

**CITY OF AVON PLANNING COMMISSION
NOVEMBER 15, 2023, 7:00 P.M.
REGULAR MEETING MINUTES-REVISED**

PUBLIC HEARINGS

1. Caribou Coffee, 35091 Chester Road, Special Use Permit, PL20230064

Michael Gilbert of the Development Management Group representing Mark Wilhoite of Compton Addy is requesting a positive recommendation to City Council to approve the Special Use Permit to create a restaurant with no indoor seating, a drive-thru and outdoor seating at 35091 Chester Road.

The Chair opened the public hearing at 7:04 p.m.

There being no comments, the Chair closed the public hearing at 7:04 p.m.

ROLL CALL

The meeting was called to order by Chair Witherspoon at 7:04 p.m. in Council Chambers.
Present: Bill Fitch, Bryan Jensen, Mayor, Jim Malloy, Scott Radcliffe, Carolyn Witherspoon, Chair, Staff: Ryan Cummins, City Engineer; Pam Fechter, Planning Coordinator; John Gasior, Law Director; Duane Streater, Safety Director; Jill Clements, Zoning Enforcement Officer Susan Pintz, Planning Commission and Zoning Secretary

REVIEW & CORRECTION OF MINUTES

Motion to dispense with the reading of the minutes of the regular meeting held on October 18, 2023, and to approve the minutes as published.

Mr. Malloy moved, seconded by Mayor Jensen, to dispense with the reading of the minutes of the regular meeting held on October 18, 2023, and to approve the minutes as published. The vote was: "AYES" all. The Chair declared the motion passed.

REPORTS & CORRESPONDENCE

None

ADDITIONS & DELETIONS

Motion to add or delete items from the agenda.

Ms. Fechter indicated that item 3 Caribou Coffee Final Development Plan order should be switched with item 4 Caribou Coffee Special Use Permit. In this situation if the business is a restaurant with no indoor seating the Special Use Permit needs to come before the Final Development Plan. Therefore:

Item 3 is Caribou Coffee, Special Use Permit

Item 4 is Caribou Coffee, Final Development Plan

Mr. Malloy moved, seconded by Mayor Jensen, to switch items 3 and 4 on the agenda. The vote was: “AYES” all. The Chair declared the motion passed.

Motion to approve the Amended Agenda.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Amended Agenda. The vote was: “AYES” all. The Chair declared the motion passed.

1. Gingko Leaf Properties, Lot Split and Consolidation, PL20230060

Vic Stewart of Bramhall Engineering representing Tom Demaline of Gingko Leaf Properties is requesting to split a portion of Brunner Properties; 11.0329 acres of PPN 04-00-012-101-088, and .74 acres of PPN 04-00-012-101-048, to consolidate into Gingko Leaf Property PPN 04-00-012-101-082 for a total of 65.6753 acres.

Tom Demaline, Gingko Leaf Properties, 4734 Center Road, Avon, Ohio 44011.

Mr. Demaline states that they have been leasing this piece of property for Willoway Nursey use for the last 25-30 years. Mr. Brunner asked Mr. Demaline if they were interested in purchasing the property. He indicates that they would like to change ownership and divide the property and include it into the Gingko Leaf Plan.

Ms. Fechter indicates that all staff comments have been made.

Mr. Cummins states that all surveying comments have been addressed.

Mayor Jensen asked what is a “gingko leaf”?

Mr. Demaline states it is a tree and one of the LLC businesses he owns along with a family member.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: “AYES” all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Lot Split for a portion of Brunner Properties; 11.0329 acres of PPN 04-00-012-101-088, and .74 acres of PPN 04-00-012-101-048, to consolidate into Gingko Leaf Property PPN 04-00-012-101-082 for a total of 65.6753 acres. The vote was: “AYES” all. The Chair declared the motion passed.

2. Jacobs Group, Subdivision Plat No. 7, PL20230058

Aaron Appell of Bramhall Engineering and Carl Frey of Jacobs Group are requesting approval of Subdivision 7 to create a new 1.0008-acre parcel for Caribou Coffee.

Aaron Appell of Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.

Mr. Appell states they are requesting acceptance of the subdivision plat to create the 1.0008 acres lot. This is located on Chester Road northwest of the Planet Fitness building.

Ms. Fechter clarifies, when they were present at the November Planning Commission meeting to amend the General Development Plan for Copper's Hawk and Dick's Sporting Goods that it also included Caribou Coffee.

Mr. Appell confirms that is correct.

Ms. Fechter states she has no further comments.

Mr. Cummins states all surveying comments have been addressed.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve Subdivision 7 to create a new 1.0008-acre lot for Caribou Coffee. The vote was: "AYES" all. The Chair declared the motion passed.

3. Caribou Coffee, 35091 Chester Road, Special Use Permit, PL20230064

Michael Gilbert of the Development Management Group representing Mark Wilhoite of Compton Addy is requesting a positive recommendation to City Council to approve the Special Use Permit to create a restaurant with no indoor seating, a drive-thru, and outdoor seating at 35091 Chester Road.

Ms. Fechter states the reason for the special use permit being presented first is because there will be no indoor seating and our code only allows restaurants with no indoor seating north of Interstate 90.

Michael Gilbert, Development Management Group, 4209 Gallatin Pike, Nashville, TN 37216.

Mr. Gilbert states he appreciates the Commission taking the time to hear about their project. The proposed project consists of a coffee shop of about 758 sq. ft. with no indoor seating. The entire building consists of a kitchen and an employee restroom. The customers are serviced through a few different modes, primarily through a drive-thru window. That is about 80 percent of their business. They also utilize a mobile order system where people order on the app and customers park and pick up their order at the pickup window or it is brought out

to them. That is about 15 percent of their business. They also have a walk-up window so that someone can park their car and walk up to the window and place their order. That is about 5 percent of their business. The property has 15 parking spaces, five of those spaces are for employees. There is a handicap parking space, there are 3 order ahead parking spaces, 1 wait space and 5 public spaces. The special use being outside the zone is one thing but there is also a matter of the special use code that requires outdoor seating to include access to a public restroom. Mr. Gilbert says the international construction, building code and plumbing code both also contemplate this requirement. However, in their contemplation their criteria for justification of needing a public facility for a project like Caribou is whether or not the patio exceeds 300 sq. ft. The Caribou patio does not exceed 300 sq. ft. The use of their patio will be seasonal so it's a minimal time during the year. When the patio is used it will be used by those customers that generally use the walk-up window. That will consist of 5-7 people at most, at any given time, so adding a public restroom for those limited needs didn't seem logical.

Ms. Fechter states that what Mr. Gilbert is referring to is Avon's Special Use Permit requirement. In this situation it is code 1280.06 (e) (e) restaurants with no indoor seating. We have 3 requirements; a restaurant with no indoor seating may be permitted in a C3 or C4 district but only when their zoning district exists north of I-90. There must be a structure on sight having indoor men's and women's restrooms and there must be a full kitchen facility utilized for the preparation of food. Ms. Fechter states those are the 3 requirements that are put into the special use for a restaurant with no indoor seating.

Mayor Jensen asked what is the capacity at the outdoor seating?

Mr. Gilbert responds they have 4 tables that seat 4 each, but it is for convenience. The usage will range between 5-7 people on average.

Mayor Jensen states you have 4 tables and 5 parking spots.

Mr. Gilbert states that is correct.

Ms. Fechter states there are 5 tables with 4 seats each.

Mayor Jensen states you are serving a liquid that someone would drink which would probably cause some other reaction and then have no restroom.

Mr. Gilbert states obviously there is a reaction there.

Mayor Jensen states it wouldn't be at Caribou but at some other location as they are travelling through.

Mr. Gilbert states it is an intensity issue. The experts on this issue or the international codes; from a building and plumbing standpoint state they have considered what we are discussing in much greater detail than we are.

Mayor Jensen states they would probably need to relieve at some other property if they couldn't find a restroom at Caribou.

Mr. Gilbert states he thinks that people would plan for that and know where they are going and where they are coming from.

Mayor Jensen states he has an issue with it, and you can use experts, but we have seen enough that if someone is going to drink something we think they should have access to a restroom. A code can be a code but what we would like to see is access to a public restroom.

Ms. Fechter states that she did explain to Mr. Gilbert that this does not have anything to do with the international building code. This is something that was decided and was required because we are allowing a restaurant with no indoor seating.

Mr. Gilbert states that is understandable. He believes that his project is one of the first of its kind to come under this code. He can appreciate the need to visit this discussion. He suspects that this will not be the last project to come before you with the same or similar situation. The reason their building is the size and functionality is because it is a direct response to COVID. A response to being able to obtain and maintain employees. He believes that people are trying to learn lessons from the COVID issue and learn lessons from the employment issues. Many companies are struggling to do that. Caribou has primarily been in the north and their primary functionality has included an indoor seating element because they are from Minnesota.

Mayor Jensen states that Caribou was in Avon for a long time at the Avon Commons but then closed. People have missed them. His concern is that if you have outdoor seating and someone pulls in to sit down and consumes a beverage, he thinks you want to have the convenience of public restroom.

Mr. Gilbert states he completely understands. He thinks there are options on how to go about addressing this requirement. We will need to review these options in detail with Caribou, who is their tenant, to make sure they agree with whatever options they choose. From an options standpoint we could do things like eliminate the patio.

Ms. Fechter states that the restroom is not tied to the patio. The code says for the no indoor seating you need to have a restroom. She mentioned that Swenson's has no indoor seating, and they have 2 restrooms with outdoor access.

Mr. Gilbert states another option would be that they have a single unisex restroom facility in the building for staff. If we could figure out how to redesign that facility so that it could be accessed from the outside, then it could serve the public from the outside.

Mr. Radcliffe states he appreciates hearing about options. However, there is enough space on the property and the ability to add a couple of restrooms that are accessible for a restaurant that has no indoor seating and there is no food preparation only drink preparation. He thinks they need to have a restroom facility with both options to have it inside and outside and keep

the outdoor patio. People will like the patio and use that when the weather cooperates. If you could expand and put a couple of tables inside to modify this as an inside restaurant. Otherwise, it looks like a little more than a food truck without wheels that you are serving drinks out of which is ok but it's not what the code is looking for. If you could expand it and add a couple restrooms it would be a much better situation. He thinks a bit of redesigning could help.

Mr. Gilbert states they probably would not be successful with Caribou in adding seats into the building if it's not their model. He asked if they would be satisfied if they could convert the restroom that they have to be an accessible unisex restroom from the outside?

Ms. Fechter states that would meet our regulations and have that ability. She suggests a contingent referral to City Council and then if they have made it to the City Council Work Session and there is no restroom then it is off the agenda, and it is referred back to the Planning Commission and is denied. Ms. Fechter's understanding of the body and other people in the administration is that the restroom needs to be there.

Mr. Radcliffe believes it should be 2 restrooms but if 1 is the best that Caribou can do to meet the requirements of the City of Avon then that is what it has to be. He thinks that it shouldn't be that much of a cost burden for a well-known business-like Caribou.

Mr. Gilbert states you would be willing to entertain a unisex structure restroom?

Mr. Radcliffe states his preference would be 2 restrooms but if the best we could do is 1 and it meets the requirement then that is what it would be.

Mr. Gilbert states they would agree with Ms. Fechter's statement. They would like to talk with Caribou, work on these options and present some options to Ms. Fechter and staff to try and meet their satisfaction and suggest it to Council. He thinks this can be worked out between us and staff before we meet with Council.

Mayor Jensen states that he would like to give caution if the restroom redesign doesn't happen, Mr. Radcliffe and himself are at the City Council meetings and will let the other council members know what stipulations were put on this. It will then be recommended to go back to the Planning Commission, and it will then be given a negative recommendation. He doesn't want to do that, but if something can be worked out between now and the council meeting that would be best. Mayor Jensen adds the one thing you said about not putting the tables outside, just so you are aware that area is a walking area, there is a bike and walking trail that goes in front of your area, so we see more people using those trails. In the future if there were things that weren't done, we will hear about it in the city and residents will ask why certain things were not done.

Mr. Gilbert states he understands. He asked what is the date of the council meeting?

Ms. Fechter stated it is the first Monday in December and then the work session, is the second Monday of December.

Mr. Malloy states that a 700 sq. ft building on a 1-acre site in that area right now which is hot is kind of cheap. Then there is a special use permit now that is going to snowball into other things, say another restaurant that wants to come in and doesn't want indoor seating.

Ms. Fechter states they are allowed not to have indoor seating north of I-90 but nowhere else in the city.

Mr. Malloy states are we are lowering our standards just to get business.

Ms. Fechter states we can take another look at our code if you want to consider eliminating restaurants without indoor seating but if you look at something like Swenson's, she doesn't think they are trying to negate our code that is just their business model.

Mr. Malloy says that is not an area that is hot right now.

Ms. Fechter states that is correct.

Mr. Malloy states that this could mess our standards up.

Ms. Fechter states that this body and everyone else she has spoken to has indicated that without the restroom this will not happen. She also states that if a referral to recommend to council is contingent upon the restroom and if we get to the work session the first week and there is no restroom it will be deleted from the agenda.

Mr. Malloy states he thinks there are bigger problems than the restrooms.

Mr. Fitch states he thinks we need to look at the way the industry is going. You can walk into a restaurant and there are 50 seats, but they only seat 3 people. He states that buildings will be made smaller compared to what they have been in the past. We need to take that into consideration. He understands Mr. Gilbert's position. Mr. Fitch believes this model will be coming before us more often in the future.

Mr. Gilbert states that they did the Panera in Avon a couple of years ago. He thinks that the building is approximately 4,500 sq. ft. Panera is now building approximately 2,400 sq. ft. buildings, same services but just a smaller building.

Mr. Radcliffe states that the proposed Caribou would have a 300 sq. ft patio, if you had that indoors you could have tables, add the room for the restrooms and it could be accessible indoor or outdoors and would be at 1,100 sq. ft and would be half the size of the new Panera model. We are aware that things are shrinking down and getting smaller but that doesn't mean we want to have less of the services, especially for people that we are trying to get to use the walking area in the 3 seasons of the year.

Mr. Gilbert agrees. He mentioned Panera to reinforce Mr. Fitch's thought. The Panera currently has approximately 99 seats inside. The new model of Panera will have 30 seats that is a 70 percent reduction.

Mayor Jensen states the Panera in Avon is always busy and seats are always full and thinks they are doing well.

Ms. Fechter states she appreciates what Mr. Gilbert is saying about the industry changing and what we are running into with our drive-thru and carry-out windows and having to make some adjustments.

Mr. Fitch asked if the walk-up windows mean everything is outside.

Mr. Gilbert states the walk-up window is exactly what it says. You get out of your car, you place an order at the window, you pick up your order at the window and what the customer does after that is up to them. How the customer arrives at the window is up to them, walking, biking, car, it's up to the customer. The idea of having the patio is an amenity that people will like and take advantage of, and we feel like it adds value to the project, and we like it in our program.

Ms. Fechter asked can someone order on the mobile app and pick it up at the walk-up window.

Mr. Gilbert states he thinks so because there is also waiting parking in the parking lot.

Mayor Jensen states if it is cold outside and someone is waiting at the window and had to use the restroom there would be no place to go.

Mr. Gilbert states that they will look at an option to see if they can solve that problem. They want to be good neighbors and good business partners. We want to be in Avon and have invested a lot of money already to try and be here. They will continue to do their best effort to see that to the end.

Ms. Fechter says she appreciates that and our residents like Caribou.

Mr. Fitch asked if there is a way for customers to access the inside to use the restroom.

Mr. Gilbert states no, the entire building is a kitchen and the restroom for the employees.

Chair Witherspoon asked if we could do a motion contingent on the restrooms.

Ms. Fechter states she can work with Emily Hanson in the Building Department to make sure whatever they come up with meets their requirements.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to recommend to City Council to approve the Special Use Permit to create a restaurant with no indoor seating, a drive-thru and outdoor seating at 35091 Chester Road contingent upon submission of plans for outdoor access to a restroom.

**Mayor Jensen, Mr. Fitch, Mr. Radcliffe, Mrs. Witherspoon, was: “AYES”
Mr. Malloy, was: “NAY”**

The vote was: 4 “AYES” and 1 “NAY”. The Chair declared the motion passed.

4. Caribou Coffee, 35091 Chester Road, Final Development Plan, PL20230063

Michael Gilbert of Development Management Group representing Mark Wilhoite of Compton Addy is requesting approval to construct a 778 sq. ft. restaurant with no indoor seating, drive-thru and outdoor seating at 35091 Chester Road.

Ms. Fechter states that staff comments have been addressed but would ask that if this is considered it would be contingent upon the approval of the Special Use Permit because if they don't get approval of the special use then they can't build the building.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: “AYES” all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Final Development Plan to construct a 778 sq. ft. restaurant with no indoor seating, drive thru and outdoor seating, for Caribou Coffee at 35091 Chester Road contingent upon approval of a Special Use Permit by Council.

**Mayor Jensen, Mr. Fitch, Mr. Radcliffe, Mrs. Witherspoon, was: “AYES”
Mr. Malloy, was: “NAY”**

The vote was: “4 AYES” and 1 “NAY” all. The Chair declared the motion passed.

5. Clean Express Car Wash, Middleton Crossings, Nagel Road, Final Development Plan PL20230065

Jeffrey Plautz of Neff and Associates representing Joe Bertucci of Express Wash Concepts is requesting approval of the Final Development Plan to construct a 3692 sq. ft. car wash facility south of the Sheetz Gas Station at Middleton Crossings on Nagel Road, PPN 04-00-022-102-150.

Jeffrey Plautz, Neff and Associates, 6405 York Road, Parma Heights, OH 44134.
Joe Bertucci, Clean Express Autowash, 13375 National Road, SW, Suite D, Etna, OH 43068.

Jeffrey Plautz states they are looking to construct the Express Car Wash, it would be included in the Middleton Crossings plan, south of the Sheetz Gas Station and south of the Meijer store. They are looking to construct a wash area, 33 stacking spaces, 20 vacuum stalls, 4 regular stalls. Access for the wash itself will not be off Nagel, it will be off the access road being constructed between the Sheetz and the car wash.

Ms. Fechter how many employees?

Mr. Plautz states that they will have 2-3 employees on site during peak hours. The hours are 7:00am-8:00pm Monday through Saturday and 9:00am-6:00pm on Sunday. There are staff always on site during those hours.

Ms. Fechter states all staff comments have been addressed.

Mr. Cummings states all the engineering comments have been addressed as well.

Mr. Radcliffe asked if they could describe the type of wash, is it automated or rollers.

Mr. Plautz states it's a typical express car wash with conveyor. They have 12 locations throughout the Cleveland area, one will open shortly in Strongsville that will make 13. They have a handful going through development right now. It's a membership driven program, the number of locations they have makes it convenient to their customers, wherever you sign up, they can go to any of their wash locations and use the membership. The car enters the stack lane, welcomed by a staff member at the pay station, if they are a member, they can enter the far-right lane and that arm will lift automatically and proceed through. One gate at a time will open for safety reasons. The customer will navigate into the wash directed into the conveyor into the building and then they can exit or use the free vacuums that are on site.

Mr. Radcliffe asked where is the next closest facility?

Mr. Plautz responds, Elyria, Middleburg Heights, most of their presence is south and east.

Mr. Radcliffe asked what is the typical volume at the locations he mentioned? What is the stacking traffic?

Mr. Plautz states it moves well, it does vary from site to site, but this number of stacking (33) is an abundance of stacking and it's even a lot for our typical sites. This could handle a peak hour including inside the building if every customer showed up at the same time at the peak hour, which is maybe a little overbuilt but that is what we have to work with and we thought it would be ideal.

Mr. Malloy states he thinks we are getting into the same situation with the number of car washes in the city along with outdoor storage facilities. He doesn't see how all of these can be supported.

Ms. Fechter states that is somewhat of a concern, she has had several people approach her and ask her if we really need another car wash. She started 9 years ago and there was 1 car wash and now there is 7 or 8. There will be 1 road with 4 car washes on it. She asked if you are still able to do the same business in these locations with multiple car washes on the same street.

Mr. Plauntz states car washing is what they do for a living, they are not developers, this is their lifeline. They believe they do it better than any other car wash in the market so they think that will sustain them along with the market share that they created and continue to create. They can't speak for their competitors; they know what is going on in the market and they are going in a different direction trajectory wise. The locations they build are successful because of their operations. In each market that they are in, and they are in multiple markets, and they are typically the number one car wash in that market.

Ms. Fechter states it is a permitted use and we know it's a service for our residents but keep in mind from a city perspective there are 2 employees and then we have so many car washes to Mr. Malloy's point we are starting to feel like there is a lot in the area.

Mr. Plauntz states to be clear we have on average 13-15 employees per site, that is how many are on site working during those hours and then those shifts adjust so the site does have between 13-15 employees. Another thing they do that they are proud of is that during their grand opening in the first 10 days, they will donate 100 percent of that money to a local charity and that local charity will be in the city that the car wash is in which will be Avon and that will be ongoing not just the grand opening. It will be on a quarterly basis they will sell air fresheners. There is also a towel program that is throughout the year, not a promotion. The towel program is \$4 for a towel, you get a towel, and you can exchange the towel for free for the rest of your life as long as you return the old towel. That \$4 will go toward any charity and the charity can change and whatever charity we are sponsoring that money will go to that charity. If there is an air freshener drive, any type of promotion inside the building, even the gift cards, they will donate half of that money and that is throughout the year. They are very proud of their donating to charities.

Ms. Fechter states that is awesome and good to know.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Final Development Plan to construct a 3692 sq. ft. car wash facility south of the Sheetz Gas Station at Middleton Crossings on Nagel Road, PPN 04-00-022-102-150. The vote was: "AYES" all. The Chair declared the motion passed.

6. Avon International-Subdivision Plat, PL20230067

Aaron Appell of Bramhall Engineering representing Ed Jasinski of Jackson Taylor Contractors is requesting approval of the Subdivision Plat for a division of 28.33 acres into 3 lots on PPN 04-00-009-000-157.

Aaron Appell of Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.
Ed Jasinski, Jackson Taylor Contractors, 7047 Spinach Drive, Mentor, Ohio 44060.

Mr. Appell states this a subdivision plat located off Moore Road just south of the railroad tracks where the existing Avon Commerce Park driveway is located, and they will be extending that to approximately 1040 feet and creating and dedicating that to the right of way and creating 2 lots one north and one south of the roadway.

Ms. Fechter states they are the next 3 items on the agenda. We have the Subdivision Plat, Final Development Plan for the actual building itself and then the road plans. Comments have been going back and forth and everything is being taken care of. We would ask that all 3 of these agenda items end up being contingent. We would like to figure out more about the dedication plat for the right of way for Avon Commerce Parkway and some of those legal things that need to be involved with that extension. She would like to request that these be contingent upon us completing all of these and having the Law Director comfortable with everything that he has before they get final approval.

Mr. Cummins states as Ms. Fechter notes there are still outstanding issues and that is includes the engineering and the surveying side as well, if you do want to proceed with an approval, he would request that it be contingent on final engineering approval and that would apply to all 3 items.

Mr. Gasior asked if there will be a Developer's Agreement.

Mr. Cummins responds yes.

Mr. Gasior asked if there is any final engineering yet.

Mr. Cummins responds no.

Mr. Radcliffe asked on the far west entrance of that, it's almost lined up with the Cleveland Pneumatic across the street from their driveway. Should that try to be lined up better for the vehicles coming in and out of there, it seems so close.

Mr. Cummins states that he looked at it as the amount of traffic coming in and out of it, he didn't see that as being that much of an issue. It is slightly off from the driveway to the south but given the size of the building and its location on its site and the amount of traffic coming in and out of it, he was ok with it. We can ask the applicant if there is an opportunity to make it line up more precisely, it certainly wouldn't hurt.

Mr. Radcliffe states that if that is a possibility, he thinks that would be a good thing. He states it seems like this will be a large warehouse of some type with at least a couple of shifts going in and out. He thinks Cleveland Pneumatic does a good job with contractors and people coming in and out all day long. If there is a way to line up the driveway, he thinks that would be the right thing to do.

Mr. Appell states they will look at that.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: “AYES” all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Subdivision Plat for the division of 28.33 acres into 3 lots on PPN 04-00-009-000-157 contingent on final engineering and legal approval. The vote was: “AYES” all. The Chair declared the motion passed.

7. Avon International-Final Development Plan, PL20230068

Aaron Appell of Bramhall Engineering representing Ed Jasinski of Jackson Taylor Contractors is requesting approval of the Final Development Plan to construct a 232,056 sq. ft. building off Moore Road on PPN 04-00-009-000-157.

Aaron Appell of Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.
Ed Jasinski, Jackson Taylor Contractors, 7047 Spinach Drive, Mentor, Ohio 44060.

Ms. Fechter states she has the rendering drawing, and she can put it up on the screen. She asked if this is a 2-story building?

Mr. Jasinski states this is a 1 story building.

Ms. Fechter states this is an industrial building, but it is a nicer-looking industrial building.

Mr. Jasinski states the building is 232,056 sq. ft., they have a 32-foot clear story inside, fire suppression systems and is currently set up for 2 tenants. The exterior of the building is concrete and glass.

Mr. Radcliffe asked about hours of operation.

Mr. Jasinski states this could potentially be a 24-hour-a-day operation and expecting 2 shifts.

Mr. Cummins states the same as the first item, this is subject to engineering approval.

Mayor Jensen states this will be a welcome addition to Avon. He asked how many acres would this be?

Mr. Appell states it is approximately 5.3 acres.

Mayor Jensen states that is a pretty big site.

Mr. Jasinski states there are plenty of restrooms for everyone.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: “AYES” all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Final Development Plan to construct a 232,056 sq. ft. building off Moore Road on PPN 04-00-009-000-157 contingent on final engineering and legal approval. The vote was: “AYES” all. The Chair declared the motion passed.

8. Avon International-Avon Commerce Parkway Extension, PL20230069

Aaron Appell of Bramhall Engineering representing Ed Jasinski of Jackson Taylor Contractors is requesting approval of the Final Development Plan/Improvement Plan for the Extension of Avon Commerce Parkway off Moore Road.

Aaron Appell of Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.
Ed Jasinski, Jackson Taylor Contractors, 7047 Spinach Drive, Mentor, Ohio 44060.

Mr. Appell states that this is per city standard, extending the roadway, sanitary water, storm sewer system, about 1040 feet to the east of the existing roadway. Stormwater from the roadway will go into stormwater management basins that are predominantly on the east side of the building site and that will be maintained by the owner.

Mr. Cummins states that this item has outstanding engineering comments to be worked through, so he would request you to consider this on a contingent basis subject to final engineering approval.

Ms. Fechter states that she agrees with Mr. Cummins. She is excited to see Avon Commerce Parkway extend and open that next section of land.

Mr. Gasior asked if the stormwater ponds are in existence or are they going to be constructed?

Mr. Appell states that they had presented a mass grading plan approximately 2 years ago and obtained a stormwater permit so there has been a lot of grading on site in accordance with that mass grading plan.

Mr. Gasior states that he is thinking of the stormwater detention fee and how we calculate that in a Developer Agreement and are they going to be able to show a certain dollar amount that covers cost stormwater detention.

Mr. Appell states that they do have those prepared along with the dedicated cost estimate for the roadway.

Mr. Gasior states it may be a little different, but we will work it out.

Mayor Jensen asked if there is an estimate as to the number of employees?

Mr. Jasinski states they are anticipating the building will hold approximately 150-200 people.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: “AYES” all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Final Development Plan/Improvement Plan for the Extension of Avon Commerce Parkway off Moore Road contingent on final engineering and legal approval. The vote was: “AYES” all. The Chair declared the motion passed.

9. Joseph Misencik, 2209 Holly Lane, Rezoning, PL20230057

Joseph and Christine Misencik of 2209 Holly Lane are requesting a positive recommendation to City Council to rezone a portion of Permanent Parcel 04-00- 015-108-043 from C-2-Central Business French Creek District/R-1-Single Family Residential to R-1-Single Family Residential for an existing single-family home.

Christine Misencik, 2209 Holly Lane, Avon, Ohio 44011

Mrs. Misencik states they are requesting a positive recommendation to City Council to rezone a portion of Permanent Parcel 04-00- 015-108-043 from C-2-Central Business French Creek District/R-1-Single Family Residential to R-1-Single Family Residential for an existing single-family home. The original intention was for this parcel to be zoned completely residential when the parcel was split back in the late 1990's. For whatever reason there was an oversight on the City's zoning map and the zoning map was not updated and the zoning line of today did not catch up to the parcel. When their property was split back in 1998 to allow for their residential home to be built it was surveyed by J & R Engineering with the commercial and residential lines clearly marked (which she has). The plot plan was stamped and approved by the City, building permits were issued and a residential home was constructed, which has remained on this parcel for the past 23 years, operating and paying taxes as a fully zoned residential parcel. Every shred of evidence that exists shows that this parcel was clearly meant to be fully zoned as R-1. It does not make sense that a city would have a parcel of land where a dividing line runs directly through the center of a home splitting into commercial and residential. There is not a zoning code that would allow for this exception. You can clearly see that the intent was for it to be fully zoned R-1. The original owner of the land at that time is here tonight (Marilyn Misencik) and she can go on record and state that the original intent was for this parcel to be zoned R-1 at the time of the lot split. When Joseph and Christine Misencik recently learned, much to their surprise, that the zoning

map had not been updated they came to the city and asked that it be corrected. They assumed that this would be an easy task, as all the research and historical data shows the original intent was for it to be zoned R-1 and they thought the obvious thing to do would be to correct the zoning map. They were also surprised that this was put in front of the Planning Commission as the Board of Zoning and Building Appeals is meant to hear and decide zoning issues and concerns. However, Mr. Gasior did address that to her. In addition, the funeral home that is the bordering property has also operated under the assumption with no adverse impact on their business that the lot line was residential to commercial for the past 23 years. This is evident as the proper commercial to residential setback was put in place on the northern bordering line when the parking lot addition was completed years ago. Once again, she would like to restate that it is clear and obvious that the original intent of the parcel was to be zoned R-1. It would be clearly impractical for it to be zoned any other way. We are requesting that this matter be given a positive recommendation to City Council.

Mr. Gasior states that Ms. Fechter and he have looked at this project and have seen many of the documents that seem to support the argument that Mrs. Misencik just made. They know from working with the city over the years that errors have been noted on the zoning map. The Zoning Map is an effort to put together and Mr. Cummins is doing one right now. We are trying to identify any parcels that may have been mismarked. Mr. Gasior further states what we have here is a situation where from all the records that he has seen is a parcel of land that has been clearly mismarked and could even say miscolored because that is all that is identifying this C-4 property. When you look at the documents behind the color you realize that the color may not be correct. He further states we have asked the Misenciks to come forward and rezone the property and clear up the confusion once and for all. However, he would like to explore this further because if it is an error the property is already zoned residential and why would we consider rezoning it when it's already zoned residential. He never thought there would be the controversial arguments that have been made from the neighbors regarding this zoning when it appears from the records, we have viewed that 23 years ago everyone knew what was happening here.

Mr. Gasior states that the previous owner could tell us what the intent of the parties was at the time the property was conveyed to the current owner in that zoning. He would like to look at this a little closer and review it. He doesn't want this body to recommend a rezoning and then Council rezones a property that has already been rezoned and just not colored correctly on the map.

Mrs. Misencik states she understands, and zoning was done differently back then.

Mr. Gasior states to some extent we still do it that way. There was a rezoning last month at the Planning Commission. Mr. Romanello wants to rezone property that sits within the purple box (he is referring to the map hanging in Council Chambers) at the interchange where it says C-4. We want to be precise as to where he wants to rezone because there are some other implications to that, and we want a legal description of that property and when that property goes through and gets rezoned, we will have to carefully color the map to make sure everybody knows what is now C-4 property not R-1. He would like to investigate this

further and postpone this until the December Planning Commission meeting. The other issue that came up late this afternoon regarding Joseph Misencik being here in person is because of a restraining order. He spoke to the attorney for Joseph Misencik. He thinks it would be in everyone's best interest if Mr. Misencik could be here in person. Mr. Gasior hopes that the attorneys that represent the parties could petition the court to allow him to be here in person to present whatever arguments that he needs to present along with Mrs. Misencik.

Mrs. Misencik states that she believes they have said all that they want to say and it's clear.

Mr. Gasior states Mr. Misencik is the applicant along with Mrs. Misencik and they are the ones that are supposed to be here and yet we have someone showing up who also has a right to be here as well. The most important people to be here are the applicants. Mr. Gasior further states that Ms. Fechter and him will review this further and perhaps there will not be a need for Planning Commission to act but maybe it's something that Council would take under advisement and correct by way of an ordinance to correct the zoning map of the city to reflect the fact that a parcel of land which is currently identified on that map by a color is commercial when in fact we should order the engineer to change the color.

Ms. Fechter asked Mr. Gasior if we should have Mrs. Marilyn Misencik state on the record what her intention was at the time of her and her husband.

Mr. Gasior says yes if she would like to make a comment, he would appreciate it.

Mayor Jensen asked Mr. Cummins regarding the property, if there is a retention on the one piece of land, and was that to be shared with the funeral home or does it have its own retention?

Mr. Cummins states that everything that he has seen is that the retention is with the subdivision that was constructed.

Mr. Misencik speaks through face time indicating that the retention easement was given to his parents for the original intent to the original section of the parking lot and no further development to put anymore water into that retention basin and yes, it is for Holly Lane only and no further development for Misencik funeral home whatsoever. They did studies with the city and said it could take 8 percent more, 8 percent more water is giving people on Holly Lane situations that they never had since they have been there for 30 years. He doesn't want to be the cause of that because someone else is allowing someone to develop their property and tie into something that they should not be tying into. Any development further over there has to be either tied into Detroit or they could put their own holding system in and take care of their water entirely on their own.

Mayor Jensen states that Mr. Misencik adjusted that retention in terms of adding structures or landscaping.

Mrs. Misencik states that they own that parcel of land and can do whatever they want.

Mr. Cummins states to correct one thing, there is drainage coming from the adjacent commercial site into that basin currently. He believes that it was originally constructed for

the subdivision, but there is drainage that comes there through the storm sewer systems currently.

Ms. Fechter states she has minutes from years ago about the parking lot expansion, and that the basin could accommodate it and that the current basin could not accommodate the expansion of the funeral home. There would have to be further discussion about an expansion or having it elsewhere.

Mayor Jensen states that with having adjustments to the basin as it is now, he knows that Mr. Cummins looked at it before because it was requested that he look at it. Mayor Jensen asked Mr. Cummins if the adjustments that have come back have some kind of engineering that shows adjustments, is that correct?

Mr. Cummins states that is correct and if there was to be more water proposed to be contributed to it there would be legal aspects to investigate with permissions and property rights and then also engineering aspects about the capacity of the basin and its operation.

Mayor Jensen states if adjustments were made to the basin what would happen there. Mrs. Misencik says that it's their retention pond they can do anything they want to it.

Mr. Misencik on facetime responds and says no.

Mr. Cummins states that back to his original point, he thinks it was constructed for the subdivision and if there are changes made to any approved areas that are contributing to it, that use has to be maintained. It can't just because a third entity now owns it then it cuts off the original intent, with any previous approved uses.

Mr. Gasior states this is something we can discuss at another time because we are just talking about a color on a map.

Marilyn Misencik, 3511 Long Road, Avon, Ohio 44011

Marilyn Misencik states they moved the property line to the funeral home further north to give more property to Joseph and Christine Misencik, because they did not need it and they already had their parking lot at the funeral home, and it was wasted land. They moved it back and put trees up for a barrier to block the headlights but now they have been trimmed so far so all the headlights are shining into Joseph and Christine Misencik's house. This happened before 1996. Back then she drove in the back on Holly Lane and weeds were very high and she wanted to see who they would have for a neighbor. She saw a for sale sign in the weeds and she didn't know who owned it and she asked her brother who owned it, and he said it was Mr. Schaefer, they were the developers at the time. Then she saw the retention basin and it was not maintained. She was reading the forecloses in the paper and saw that property with the retention basin was getting foreclosed on. She bought it because she did not want to see that mess in the basin any longer.

Mr. Gasior states that is not the first time someone has built a development and allowed the retention pond to fall into disrepair.

Marilyn Misencik states they did extra to clean it and take care of the retention pond.

Mr. Gasior thanked Marilyn Misencik for speaking. Ms. Fechter and himself have gone through a few things to see what the intention of the zoning board at the time was. He knows they created the French Creek District. The bottom line is he thinks she would agree that it was always intended for that to be zoned for that property.

Marilyn Misencik states she really thought it was.

William Greaney (Misencik Funeral Home) 3511 Long Road, Avon, Ohio 44011

Lucy Greaney (Misencik Funeral Home) 3511 Long Road, Avon, Ohio 44011

Mr. Greaney states he has a few things to bring up about the retention basin. The flow has changed, the capacity has changed, those are the 2 more important things that have changed.

Mr. Gasior states that is not relevant to the issue of zoning.

Mr. Greaney states that it was brought up today. He states that the zoning could not be changed because of French Creek reasons.

Mr. Gasior states the French Creek District would not have permitted a single-family dwelling.

Mr. Greaney states that is correct, but the “Irwin Development” were the ones that owned it and they were told they could not build on it. It went through Council, and it might have been approved, it was only for what was there. The house originally was supposed to face Holly Lane, that is the only house that does not face Holly Lane. It faces the rear of the business, that is where it was supposed to be. He spoke with the gentlemen that did the plans and at the last minute they had to hire a draftsman to change the house to reverse the plans. The intention was never for the house to be over that far.

Mr. Gasior states if it was to be built to face north, it would have been in the C-2 district-commercial, and a permit would not have been issued to construct a single-family home in that district.

Mr. Greaney agrees and says the lot is half commercial. The half that isn’t is where the house was supposed to go, and the footprint was changed. He purchased the property on the other side, and he made that purchase long after with the intent to build a crematory and he needs all the space he can get. He does not want to abide by Mr. and Mrs. Misencik’s setbacks.

Mr. Gasior states that is a different issue.

Mr. Greaney states that would be changing the zoning.

Mr. Gasior states he doesn’t know if that would be changing the zoning. We are talking about the zoning having already been changed.

Mr. Greaney states when he purchased that property next to it, it showed that it was C-2.

Mr. Gasior states that was only by a color on a map.

Mr. Greaney says, “what else do you need.”

Mr. Gasior states you need the ordinance, you need to see what the legal description was of the property. That is why he said he needs to investigate this further. What if we discover that the property was already zoned at one point in the 1990’s to be residential. For whatever reason the engineer at the time who could have been Peter Zwick or could have been Mike Bramhall but whoever the engineer was at the time that colored the zoning map, which do not include legal descriptions of what should be colored, red, green, or yellow, that would be in the ordinance. If the ordinance says it should be colored green, then it is simply an error on the part of the engineer who colored the map. It is zoned residential.

Mr. Greaney states that it was zoned residential but only half of it.

Mr. Gasior states that they are going to look at the record and if only half was zoned residential and that half runs through the middle of the house then he thinks it’s logical for this body to recommend to City Council that the other half that goes through the house gets rezoned. It would not make sense.

Mr. Greaney says to Mr. Gasior to you it does but for him he is losing land.

Mr. Gasior states that Mr. Greaney would not be losing any land, he understands his position regarding his setbacks, but he doesn’t have an issue yet because he hasn’t brought forth a project.

Mr. Greaney states he purchased the property.

Mr. Gasior states he understands that he purchased the property, but he hasn’t brought forth a project on his commercial property. He could go to the Board of Zoning Appeals and get relief from those setbacks and the history of what has been going on may play out to your advantage when it comes time to get a variance. What we are talking about right now is simply correcting something and doing the right thing by a property owner who has parcel of land that should not be zoned half residential and half commercial. It should just be zoned residential.

Mr. Greaney states it was built on the residential.

Mr. Gasior states the Building Department and the Zoning Officer at the time would have never issued a building permit for the house to go on property that was not zoned properly.

Mr. Greaney states they issued it to go on the half and the house is supposed to face Holly Lane like all the other houses.

Mr. Gasior states we will go back and look at the record and it still doesn't make sense, it's a lot for a single-family home and why wouldn't you zone the entire parcel for a single-family home. Why would you split the zoning in that situation.

Mr. Greaney states because of the business.

Mrs. Greaney states because it's commercial-to-commercial right now.

Mr. Gasior states he understands that but it is all over the place and if you have a basis upon which to be granted relief you go in front of the Board of Zoning Appeals and state the history and say he is going to put maybe a parking lot and would like to expand it and would like to go to a certain setback and need the Board of Zoning Appeals to grant relief and it needs a variance. He states the set back is 35 feet versus 10 feet or 15 feet. They may not grant it.

Mrs. Greaney states they have paid a lot for a piece of property that could potentially be lost. They came to the Planning Commission because originally it was stated if the home burned down, they could not rebuild and then Mr. and Mrs. Misencik are worried about a crematorium in their front yard.

Mr. Gasior states that if the city made an error and you relied on that error, you could potentially talk to legal counsel and find out where you stand on that issue. He has an inclination where the city stands on the issue. Mr. Greaney could ask legal counsel where he stands if the city miscolors a map because that is basically what we have here, and you relied on that incorrect color on the map when you purchased your property.

Mrs. Greaney states the community put a kibosh on the plans for ABC Brewing Company.

Mr. Gasior states that no one put a kibosh on plans for ABC Brewing Company. They wanted to build a structure and have a certain number of seats in the structure. They were told they could build the structure and work out an arrangement with Mr. Greaney so that they could have adequate parking and shared parking with the funeral home, so that he could have the capacity that he wanted to have for that building. They never sent plans to reflect that. He thinks Giovanna Bremke put together an agreement which we looked at and there were no obstacles for that business to go forward.

Mrs. Greaney states she heard a lot of things about headlights, people were concerned about headlights and that is a concern for their business as well. She also states people have concerns about trees that have been trimmed.

Mr. Gasior states the residents on Holly Lane were satisfied because Mr. Hawk said he would plant trees as a buffer. He had the right to proceed with his project and he was ready to proceed, he just wasn't going to be able to fill the building to its capacity if he didn't have adequate parking. That is probably what made him rethink his plans. Mr. Gasior can't emphasize enough that Joseph Misencik has a parcel, and he has a house on it, he can't find anything to indicate that anyone intended to have a half being commercial and half being

residential. The property line is where it's at and he has no use. He can't do anything in the section of commercial property.

Mrs. Greaney says she doesn't know what Mr. Misencik can do but she knows what she can do.

Mr. Greaney says Mr. Misencik does whatever he wants. He put up a fence with no permit. He puts things up with no permit and they get permits.

Mr. Gasior states, is he going to put a restaurant there on the commercial section?

Mr. Greaney states that Mr. Misencik has also assaulted him.

Mrs. Greaney states the Mr. Misencik took it upon himself to change the footprint of the house over onto the commercial section.

Mr. Gasior states the house has already been built and the house has been there for years. He states Mr. Greaney is making it sound like the house was just built last week.

Mr. Greaney states he could have put the house on the residential section of the parcel.

Mr. Gasior states what if Mr. Misencik thought the whole parcel was residential.

Mrs. Greaney states she thought she bought a piece of property that was all commercial and now with setbacks and all that now she thinks she has an issue. She states they own the property to the north and west.

Mr. Gasior states he can see the coloring (he is referring to the photo on the screen), he can see the city's pool, the funeral home parking lot and the area to the west which is where Mr. Hawk was going to build. He sees Mr. Misencik's house, which is in the middle, and he sees the trees and the purple lot lines. All we are talking about here is the parcel of land should be zoned R-1 up to the end of the property line. He doesn't understand what the problem is. If there was an error made, we will correct the problem. Mr. Gasior asked Mr. Greaney if he understood.

Mr. Greaney responds no.

Mr. Gasior says it is just affecting his property and he asked Mr. Greaney how we are affecting your property.

Mrs. Greaney states we may approach you for setbacks and we may this and that. She did not buy the property for "mays". Commercial to commercial versus commercial to residential. If she does lose 35 feet, then the piece of land she paid a lot of money for is useless.

Mr. Gasior points to the piece of land in the photo.

Mrs. Greaney states that is correct.

Mr. Gasior asked do you think you can't use that for anything?

Mrs. Greaney states that if she chooses, she can pave her concrete up to the property line. Can I do that, she asked? She asked, up to commercial to commercial, whatever that setback is. She says she paid a lot of money for a business and future expansion of it.

Mr. Gasior states the business has been there and the house has been there.

Mr. Greaney states they just bought that land about 14 months ago to build a crematorium.

Mr. Gasior states that is another issue.

Mr. Greaney states that will be an issue and that is why are here. He doesn't care what Mr. and Mrs. Misencik do with their land as long as he doesn't have to abide by them.

Mr. Gasior asked Mrs. Clements about setbacks for commercial to residential and commercial to commercial.

Mrs. Clements states commercial to residential is 35 feet. C-2 French Creek is 5 feet.

Mr. Gasior states the funeral home wants to go 5 feet to that property line.

Mr. and Mrs. Greaney respond yes.

Mr. Gasior states that the property will be zoned residential so you will only get 5 feet. It looks like you have some buffers, you can expand the parking lot.

Mr. Greaney states there is a drive into the other property.

Mr. Gasior states there are trees on your property?

Mr. Greaney responds yes, all those trees.

Mr. Gasior states if you come in and want to go 5 feet and Mr. Misencik's property gets rezoned then you will need to go to the Board of Zoning Appeals and request a variance.

Mrs. Clements asked what kind of setback we are talking about, are we talking driveway setback or building setback. For a building setback it's 35 feet and for a driveway it's 5 feet. Mr. Gasior states the opening is not very big.

Mr. and Mrs. Greaney state they are aware of that and are working on that. We don't use that access drive very often only for an emergency and we don't use that as everyday access. It's not a driveway right now.

Mr. Gasior states with the history of what has taken place here you can take your issues to the Board of Zoning Appeals and ask for relief from the more stringent setbacks that would be up against residential. If you file an application for a variance with Board of Zoning Appeals, you can explain the history of the property; you can explain how everything got split and then you ask the Board of Zoning Appeals to take that into consideration and you may get relief or get some relief or maybe you get all of it.

Mr. Greaney states the way it sits now we don't have to do that.

Mr. Gasior states that the record seems to indicate that the property should have been rezoned if it wasn't already back in the 1990's. Mr. Gasior asked, "can you see this looks like a mistake".

Mr. and Mrs. Greaney state the mistake is where the house was put and where it was built and how it was built and where it was moved to.

Mr. Gasior asked where would you see a house built on a residential and commercial parcel anywhere in the city?

Mr. Greaney says why they should be the ones to suffer for it.

Mr. Gasior states that before you bought that property maybe you should have gone to the city and said you were interested in buying this property, but it looks like it's half commercial and half residential, will I have problem.

Mr. Greaney states he knew all along.

Mr. Gasior states he knew but did he inquire at the city.

Mr. Greaney states yes.

Mr. Gasior states he inquired about buying land with that type of zoning on the house where the property line goes through the middle of the house?

Mr. Greaney states no he just inquired about what the zoning is now, commercial to commercial.

Mr. Gasior states to Mr. Greaney that he didn't find it odd that the property line goes through the middle of someone's living room.

Mr. Greaney states he found it odd that someone would build a home on commercial property.

Mr. Gasior states the law is designed to do justice and it's not designed for people to take advantage of one another. He thinks to do justice here, the correction should be made. We are

not going to do anything now, we are going to study the problem and come back to the December Planning Commission meeting.

Mr. Greaney states if there was a zoning done back then, there are a lot of things to do before you change a zoning, you have to have signs out there for 60 days.

Mr. Gasior asked where that is stated in the code.

Mrs. Greaney states the whole purpose of this issue was if the home burned down but at the last meeting it was said if the owner tries to sell the home there will be a crematorium in the front yard. She asked are two different issues being brought up.

Mr. Gasior states that is a separate issue and in the language of law they call it ripeness. We are not ripe to decide that issue right now. The only issue is, was there a mistake and if there wasn't the applicant will ask for a rezoning and the process will go forward. He doesn't know what this body will recommend to Council, and they could negatively recommend it but it's ultimately going to go to Council and Council will have to decide whether to rezone it if it has to be rezoned. Again, we will be looking at all that documentation and presenting it at the next meeting. Again, you are not being prejudiced to any extent until you are coming in with your concrete driveway or your crematorium and then you can raise the issue.

Mrs. Greaney asked after it's rezoned then she has to back pedal, is that correct?

Mr. Gasior says no you will need to come to Planning Commission because you are a special use in that zoning district as a funeral home so if you want to add a crematorium, you want to expand your parking lot or do updates you need to get an amended special use permit. That is a result of the 2001 code 1282.10 and what happens when you have a use that has been there prior to 2001 which the funeral home was and now after 2001 is identified in the code as a special use you have to get a special use permit to expand.

Ms. Fechter states that the property does have a special use for it now, when they do the parking lot expansion, they would need to amend that.

Mr. Gasior states that then you amend the parking lot expansion in that special use permit. If you want to put a crematorium in, you come in front of the Planning Commission, and they make a recommendation, and it goes in front of council.

Mr. Greaney states he believes the crematorium is sub headed under the funeral home.

Ms. Fechter states our code separates it. The special use permit says for a funeral home; does not include a mausoleum or a crematorium. We would have to look to see what section that would be in.

Mr. Gasior states again we are getting into issues that have nothing to do with the mistake that was made on this zoning map.

Mr. Greaney states he disagrees. He thinks it has everything to do with it.

Mr. Gasior states to you it does, and he understands that but legally this body is not trying to solve your problems in the event you decide to build a crematorium, or you decide to expand your business. All this body is here to do today or next month is to decide what mistake was made and should that property be rezoned completely R-1 that's all and a recommendation is made to City Council and then all seven council members will vote.

Mrs. Greaney states whatever you come up with they are allowed access to that paperwork.

Mr. Gasior yes it will be presented.

Mr. Greaney states at that point if we have an issue the city is liable not the adjacent landowner if we are affected by this. They purchased this other property with the purpose of building this crematory. When we bought it, it was commercial to commercial.

Mr. Gasior states if you think the city is liable in that situation then you do what you've got to do. That is why we have insurance. I do not particularly think there is much there. I am not going to prejudge that.

Mr. Greaney states it will make their 30 feet of property useless.

Mr. Gasior says not until the Board of Zoning Appeals tells you that you can't do that.

Mr. and Mrs. Greaney state that after that it will be useless. Mr. Greaney asked if he can have the minutes of this meeting.

Mr. Gasior states yes, he can get the minutes of the meeting.

Ms. Fechter states we have the minutes from last month that were approved tonight. We won't have the minutes from tonight until next week, but we can try and get you some sort of unofficial excerpt that will give you something to look at.

Mayor Jensen states that there is a recording.

Mr. Gasior wants to point out that he is asking the body to move this to next month because Ms. Fechter and myself want to go through several documents which we will share with you.

Mr. Greaney states he has documents to share as well.

Mr. Gasior states if he has anything then he should bring it because we do want to look at it. If there is no rezoning necessary, we should resolve this and take it off the agenda and he will go to council and tell them to correct the drawing and that is all that is, a correction of the drawing.

Mr. Malloy moved, seconded by Mayor Jensen, to table the Rezoning of 2209 Holly Lane until the December 20, 2023, Planning Commission Meeting. The vote was: “AYES” all. The Chair declared the motion passed.

COMMENTS

Mayor Jensen, No further comments

Mr. Malloy, Happy Thanksgiving

Mr. Fitch, No further comments.

Mr. Radcliffe, Enjoy the holiday.

Mr. Cummins, Happy Thanksgiving

Ms. Fechter, Happy Turkey Day

Mrs. Clements, No further comments

Mr. Streator, No further comments.

The audience, Happy Thanksgiving

ADJOURN

Mr. Malloy moved, seconded by Mayor Jensen, to adjourn. The vote was: “AYES” all. The Chair declared the motion passed. The meeting adjourned at 8:47p.m.

Carolyn Witherspoon, Chair

Susan Pintz, Planning Commission &
ZBA Secretary

Date