some of the oldest residents, actually the oldest properties are on the corner of Columbia and Sprague, we have original property maps, our family has been care taking that land for 60 years. Most of the trees that you see planted on that land in question have been planted by her family. We have maintained the yard, everything on that property uncontested for 60 years and we will be going to court over this. As for the Dollar General, she understands that we are trying to bring business into Olmsted Falls but this is not the right type of business especially for an area that is historic which we are fighting to get termed as a historic area. This is not the time for that and she understands that they have done their traffic studies but several hours during the day, in the morning and evening, you cannot even get out of our residential properties, all the neighbors, we literally sit in our driveway sometimes up to half an hour waiting for someone to let us out, the traffic is that bad and congested in that area. Also, there are concerns with the crime that Dollar General does bring but that is a different point. Of course, she is vehemently opposed to this project, her mother currently is the titled owner to the land, unfortunately she is unable to make it out of the house. This property was supposed to her retirement, she is very much about nature, we take care of all the animals, we make sure everything is taken care of and this is not what she wants for her in her golden years, not to be able to see her trees. On the property in question there are owls that came from far away that are relatively on the rare side that nest there, the Bald Eagle comes over from the river and hunts on this property, there are animals there that if we lose this property we are going to lose a part of what was Olmsted Falls. As far as the zoning goes, she understands that they are trying to make it smaller and give us more room but like she has said we have been care taking for this property for 60 years and we have already filed with the court over this.

Ken Martin, stated he is the consultant to the Architectural Board of Review for the City of Olmsted Falls and has been involved with the ongoing development of this project in terms of design. Before the Commission is a set of plans that simply boils down to the protection of the house to the south, in terms of the impact that the parking will have on that particular home because when you align the row of front parking, north to south, it directly points at the five windows of the residence to the south. His perception is that the landscaping is four feet high, the fence is three feet high, and that is not going to protect that residence from the glare of all of the traffic that will be running up that isle towards that home. We just have to look at how tall SUV's are, pick up trucks, even smaller vehicles will cast that home in the light every time they drive down that particular isle at night. There were two recommendations made by the ABR and that was to basically reduce the parking at the south line by simply two cars which seemed incrementally proportionately to other facilities like this both Dollar General, Family Dollar and all of these other stores, they seem to have less parking than they are actually have planned for this particular piece of property. He wrote a document to the effect that there are certain zoning code rules that say you are suppose to have so many cars, meaning parking spaces, for area of square footage of your building. It is his contention that the zoning code allows the number of spaces to be reduced by four spaces and of those four space reduction one is looking at two of those spaces, only two, could be taken away from the southern property line next to this residence and that area be used for additional landscaping. The ABR board was asking for a six foot high fence along that property line and the zoning code basically says that a fence that is put in the front yard along the property line can only be three feet high and in this case we are saying that this is a unique circumstance where privacy, at least the minimum of privacy should be affordable to these residents. That being said, there are reasons for the Planning Commission to take it upon themselves and say that they don't need all these parking spaces and two spots less proportionately is not much. Any retailer wants their whole width of the whole front of the whole property in cars for parking, why because everyone goes to the front door it implies that they are doing better and more business. Here, we have decisions that are made in terms of the impact that it has on these people that is not appropriate. Mr. lafigliola stated that he understands that Mr. Zawadski made changes but Mr. Martin is still recommending the same items in the letter from ABR. Mr. Martin replied yes.

Janet Tomasch, 7522 River Road, stated that she would like to reinforce what Mr. Martin has stated. This was a very difficult project for the board, we happened to be working with a group of very professional people and we appreciated their help and feedback. However, we were limited with the authority that we have to govern this because this is not a registered historic district and it was trying to take something oversized and make it fit in a neighborhood that is zoned both commercial and residential. She feels like Dollar General worked very hard with the board to make accommodations. However, it is never going to fit, it is just a fact, and the neighborhood will continue to change, which she realizes. She hopes that this board will take into consideration the residence to the south, she believes it is imperative the impact on this very beautiful Greek Revival house that still has the original owners name carved on the post of the doorframe, it is a remarkable piece of history. Also, remember this was Westview, they had their own city and identity and they merged with us primarily because we wanted liquor licenses. But, she thinks that we need to be respectful of not just our history but their history and take every measure that is at our finger tips to

help ease this transition. She stated that their signs will be internally illuminated because they are in a non-historic district so they have that right, on the plans ABR saw they had goose neck lighting over their store sign and we are excited thinking that it would be externally lite, but they indicated that it would be internally lite with the goose neck lights also lite. Our decision was, unless Dollar General would agree not to have an internally illuminated sign on the building, that we would prefer not seeing additional lights played on that building and they were to go back and see if the corporation would allow the goose neck lights to be workable lights and loose the internal illumination and she doesn't know what that decision was.

Mr. Smerigan indicated that the applicant is present for final site plan approval which falls under Section 1232.06 of the code, which states the items that the Commission is to take into consideration for final site plan approval. One of those items is whether or not the plan has been reviewed and approved by the City Engineer, the Commission has correspondence from the engineer indicating that he has reviewed and approved the plans and finds them acceptable. He spoke to the City Engineer and indicated verbally that the storm drainage provisions, traffic study and the design drawings for the site improvements all comply with the code in his determination. The second is whether or not the plan is consistent with the previously approved preliminary plan, having reviewed the final plan it is in fact consistent with the previously approved preliminary plan. The next item is whether or not is complies with all of the requirements and standards of the Planning and Zoning Code, as he indicated in his review of the preliminary plan and will now confirm, the plan that is before the Commission complies with all the minimum requirements of the Zoning Code for commercial uses in the C-2 district, which is how this property is zoned. The applicant is meeting all of the minimum standards, the lighting, landscaping, parking, and they have requested no variances and none are necessary to meet the minimum standards for site plan approval. He understands the concerns regarding screening the adjacent property we had substantial discussion about this issue when we discussed the preliminary plan. We have an unusual situation, as Mrs. Tomasch pointed out this property is not within the historic district so the ABR ability to control design is some what limited. Unfortunately, the home to the south of the property is a very attractive house but is in the middle of a C-2 zoning district, and properties to the north and south of the home are also commercial and the properties to the rear are industrial. This is obviously an area that is intended to be in transition. The property has been zoned C-2 for 20 to 30 years, so there was clearly an intent for some extended period of time that this area would transition into a commercial area and that is essentially what we are seeing happen. He believes that every effort should be made to screen and protect the residence but believes that will be very difficult to do given the fact that the residence sits so close to the street and that is the area where the parking lot will be located. The suggestion of increasing the height of the fence, while may be a desirable one is inconsistent with the code. The code provides that it's a six foot fence for screening and landscaping up to the front of the building and from the front of the building to the right of way the fence cannot be more than three feet. In the screening, buffering and landscaping section of the code it specifically exempts fences from the height of the landscape treatment and indicates that the fences have to comply with that three foot standard. The only way to vary that three foot standard would be to have a request for a variance, but we do not have that request and the Commission has not advertised a request for a variance so the Commission can not increase the height of the

fence this evening, even if the applicant was willing to do that. The situation with regard to the parking, the parking requirement is based on the gross square footage of the building. He understands in the letter there is a calculation using the retail area and the storage area, but that is not what the zoning code states. The code states that the number of parking spaces will be based on the gross square footage and based on that footage they have exactly the number of parking spaces that they are required. The only way to reduce the number of parking spaces would be to grant a variance and we have no variance that has been requested or advertised, so there is no way the Commission could eliminate two parking spaces. He believes it is necessary to keep in mind that a lot of the buffering requirements are intended to buffer between commercial properties and residential properties and we are talking about properties that are both zoned commercial although they are being used in a residential fashion and he believes that every effort needs to be made to protect that residence for as long as it is a residence. We need to understand that the residence is a non-conforming use in the C-2 district, single family dwellings are not a permitted use. We are in an odd situation to protect something that the code wants to amortize and eliminate. The Commission has a recommendation from the City Engineer that the site plan is compliant for all of the technical design requirements; he is reporting as the City Planner that the site plan is conforming to the requirements of the Planning and Zoning Code. The Commission can discuss other ways to enhance to buffering or the screening but understand that the plan before the Commission meets the minimum requirements of the code. While there are some things that can be modified or changed some of the changes being suggested will require variances that have not been advertised or requested.

Mr. Bemmer stated that he would like the Kohler family to understand that this was not a City generated project for economic development but rather a transaction between the property owner and the Zarembo Group. The applicant has the discretion going forward but based on comments from what he considers the expert from the ABR, Mr. Smerigan the suggestions for buffering seem to be significant. Yes, variances would be needed for the fence as well as for a reduction in the parking in order to use buffering through arborvitae. He likes to see on final elevations a birds eye view of not only the structure but parking and landscaping. His recommendation to the Commission is that they are not ready to adjudicate this matter because he does not feel that they have a good finished product before them. This has been vetted through the ABR and they have a very unique project in a unique community. He would like some understanding that this is a Zarembo building and will be a lease/hold agreement with Dollar General and believes that is important to know because the community needs to know whether Dollar General is going to be the owner/occupant or whether they are a lessee of this project. Mr. Lafigliola indicated that Mr. Bemmer mentioned we do not have a sufficient product, are you referring to the drawings provided as opposed to the actual material board. Mr. Bemmer replied that when you review finished renderings of the structure in question with the elevations, he wants to see something that shows him the parking lot and landscaping. That can all be digitally enhanced and he believes that this is the type of project that you have to go that extra yard to make sure that digitally what is going to be built and the buffering renderings need to be presented to the Commission. He stated that as a follow up to Mrs. Tomasch's comments he does not see why this board does not have discretion to say no internal lighting, that is part of their process. There is lighting through the goosenecks. The lighting is a big part of

the Planning Commission whether it is located in the historic district or not. You can indicate that the lights turn off at a particular time, that is within the discretion of the Commission.

Mr. Iafigliola stated that when Mr. Bemer refers to product, he is requesting some additional context. Mr. Bemer indicated that he would like to see a couple other renderings showing elevations along with something that indicates through a 3D dimension where the parking is, where the arborvitae's will be, what the screening is from the street, from the Lutz/Kohler property. You are trying to maintain the integrity of this neighborhood whether it is historic or not.

Mrs. Tomasch indicated that the ABR board did speak with the developer about external lighting and asked if they would be good neighbors as they are moving into an area that other than the gas station on Sprague and Columbia there are no internally illuminated signs. Their response was that they would discuss that with corporate to see what their policy is. We do not have an ordinance that states that we can say you cannot use internal illumination except in the historic districts. Generally, the sign code states that internally illuminated signs are allowed in the City of Olmsted Falls. So, if ABR would have indicated that they have to use external lighting they would have had every right to appeal the decision to Council. Mr. Bemer indicated that usually there is a lot of flexibility with the Commission. Mrs. Tomasch replied that ABR does not have that flexibility. Mr. Bemer replied that the Commission does. Mrs. Tomasch replied that ABR felt it was outside of their bounds.

Mr. Iafigliola stated that it sounds like when they were before the ABR a request was made and the response was that they would have to check with corporate and asked what the response was. Mr. Zawadski stated that signage was a big discussion point during the ABR meeting. The discussions were regarding the color, size, type of lighting and subsequent to that meeting he spoke with Dollar General and discussed the requests and the signage that we are reviewing today is the signage that they have selected to move forward with for the project. A couple of reasons for that is brand identity is very important to businesses regardless of the size, this is a very unprototypical building for Dollar General, this is a unique building that has never been built before anywhere in the country, so to have the yellow signage is very important for the success of the business. In addition, they have already made some successions to the size of the signage in order to meet the city's ordinance. This is not a prototypical Dollar General sign, their prototypical sign is a box sign that you will typically see on stores. Mr. Iafigliola asked if he was referring to the building sign or the monument sign. Mr. Zawadski replied the building. It is a plastic box that is internally illuminated and is much larger than the proposed sign. In addition, their prototypical ground sign is a pole sign, 25 feet tall, with a box on top of the pole. The brick base is again, not prototypical and is something that we have agreed to add. He wanted to state that the signage being proposed tonight is in 100% compliance with the city's code, both the lighting and signage codes.

Mr. Iafigliola asked how much smaller the sign would be. Mr. Zawadski stated that both signs are not what Dollar General would prefer to install and what they typically install at the vast majority of their store locations. The typical sign is 30 feet by five feet tall. Mr.

Iafigliola indicated that is significantly larger, on the building, what about the monument sign. Mr. Zawadski replied that the typical monument the standard is a pole sign 20 feet tall and the sign is 25 feet wide and four feet tall.

Mr. Iafigliola indicated that if the building sign is not to the applicant's liking is there a possible compromise, they could get a larger sign that would not be internally lite. Mr. Zawadski indicated that he would like to move forward with the signs as submitted. He cannot provide an answer to this question.

Mr. Bemmer asked who would be the property owner. Mr. Zawadski replied that Zaremba Group will own the property and Dollar General will lease the property. Mr. Bemmer asked how long is the term lease. Mr. Zawadski replied that the initial term is 15 years but he cannot provide any additional details on the lease itself. Mr. Bemmer asked what would be Zaremba's back up plan. Mr. Rinker stated that he is surprised at the nature of the questioning. He would like to review what he understands to be the city's code, and would certainly defer to the law director if there is another provision that addresses these issues as to the "discretion" the Planning Commission purportedly has. He believes Mr. Smerigan paraphrased what he understands to be the criteria that govern the way this meeting is run tonight. It's the action by the Planning Commission, we are discussing Section 1232.06, which has many parts, specifically Section K deals with submission of final development plans. There are a number of sections that pre-date, precede this meeting, conformity to approve preliminary development plan is K1. He stated that K2 is the starting of construction; K3 application and guidance; K4 acceptance of application, "after the applicant has conferred with the City Planner", which as a matter of record was done, "and discussed the general details of the final development plan requirements the plan may be formally accepted for review." Then it addresses standards for construction, etc.; little more about each development plan and what items it shall include; then there is a referral in K5, which states "upon receipt of a complete application, the City Planner shall place it on the agenda of the next regular Planning Commission meeting that is more than 10 days from the receipt of the complete application by the building department." He would like to ask Mr. Smerigan to repeat again, but his understanding was that prior to tonight Mr. Smerigan confirmed that the application was complete as to the sufficiency of the drawings, the comprehensive nature of what is being submitted. His understanding is that what the code says is the planner is the one that has to determine that, is that correct, and he is reading the code. Mr. Bemmer replied that is what the code may say, but, unfortunately, he and Mr. Smerigan did not have any discussion and he believes that Mr. Smerigan would stand corrected as well, because the recommendations of ABR were not incorporated into the final plan. Mr. Rinker stated that he would like to continue. The code moves on to (6) the administrative review, as appropriate, and he is quoting this is not what it may say this is what it reads, "the application shall be submitted to the necessary administrative departments, including but not limited to, the law director to review any proposed homeowner's association documents for proper form and legality" that is specifically what it says the law director does. Next, 6(b) states, "the City Engineer to review the development and construction plans" and again Mr. Smerigan reported that was done by Mr. Sheehy; 6(c) is the City Planner and Mr. Smerigan has spoken to that; Section 7 Planning Commission review, which states "the Commission shall review the final development plan and all pertinent comments thereon to determine whether or not such plan (a) meets the

requirements and criteria of this Planning and Zoning Code and any other applicable city ordinance” and it is understood that is the discretion of the Planning Commission. However, the Planning Commission is looking to the administrative staff to inform that process. So, the determination, does it meet the requirements and criteria of this Planning and Zoning Code, the engineer has said it does, the planner has said it does, he is not sure how the law director weighs in on whether a birds eye view is appropriate or whether a lease is appropriate, we can understand the concern for the longevity of this site. He knows in this market place Dollar General has been very popular, it may not be a McDonalds and we may not want a McDonalds but a ground lease in the market place is actually a fungible item, it is something that can be marketed, if it is very solid. The fact that there is at least a 15-year ground lease, he doesn't know if there are options and neither does the Commission, that is not the issue. The issue is this a permitted use and as Mr. Smerigan pointed out in this neighborhood as sensitive as everyone understandable is, this community decided some 20 or 30 years ago, legislatively, that this was an area that needed to be changed to commercial use and there is industrial use behind. We do not presume to think that anyone is going to like the fact that a commercial use is coming next to a neighborhood where people have such passionate feelings about it, but your code says that it is a permitted use. The code requires certain variances for all the discussion that his client has had on behalf of Dollar General, but the property owner Zaremba has been trying diligently to provide as much of a cushion and provide the amenities within a certain margin. But it meets the code, so he is not sure how discretion can be exercised by creating requirements that the code does not provide. It is not in a historic district, the ABR does recommend but those recommendations have to be code compliant. He stated that Mr. Smerigan indicated to this body that these were detailed precise expansion of the preliminary development plan as previously approved and we have already said that for the record, the only conditions that were put on here had to deal with questions about traffic, there was a concern there, certainly questions about lighting and screening, everyone one of those items has been improved over what the preliminary plan presented and that is a matter of record. Finally, does it comply with all conditions which may have been imposed at the time of the approval, which he just reviewed. Your code specifies how the administrative input is supposed to be handled by this Commission. Item K(8) states “if it is found that the final development plan complies in all respects to this section the Commission shall approve,” we are not asking the Commission to state whether or not it is popular, whether the neighborhood likes it, we can tell you that there has been a very good faith effort to make this as compliant, not only with the code, but consistent with the neighborhood. The extent to which ABR weighed in on materials, color, and all other aspects, all of this dialogue was done in very good faith and we spent a lot of time doing it. What we are asking is that the Commission exercise its discretion appropriately. He takes issue if the law director is stating that you have some kind of discretion, he would ask that it be found in the record and we will acknowledge that, if that is the case. His concern is that we are now delving into an area that is speculative and aspirational and not dealing with the code. He is sorry to be speaking this way as he was not prepared for this kind of approach.

Mr. Bemer thanked Mr. Rinker and acknowledged his expertise in land use. His understand is, and Mr. Smerigan can correct him, but the applicant was given the recommendations of Mr. Ken Martin and he is unsure if they received the summary at the

same time that included the landscaping, he also does not see a landscaping plan, so somewhere here there is a miss here as we do not have a landscaping plan. Mr. Zawadski indicated that they would change the parking elements and would have arborvitae in the front of the building as screening, but, you do not have parking or landscaping plans so his recommendation is that they are not ready to move forward.

Mr. Iafigliola indicated that it may not meet his level of satisfaction but the Commission does have a document called "landscaping plan" on page C9. Mr. Bemer replied that he does see that. Mr. Rinker asked if Mr. Bemer would agree that this is something Mr. Smerigan could address better than two lawyers. L

Mr. Iafigliola stated that he was speaking with Mr. Zawadski regarding the lighting and he was attempting to find a compromise solution that the applicant might find more attractive and he believes what has been stated is that they would like to move forward with what is proposed, but, at the same time he would like it noted that it is a concern of the city's based on ABR. Mr. Zawadski replied that he would take it under advisement and if we choose to move forward with the suggestion he would come back before the board.

Ms. Hawkins stated that the Dollar General store on Clague Road in North Olmsted, the monument sign appears to be more appropriate for our community rather than the one being proposed. The outside sign does not appear to be internally illuminated with the bright yellow. The illumination is a large issue with the homeowners. She would like to see some sort of overall picture of what this area will look like when the building is complete. Mr. Zawadski stated that he has had multiple discussions with Dollar General regarding the signage of this project, they are happy to comply with all local ordinance requirements and is the reason you see a variety of signs on the buildings around the country. There could be some with black letters. There are center requirements for signage as well, in other words, if a store is located in a shopping center that center may have specific sign limitations. We have made some concessions beyond the code requirements and at this time he would like to move forward with the signs as submitted.

Mr. Pehanic stated that in the scope of this project signage should be at the bottom of the list. He is sure that the chairman will have questions that do not deal with signage. He would like to proceed with those concerns because even though signage is important the scope of this project is much bigger.

Mr. Iafigliola stated that he would like to note for the record that himself and Mr. Thompson met with Mr. Zawadski met at the proposed site yesterday and walked through the property. Mr. Zawadski replied that he would also like it noted that this was at Mr. Iafigliola's request. Mr. Iafigliola replied yes. He stated that this is relatively a large site than he thought. Also, at his request he had asked Mr. Zawadski if there were any other Dollar General's that his firm had developed recently and he was directed to 185 Cleveland Street in Elyria. He did drive out to this location and will admit that it is a nice store. He stated that this building is built in the same manner as the one proposed and is also located next to a residential neighborhood. He indicated that the building sign does look externally illuminated, so it can be done. Mr. Zawadski replied that it can be done and if it is externally illuminated it is because that is what their code required.

Mr. Iafigliola stated that to the east there are two residential properties located approximately 10 feet from the building itself and there are residential properties across the street. So, their proposal is not that uncommon, although he does not know Elyria's zoning codes.

Mr. Iafigliola stated that Mr. Zawadski previously indicated that he "thinned up" the drive isle on the north side and the drawings indicate that it is 27 feet and asked if it was previously drawn at 29 feet and asked why the isle width of 27 feet was chosen. Ms. Haas stated that she took the truck movement and thinned it up as much as we could based on the truck pulling in, backing up, and pulling back out, with the turning movements. Mr. Iafigliola stated that if the proposed store was built at the edge of the street, like the Elyria store, it would have overshadowed the residential property next door. So, he believes it was respectful for the store to be built further back on the property.

Mr. Iafigliola stated that with regard to the landscaping plan, Mr. Rinker indicated one type of plant but Mr. Zawadski mentioned another type and asked what would be the plant that will be along the southern border and most likely to screen the residential property. Mr. Zawadski indicated that there is a total of 17 arborvitae's and is the best option to provide quick dense screening.

Mr. Iafigliola stated that the ABR wrote a memo to Planning regarding three issues. The first is the fence issue, ABR writes "increase the height of the southern property fence line starting from the front edge of the Dollar General to the front edge of the southern neighbor's house from three feet to six feet." The code does not permit the fence to be six feet in height. However, if the resident were to apply for a fence permit, she would be permitted to install a six-foot fence because her home is further east. Mr. Smerigan replied that the homeowner could install a six-foot fence to the front edge of the home and the home is located substantially in front of the store. Mr. Iafigliola asked Ms. Collier if she would like to comment regarding the fence. Ms. Collier replied that she cannot answer the question as her mother is the legal owner of the property. Mr. Iafigliola indicated that she could answer just as a resident. Ms. Collier replied that three feet is not high enough. Mr. Iafigliola replied that he agrees. Mr. Rinker stated that in an effort to bring some closure to these issues. Is the question can someone put a six-foot fence instead of the three-foot fence so it serves the purpose of ABR and where the Commission is going. The suggestion would be that we can forego the three-foot fence, you can make this a condition, and we would provide to the city the money and the City, with the property owners, could install the six-foot fence and neither Dollar General nor Zaremba would be responsible for the fence. Mr. Iafigliola stated that the three-foot fence currently ends at the southwest corner. Mr. Zawadski indicated that the fence currently runs from the front corner to the rear corner of the building. Mr. Iafigliola indicated that when he visited the property he noted that the neighbor has an established area further to the west, on their property, that would seem in an effort to everything that we could possibly do to protect the resident, as best we can to extend that fence to provide some extra screen age for the trucks to turn around. Mr. Zawadski indicated that he has no issue with extending the fence as requested.

Mr. Iafigliola read an email from Don Sheehy (see attached). He indicated that Zaremba has provided the information the Commission has requested.

Mr. Iafigliola asked what would be the screening for the dumpster area. Mr. Zawadski indicated that the enclosure will be screened on all four sides; the front of the enclosure will be screened by two chain linked gates that will be suspended on bollards on each corner so they are able to swing open and closed. The remaining three sides of the enclosure will be screened by split face SMU units, installed to a height of six feet and will be painted to match the building.

Mr. Iafigliola indicated that the landscaping plan consists of Red Sunset Maple as a 2" caliber. Mr. Smerigan replied that the code requires the tree to be 2 inches. Mr. Iafigliola indicated that there will be three shrubs, a boxwood 3 gallon 18" height, which seems reasonable on paper but when the shrubs at the Elyria store he does not believe are taller than 6. Mr. Zawadski replied that the specifications for that landscaping plan are unknown as we do not have that information. Mr. Iafigliola indicated that the arborvitae will be four feet and seems reasonable and a winter creeper, which he is unaware of that planting. Mr. Smerigan indicated that these will be planted between the arborvitae's and the parking lot.

Mr. Iafigliola asked where the store would store shopping carts. Mr. Zawadski replied inside the store and there are no cart carrels in the parking lot. Mr. Iafigliola asked for clarification regarding the ice machine. Mr. Iafigliola asked if Mr. Zawadski knows the Dollar stores intend regarding outside sales or an ice machine. Mr. Zawadski indicated that if it is permitted by city ordinance then they will have an ice machine and typically they have a propane cage. Mr. Iafigliola indicated that his preference would be to see this type of sales inside because this adds to the visual clutter that ABR was not anticipating. He would like to note that we have discussed the residence to the south but there is also a business located to the south that has all of these things outside, which is the gas station.

Mr. Iafigliola asked if the store would be selling things outside for example, moving bins and out of the store each day. Mr. Zawadski indicated that if that was permitted by city ordinance it is possible. Mr. Bemer indicated that Section 1252.08(a) captioned Supplemental Regulations state that activities shall be within the enclosed business building, all business services shall be conducted, products stored and contained within the enclosed building. There are exceptions, conditional uses and temporary outdoor sales. Mr. Smerigan indicated that the typical exception is propane canisters as they cannot be store inside the building. We do not allow outside displays; in other words, they cannot stack mulch in the parking for sale. Mr. Iafigliola asked about temporary bins that are moved in and out each day. Mr. Smerigan replied typically that is not permitted.

Mr. Iafigliola asked Mr. Zawadski if he was open to the idea of eliminating parking spaces and yet being code complaint. Mr. Zawadski stated that the issue is not with the elimination of the two spaces. We currently have 37 parking spaces, which is compliant with the minimum parking requirements of the city's code, if we were to lose two spaces and go down to 35 spaces that would not be a problem for the operation of the business. The problem is the location of the two spaces that ABR has suggestion be eliminated as those two spaces are located in very close proximity to the front entrance as these is prime

parking that no business owner would want to eliminate. Mr. Rinker stated that he would like to reiterate that Zaremba will provide to the City a sum of money for a six-foot fence and with this fence as he understood from Mr. Martin was the headlights of vehicles going in and out and the fence will resolve that.

Mr. Martin indicated that he personally believed the fence should be eight-foot-high but the ABR determined six feet.

Mr. lafigliola stated that he believes Mr. Zawadski is generally correct when he states that there will be no light spill over. However, as he was taught if you are going to use absolutes you better be absolutely sure, and he does not believe that the statement can be made that there is zero light spill over although the amount of light that spills over is very little particularly around the perimeter. Mr. Zawadski indicated that this is in compliance with the lighting ordinance.

Mr. lafigliola asked why when you exit the building there is the lowest amount of lighting and across the two handicap parking spaces, because it seems that you would want the highest level of lighting. Mr. Zawadski replied that he agrees but unfortunately because of the restraints of the tightness of the site and the restrictive lighting ordinance we were not able to provide a greater level of light in this area that also did not spill onto the property to the south. Mr. lafigliola asked if the lighting analysis counted for the internally illuminated sign. Mr. Zawadski replied that it does not count for the internally illuminated sign. Mr. lafigliola stated that the sign would provide minimal light, if anything. Mr. Zawadski indicated that this is the area that they reduced the amount of light. The original plan that was submitted was a little bit hot along the southern property line, which is where the house is, so we redesigned the lighting plan in order to comply with the lighting ordinance.

Mr. Pehanic stated that he believes he reviewed a plan that showed parking would be with headlights facing south but that is not the case as the headlights will be heading east or south into the building. Mr. Zawadski replied he was correct. There are some spaces that are behind the building that would be directed southwest. Mr. Pehanic stated that we are considering getting the resident involved with the fence; why get the resident involved, why can't the Commission grant the variance to make the fence six feet in height to the end of the resident's home and then drop the fence height down to three feet to the end of the property. Mr. Bemmer indicated that if the Commission is giving final approval conditioned on other things, for the third time this matter should be tabled and encourage the application for a variance so there is proper noticing and then move forward. Mr. Rinker asked if Mr. Bemmer was suggesting that the meeting be tabled with the condition that the applicant seek a variance. Mr. Bemmer replied on the issue of the front yard fence. Mr. Rinker stated that he will ask his client again, but his understanding is that they do not want to seek a variance and does not believe that is something that legally they can be required to do. Mr. Bemmer replied no they cannot be required. Mr. lafigliola indicated that he is unsure of how the mechanics of the fence request would work. Mr. Rinker stated that he cannot speak for the city, but he is suggesting that the City would relieve Zaremba and Dollar General of the responsibility of addressing the six foot high fence that would extend east of the building frontage but would extend to the front of the neighbors property. In other words, the fence would need to be on the neighboring property and fit the dimension.

To go onto someone else's property creates a lot of other issues from his client's standpoint wouldn't be appropriate. If the city is prepared to do that then Zaremba is prepared to provide basically a deposit, like putting in trust. Mr. Iafigliola asked if this could be provided to the resident. Mr. Rinker replied no we would provide it to the city as the city is seeking to relieve the issue on behalf of its constituent, we understand that, and its looking for a practical way to solve the problem. This will address the issue that has been drawing a lot of concern. Throughout the ABR discussions time and again they looked at what type of landscaping features, Mr. Martin explained in very detail how he arrived at being about to reduce those two spaces. But the problem remains that it is not good business, a retail requires that close in parking. So, to solve the problem it is that physical structure that a fence would provide. It is nice not to include the property owner but the property owner was requested to speak and has weighed in on this so we are trying to respect the issue in a way that solves the problem. We suggest that the problem should be directly between the property owner and the city and ultimately engineering will review everything, a lot of the details which were reviewed tonight the understanding is that this will be code complaint and Mr. Sheehy and Mr. Smerigan will review all of this. He stated that if this does not work out then Zaremba can always install the three-foot fence. He believes that over time there may be a way to resolve this without this board trying to figure out all those details. If it is a condition of approval that there is that opportunity for the city and the property owner to work out the details, we are saying that Zaremba will fund that opportunity.

Mr. Smerigan indicated that he has had a situation in other communities where applicant's have filed deposits with the city in order to accomplish like this fence where the buffer is going on an adjacent property and instead of the property that is being developed. There is always a reluctance by a developer to go onto another property because that opens up all kinds of other legal issues. The way that other communities have sometimes addressed this is what Mr. Rinker is suggesting that funds be deposited for that purpose of the adjacent property owner installs the improvement the city releases the funds to the property owner. He believes this is a relatively easy solution to the problem assuming that the neighbor wants the fence on their property. Mr. Bemmer indicated that no one here can impose a fence upon the adjacent property owner. Again, his suggestion is that very likely cooler heads may prevail and there may be a negotiation so he would suggest tabling this matter to see whether Mr. Zawadski can speak with Dollar General and see if they are willing to make application for the variance to get the front yard fence at six feet. Mr. Rinker stated that he understands that the law director was not present for the ABR discussions, but he just asked Mr. Zawadski again, and that discussion was held with Dollar General and they have declined. Mr. Iafigliola asked what suggestion he was referring to. Mr. Rinker replied to ask for a variance. Unfortunately, the time frame schedule, contracts, what we are saying is this is a project that meets the code and we are asking for approval. If there is a way to put a condition on it, he does not believe it drags in the property owner but rather it an opportunity for Zaremba to put money into "the bank" for the city to see if it works out. Otherwise we will meet the code, the plan has been approved by the engineer and planner the questioning tonight has resulted in some adjustments but there is only so much Zaremba can do and we are asking that the Commission approve because we believe the project complies. Rather than delay the process and put a burden on the

property owner we are giving an opportunity for the adjacent property and the city to work out the issue, if not, we know what the plans will be.

Mr. Iafigliola indicated that there are questions/issues and he would like to briefly summarize those. He understands what Mr. Rinker stated, which is, that the applicant has provided a code compliant set of plans and the Commission is obligated to act on the request. The Commission is also obligated to review and we have a certain amount of time to make a decision and does not have to be necessarily tonight. He does not believe all of the remaining issues/concerns will be resolved tonight, one of those is the mechanics of the fence issue as he is a little unclear about how we would go about handling that. The external lighting. The ABR chairman made two important comments one is they would give anything to have external illumination and she did not feel it was within ABR's jurisdiction to say whether or not that was allowed and our law director is giving a different opinion than others. What he senses, maybe incorrectly, is that maybe Dollar General would want different signage that is within code and not a variance request because he knows they are trying to avoid that at all costs. His question to Mr. Zawadski, if this issue is going to hold up the whole thing is there some sort of compromise? He is specifically thinking would they want a bigger sign if we could light it a different way. The last issue, and he knows no more information than what was said at the very beginning of this meeting, which is the potential lawsuit the resident spoke about.

Mr. Rinker stated that there may or may not be a lawsuit, it is not the province of the city to speculate on what that may be. He can say, based on what his client has informed him, they performed a title search and that come back that the title was clean. They would not go through this whole process if they believed that they could build. It is not incumbent upon this body, nor appropriate for this body, to condition developmental site plan approval on some one else's lawsuit claims and he is sure that Mr. Bemmer would back him up on that.

He stated that Mr. Zawadski has indicated this evening that he is willing to talk again to Dollar General even though he has already spoken to them a couple of times regarding the external lighting. They were informed by ABR that the goosenecks look nice but they do not want those plus internal lighting. In other words, the answer is we want to get rid of the internal lighting all together and Dollar General has stated that they did not want that. They have made other changes, and we went through a lot of discussion, but nonetheless this is what the tenant, who is going to be operating the store putting money in the dirt, is saying so he thinks we all have to respect that. We appreciate the aspiration, but again, we have something that is code complaint so to say we have to condition approval on some further discussion that Mr. Zawadski is willing to do, but he wants the approval so he can move forward. Between the lawsuit, external lighting, and the screening mechanism he explained we can have as a condition, to follow through, we simply suggested providing a fence, it may not work out, but that "tail should not wag this dog," with all due respect. These are items that can be subject to further discussion and he thinks Mr. Zawadski has shown that he has worked in good faith. We have a line of communication with the engineer and planner so it's not like that discussion will stop but we are at a point where all of the exhaustive reviews that have been undertaken administratively and when you meet the code to suggest that somehow because we are trying to tinker with this further we should

hold up the applicant's application is not proper; so we are asking for the vote on the issue as we want to be able to move forward. With all due respect, when all your administrators are saying you meet the code and you acknowledge that, he does not understand how someone can say that we need more time.

Mr. Iafigliola asked if Mr. Rinker does acknowledge that it is within the Commission's authority to take the time it needs within the code. Mr. Rinker asked what were the remaining questions because everything is code complaint. Your code mandates that the Commission shall approve when it meets those conditions. You are creating new conditions that go outside of the code that is why he said aspirational, it is understandable but it is not the law and we are asking that you follow the law. Currently the Commission has everything it needs and it is your responsibility to vote, that is what the code states.

Mr. Bemmer indicated that he is recommending to the Commission that this issue be tabled. There are some external issues and they may or may not be code compliant but there are issues that in the long term may cause this project to sit here for another two years or it may be resolved in a month, so that is the basis of his recommendation. Mr. Rinker replied that is not a recommendation that is within the law, that is overstepping and not correct. It says that the Planning Commission shall approve and that is in 1232.06(k)(8), decision on application, if it is found that the final development plan complies. Mr. Bemmer replied that he has said his peace. Mr. Rinker stated, with all due respect, that is an opinion that is not supported by the law. He is following the letter of the city's code. The applicant who is the one who would ask for the continuance, this is not to be done to the detriment of the applicant because city officials believe that they want some other kind of solution. He is sorry, but when the code speaks to it and we meet the code it is not fair to hold it up further.

Mr. Iafigliola requested for a five minute recess. Meeting resumed at 10:16 p.m.

Mr. Iafigliola stated that we had three issues, one was a potential lawsuit and we have no information on that; one is the fence screening issue and he believes we have a general understanding but not necessarily the mechanics, and the only question that remains is the exterior signage, specifically the building and monument signs. As he sees it there is really only one issue. He understands loud and clear that the applicant wants to move forward because they have a project to build and deadlines to meet. He is also well aware that the Planning and Zoning commission is well within its rights to review within an established period of time, he understands what Mr. Rinker has stated, but we do have the amount of time that we have to ask questions and come back. When we have had previously contentious issues one of the ways we have successfully moved forward as a Commission is vote on the issue. We have two options, one option that he is suggesting is making a motion to approve the submittal subject to conditions to resolve the six foot fencing issue from the point south of the building towards the street; and extending the same six foot fence from the southwest corner further west for a distance of approximately 30 feet. He does not believe, other than the signage, there were no other comments that the Commission brought forward of things that would need to be changed. Mr. Smerigan asked if the signs would be approved. Mr. Iafigliola replied that the signs would be left out.

Mr. Pehanic stated that the fence would be the responsibility of the city and the resident. Mr. Iafigliola replied that he does not understand how that would be accomplished. He asked Mr. Zawadski, in the big picture, does he want to get everything approved with the two fence issues and signage left out; or the other option would be to table the whole project till the next regular meeting and then maybe there would be clarification on the issues that have been raised.

Mr. Pehanic stated that he does not understand the fence issue. To him approval would be contingent upon a request for a variance to extend the fence from the front of the building eastward to the front portion of the residential property. Mr. Iafigliola stated that it's a great question that is not un worth asking but he does not know the answer. The real question is which option do you want, the "A" option so we can explore the fence, or table the whole thing then there is no sense talking further about the fence issue. Mr. Pehanic stated that he does not want to table the whole thing. Mr. Iafigliola replied then approval. Mr. Pehanic responded based on these two items, the fencing and the signage, but the fencing should be based on a request for a variance. He stated that the resident has a major concern now and now we potentially could put more burden on the resident to build a fence on their property and he has an issue with that. Mr. Iafigliola stated that if it satisfies Mr. Pehanic we could leave the fencing off of the first option which then gives the Commission time to figure out the answer. The real question is do we want to approve what we can approve and leave off what we are not comfortable with. Mr. Pehanic replied that he would agree with that.

Mr. Iafigliola stated that upon Mr. Pehanic's advice option "A" would be to approve the plan as written except the signage, both elements building and monument, and the fence would not be included in the approval. He stated that now the question to the Commission would be would you rather see everything tabled or approve leaving those two items off. Mr. Rinker asked if the Commission would approve the variance request; because it is just not lawful to insist that an applicant seek a variance because the variance suggests that you still have the discretion to grant it or not. If we waive the right to rely upon the code and instead seek a variance from the code because the city wants the variance it seems like we are putting the shoe on the wrong foot. He has heard the law director speak to it but if the body is inclined to say that the variance issue would be that our client would install the fence for that distance. Mr. Zawadski asked if part of the condition could be that the Commission would approve the variance. Mr. Iafigliola replied that the Commission could not do that. Mr. Zawadski asked why. Mr. Iafigliola indicated that the Commission cannot approve something that has not been asked for. He is struggling with this whole fence issue and is inclined to just leave it off for right now and approve what we can do. Mr. Thompson stated other than the fence in the back. Mr. Thompson indicated that the resident has not expressed any interest in whether they want to install a fence or not. If you look at the elevations there will be four-foot arborvitae's planted and the elevation is already one foot lower so there is actually already a five-foot distance. Mr. Zawadski stated that the parking lot will be two feet lower than the finished floor of the house.

Mr. Rinker stated that he understands that the question about the two signs is still open ended. Mr. Iafigliola replied correct. Mr. Rinker stated that on a good day that would be the only issue that would be left out so we would still have to come back to the Commission

to finalize the signage question. Mr. Iafigliola replied correct. Mr. Rinker replied then the only other question is the variance and as a lawyer he knows what his client's rights are in terms of not having to be forced to seek a variance, it is just upsetting, but, we all know that a variance is what the city really wants to be able to resolve in order for the fence not to be on the residential property and not be the responsibility of the resident but rather the responsibility of the applicant. The straw vote he would like to know is if the understanding is, and Mr. Bemer seemed confident, but you are the body that would be considering the variance, if the motion states that the Commission will in good faith consider the variance the request that would allow our client to construct the fence as an exception to the code would solve the problem which could be handled at the next meeting. Then both the sign issue and variance issue would be resolved. He believes this is the request that the applicant is making, that the Commission will consider the variance in this timely fashion. This will simplify the process, again, its unusual but is a mechanism that allows the fence to get built in the way people are seeking to have it built. The time table and the fact that this body would in good faith consider the variance request knowing what the record is and what all the discussion has been. We cannot guarantee what the response will be on the signs but we are going to go back and ask and that was the time that Mr. Zawadski said he needed.

Mr. Iafigliola replied stated that if the Commission is going to act in good faith about the fence and the variance, and Mr. Rinker can take a straw poll, but he believes the general consensus is that this is the best option. Mr. Rinker replied that the point is there is a risk that the applicant faces that the Commission could say no. Mr. Iafigliola replied that the city also faces a risk, we could grant approval, then when you speak with your client you could indicated that the Commission has already given everything else so there is no leverage regarding the sign illumination. So, if we move forward in good faith on this fence issue we would like to know, and again, you can't say for sure about the illumination, just like we can't say for sure on the variance. He is suggesting, for what it is worth, the applicant may be able to ask for a slightly larger sign in exchange for external illumination for both signs and maybe that is a small trade; he also understands the applicant cannot guarantee that and you are asking for the same information on the variance.

Mr. Thompson stated that he does not have any issues with the monument sign and does not care if you internally or externally light it, honestly, he believes it is better internally lite rather than externally lite. His concern is the one on the building because that sign is up high and there is a house next door and a six fence is not going to block that sign. That sign has to be 10 to 12 foot up on the side of the building. We will have to discuss hours of operation for this sign, which has not been discussed. If the sign is internally lite and he is in the house you will see it no matter what because it is yellow and will stand out like a sore thumb. If it is externally lite it will not glow like it will if it is internally lite. Otherwise the Commission could be restrictive on the hours of operation and is within our purview to do that. We can certainly restrict that sign from glowing because there is still some contamination of light yellow and red shows. From his perspective this sign he would rather see externally lite with the gooseneck lighting.

Mr. Rinker would like it noted that the Commission will in good faith consider the variance issue regarding the fence. Mr. Iafigliola replied yes.

Mr. Iafigliola moved to **approve** Planning and Zoning Case #02-2020 a request made by Olmsted Falls BTS Retail pursuant to Section 1232.06 for final development plan approval for a Dollar General Store to be located at 9736 Columbia Road subject to the following criteria: (1) exterior signage, specifically the building sign and the monument sign, are not included in this approve; (2) that the southern screening fence is specifically excluded from this approval, with the understanding that they will submit a variance request; Mr. Munteanu **seconded**.

Mr. Zawadski would like to clarify if he could move forward with submittal of building permit plans for review, not necessarily approval. Mr. Iafigliola stated that he does not believe that would be the case, but he would have to defer to the building department.

Poll: 7 ayes; 0 nays. **Motion carried.**

COUNCIL LIAISON REPORT – No Report

OTHER BUSINESS - None

APPROVAL OF MINUTES – Mr. Iafigliola asked that the minutes be held until the next meeting.

ADJOURNMENT: Mr. Iafigliola moved to **adjourn**; Mr. Thompson **seconded**. Voice Vote: 7 ayes; 0 nays. **Motion carried.** Meeting adjourned at 10:38 p.m.

Planning & Zoning Commission Clerk

Date

Planning & Zoning Chairman

Date