

## BOARD OF ZONING APPEALS

### MEETING MINUTES

**JANUARY 28, 2016**

#### AGENDA

- 1. Kittrell Residence 5051 Brand Road  
15-081AA Administrative Appeal (Overturned 5 – 0)**

The Chair, Brian Gunnoe, called the meeting to order at 6:30 p.m. Other Board members present were Patrick Todoran, Jamie Zitesman and Rion Myers. Martha Cooper arrived at 6:35 p.m. City representatives present were Donna Goss, Tammy Noble, Jennifer Rauch, Stephen Smith, Jr., Logan Stang, and Flora Rogers.

#### Motion and Vote

Mr. Zitesman moved, Mr. Todoran seconded, to accept the documents into the record. The vote was as follows: Mr. Myers, yes; Mr. Gunnoe, yes; Mr. Todoran, yes; and Mr. Zitesman, yes. (Approved 4 – 0)

#### Motion and Vote

Mr. Myers moved, Mr. Zitesman seconded, to approve the November 19, 2015, meeting minutes. The vote was as follows: Mr. Todoran, yes; Mr. Gunnoe, yes; Mr. Myers, yes; and Mr. Zitesman, yes. (Approved 4 – 0)

#### Communications

Tammy Noble said there will be a training opportunity provided for all of the Boards and Commission in the following months by Greg Dale but the date has not been determined.

#### Administrative Business

Mr. Gunnoe swore in anyone that intended to address the Board, including the applicants and staff.

- 1. Kittrell Residence 5051 Brand Road  
15-081AA Administrative Appeal**

The Chair, Brian Gunnoe, said Stephen Smith, Jr., with the law director's office will outline the procedures for this evening's meeting.

Stephen Smith, Jr. stated this case was reviewed by the Architectural Review Board on August 4, 2015, in which the applicant applied for a demolition certificate and was denied by a vote of 4 – 1. He said the applicant is here under an Administrative Appeal outlined in Dublin's Codified Ordinances. He stated the Administrative Appeal was filed by Mr. Loveland on behalf of the applicant. He added Mr. Loveland sighted seven grounds for his appeal and the last three raised constitutional issues that he found to be beyond the realm of this Board.

Mr. Smith highlighted Code Section 153.235F, which are the regulations regarding Administrative Appeals to the Board and included in the packet the Board received. He indicated an Administrative Appeal is different than the cases the Board normally reviews. He explained the BZA is tasked with determining

whether the previous administrative body (ARB) followed the proper requirements and standards in the Code. He said in this case, the ARB was applying standards found in Zoning Code Sections 153.176, and 153.177. He indicated there are two sets of standards in applying for demolition. He said economic hardship or unusual circumstances can be argued or the applicant must meet two of the four criteria. He read the four criteria as follows:

- 1) The structure contains no features of architectural and historical significance to the character of the area in which it is located.
- 2) There is no reasonable economic use for the structure as it exists or as it may be restored and there exists no feasible and prudent alternative to demolition.
- 3) Deterioration has progressed to the point where it is not economically feasible to restore the property and such neglect has not been willful.
- 4) The location of the structure impedes the orderly development, substantially interferes with the purposes of the District, or detracts from the historical character of its immediate vicinity; OR, the proposed construction to replace the demolition significantly improves the overall quality of the Architectural Review District without diminishing the historic value of the vicinity or the District.

Mr. Smith said he understands the BZA was provided the transcript of the ARB hearing and both the applicant's presentation and Staff's presentation was focused on those four criteria mentioned above. He stated these criteria are similar to those found in §153.177, which covers economic hardship. He explained it comes with four factors, summarized below:

- 1) Denial would result in a substantial reduction in the economic value
- 2) Denial would result in a substantial economic burden
- 3) No responsible alternative exists
- 4) The owners have not been able to sell the property or they may argue unusual compelling circumstances.

Mr. Smith said the Code is clear that the applicant bears the burden of establishing how the criteria are met in order to obtain permission to demolish the structure on the property.

Mr. Smith said the BZA has the ability to reverse or affirm the decision of the ARB. He indicated the BZA can make any decision that could have been made at the ARB level, which is more than what is seen in an appellate type setting. He explained the BZA could approve the demolition with conditions or impose the one-year waiting period.

Mr. Smith said if the Board does not have any questions then Mr. Loveland was prepared to address the Board.

The Chair said he had no additional questions. He asked that Flora Rogers record that Martha Cooper is now present.

William Loveland, legal counsel representing the applicant said this is an unusually complex case. He indicated it is his belief that everyone in the United States has the obligation to uphold and respect the Constitution of the United States and he will be making those arguments.

Mr. Loveland asked what public interest is being served by denying the demolition of a totally destroyed home, well beyond its useful life. He stated the home is over 100 years old, it has not been maintained for many years, and water has permeated the flat roof and walls. He added the home sits on a fieldstone

foundation, much of which does not even have mortar and one of the floors is lower at one end than the other by four inches.

Mr. Loveland said they believe the ARB has made a terrible mistake. He stated they denied this application on the basis of absolutely no evidence except for evidence in support of making the findings that Code requires. He said the decision is contrary to the laws of Ohio and the United States and it is economically ruinous. He noted Don Herron and his brother are present, both in their mid to late 70's and have been denied their inheritance; all value of this property has been taken away. He reported the property has been vacant and on the market since 2012 when Mrs. Herron (last resident) died. He said they have had one interested person who intends to sensitively redevelop the property with a single-family home and maintain the five-acres but that has been denied. He indicated the only evidence that was presented to the ARB was evidence presented by an architect, contractor, and an engineer. He said all three have said by rehabilitating this home, only the hand-made staircase with steps only five-inches deep and some woodwork could be saved. He said by restoring the home there would be significant cost. He noted as an old home, there is one bathroom that can only be accessed by going through the master bedroom. He concluded the home is falling down and the property has outlived its useful life. He added in order for anyone to rehabilitate this home they would have to spend at least \$600,000, plus the rough value of \$300,000 to \$350,000, which makes it a million dollar home with an outdated floor plan. He indicated this home will remain vacant until it falls down.

Mr. Loveland indicated there was wide-spread publicity when the ARB disapproved the demolition request. He said there has been no interest (public or private) in this property. He said this home was placed on the Historic Register by Don Herron's father, long been deceased, because at the time, Dublin wanted the property and they wanted to demolish it when it was in much better shape than it is today to use the property for public purposes. He said this is the only substantial asset of the trust since Mrs. Herron passed. He said the Herron's have been paying taxes and maintenance expenses to the extent possible to prevent foreclosure; the property cannot generate revenue.

Mr. Loveland noted the Planning Report states the home is inhabitable, unusable, and is falling down. He said the only folks that have provided any kind of reliable evidence in this case have uniformly said, this house cannot be rehabilitated on a reasonable economic basis. He said the style of this house has been discussed as being Italianate. He said each side of this house is different - the front windows do not match the side windows showing it has been added on over the years and the expectation was not that this house would last 120 years. He said there are no vapor barriers to stop moisture from coming into the walls and beams, there are gaps from the floor to the roof, and there are termite problems, etc.

Mr. Loveland said the key pieces of evidence in this case are the reports experts have provided, and presented by the applicants, Mr. and Mrs. Kittrell. He said the letter from Brian Wiland, architect and home restorer, stated he refused to prepare a budget for restoring this house because it is so bad and there is no way to predict the cost to restore this private property. He said Bill Lett, with 40-plus years of construction management experience restoring historic structures all over the United States said restoration cost without addition or change would be \$700,000.

Mr. Loveland said the property is 260 feet from the street and there are trees that block it. He said the only potential historical attributes are some masonic symbols carved in the woodwork on the interior of the home. He said the only unofficial use and positive impact of this property is that it is visible from the street behind the trees. He said those opposed to the demolition have not provided any evidence, substance, or proof of what they have presented. He said all of the neighbors have testified the home should be demolished.

Mr. Loveland said there are some very serious issues and noted the various materials provided in the packet to the Board.

**Exhibit 1** – He said is part of the Constitution of the United States of America. He read the Fifth Amendment - "No person shall be deprived of property without due process of law nor should private property be taken for public use without just compensation." He said no compensation has been awarded in this case. He said denying a demolition permit for this un-restorable home is a taking of property. He said the Fourteenth Amendment makes the Bill of Rights applicable to the states – "Nor shall any state deprive any person of property without the due process of law." Clearly, he said this is a deprivation of property rights.

**Exhibit 2** – He said are some excerpts from the Constitution of the State of Ohio. "All men are by nature free and independent and have certain inalienable rights among those which are those of acquiring, possessing, and protecting property." He said "Private property shall be ever held inviolate but subservient to the public welfare. What private property shall be taken for public use, compensation therefore shall first be made."

Mr. Loveland said there was an issue as to whether or not you could consider the Constitution. He referred to the BZA Charter, §2.01 states "The City shall have all powers possible for a city to have under the Constitution and laws of the State of Ohio." He said the purpose of the Architectural Review Board, as stated in §153.172 - "Promote the educational, cultural and economic well-being of the community through the preservation and maintenance of the District." He noted this property is not in the Historic District, but a single, isolated piece of property.

**Exhibit 4** – He said is the Planning Report.

**Exhibit 6** – He said is the presentation that Ms. Kittrell provided to the ARB.

Mr. Loveland went on to note each exhibit included in the packet. He said the Herron family has great roots in this town as they settled in 1950. He concluded by saying the ARB's decision has really hurt this family as they want to sell this property and get on with their lives.

The Chair asked Mr. Loveland to begin his questions to the witnesses.

Mr. Loveland asked how long Ms. Rauch has worked for the City of Dublin and if she resided in the City. Ms. Rauch replied she has been employed with the City since August, 2004 and does not reside in Dublin. She said she has a Master's Degree in City and Regional Planning and a Master's Degree in Landscape Architecture and an undergraduate degree in History. She said she did not have any qualifications as an architect, engineer, or an expert on matters of construction or restoration. She affirmed she was the primary author of the Planning Report but it was a collaborative effort.

Mr. Loveland asked who is considered Planning and Building Standards. Ms. Rauch answered it was herself, the Planning Director, and representatives from the Building Standards Department, including the Chief Building Official. She said they based their review and recommendation on the criteria. Mr. Loveland said the Report states "Planning and Building Standards" make findings. Ms. Rauch clarified that is referring to the different divisions as opposed to stating "Staff". Mr. Loveland asked her if she was able to identify any written standard that supports the denial of this application. Ms. Rauch restated the review was based on the review criteria in the Code.

Mr. Loveland asked her if she found the property to be inhabitable. Ms. Rauch said the statement in the Planning Report is based on the narrative provided by the applicant stating the home is uninhabitable. She said the review of the narrative and addendum indicates the property is not habitable. She added she was referring to evidence provided by the applicant.

Mr. Loveland asked Ms. Rauch if she was familiar with the Dublin Zoning Code to which she answered affirmatively.

Mr. Loveland noted the exhibit that shows excerpts of the Dublin Ordinances. He pointed out Zoning Code §153.230 and asked her if she was familiar with it. He indicated it defines the powers and duties of the Administrative Officer, which is staff. He asked Ms. Rauch if this describes the duties and powers of her office, as an employee of the City of Dublin. Ms. Rauch said she did not know. Mr. Loveland pointed out this is the only section of the Code that talks about what powers staff has. He asked her to show him in the Code where it gives staff the power to advise the ARB.

Mr. Smith said he finds this questioning objectionable. He said one of the points Mr. Loveland raised in his opening established Ms. Rauch is not an expert, architect, or an engineer and that she did not present evidence to support this. He said the premise is mistaken because at the ARB level, it was not Ms. Rauch's job to present evidence to support the non-demolition of the property; it is the applicant's burden to establish the criteria under the Code.

Mr. Loveland said the only evidence in the record is the Planning Report and Facebook posts.

Mr. Smith said it is the burden of the applicant (the client) to establish how the criteria is met. He said as Staff, Ms. Rauch prepares Planning Reports for various administrative bodies as part of her job duties. He said we did not bring her job description with us tonight but he is certain if he did, advising and gathering materials for administrative bodies would be within her job duties.

Mr. Loveland said this statute gives the Administrative Officer power to advise the Planning and Zoning Commission and to advise the Board of Appeals but it does not give staff the power to advise the Architectural Review Board. He said the findings are very problematic.

Mr. Smith said even if Mr. Loveland's argument is correct, which he disputes, and even if she did not have the power to advise as a staff member, she has the ability to render an opinion on matters that are before a City Board, as does anyone who shows up tonight whether they are a Dublin resident or not. He said we swore in anyone who wishes to speak.

Mr. Loveland asked Ms. Rauch if she was there as an Administrative Officer or was there as a representative of the public. Ms. Rauch answered she was there as a staff member. Mr. Loveland asked if a staff member and an Administrative Officer is the same thing. She said she did not know.

Mr. Loveland asked, with Ms. Rauch knowledge of the Code, if she could show him where it gives her the authority to advise the ARB. She said she did not know.

Mr. Loveland referred to page 13 of the Planning Report. He asked if the Planning Report was prepared before Ms. Rauch saw or considered any of the evidence that the applicant provided. Ms. Rauch explained the Planning Report is generated after reviewing all the information provided by the applicant.

Mr. Loveland asked her if she had the engineering report and the construction report. Ms. Rauch answered affirmatively. Mr. Loveland confirmed Planning's recommendation was disapproval and asked what the basis was. She answered the Planning Report is based on the narrative provided by the applicant and represents how they say they meet the criteria. She explained the findings of Staff are contrary to that narrative and material. Mr. Loveland affirmed that Ms. Rauch proposed the ultimate findings that the Board was to make.

Mr. Smith said he objects. He said Ms. Rauch is testifying that she took information from various sources including the materials submitted by your client/the applicant to develop a Planning Report that listed both sides of the issues and make a recommendation.

Mr. Loveland said it is our position that she did not have the authority and did not have any basis for making the findings. Mr. Smith said he disagreed with Mr. Loveland.

Mr. Loveland said Planning and Building Standards finds the significance of this property to be quite clear. He asked on what basis was that statement made and what facts support the finding that this property is significant.

Ms. Rauch noted that the Report states “there are very few structures of this design remaining in the City. These structures are important to the community and remind us of our past.”

Mr. Loveland asked what evidence shows this structure has an importance to the community and he asked how many times Ms. Rauch visited the property. She answered she went to visit it once as part of this application. Mr. Loveland asked how much time she spent at the structure. Ms. Rauch said they toured the inside and outside of the structure, taking less than an hour. She said she went in the basement.

Mr. Smith objected when Mr. Loveland asked Ms. Rauch pointed questions about her visit as she has stated she is not an engineer or an architect. Mr. Smith stated that Mr. Loveland is asking for an expert conclusion when the Planning Report is to provide general information to the Board.

Mr. Loveland said he is getting a lot of testimony of counsel but not a lot of testimony of the witness.

Mr. Loveland questioned the “public interest to be served” beyond the ability of someone driving by to see it behind the trees, 260 feet from the road by preservation of this house and denial of demolition. He asked if the public has any right to access it. Ms. Rauch stated it is private property. Mr. Loveland made the point that the public is not permitted on the property to notice the masonic symbols in the woodwork, etc. Ms. Rauch affirmed that this is one of very few properties in this part of the City that are historic thus making it significant. Mr. Loveland asked if she had any first-hand knowledge of the history of this property or if it was all hearsay.

Mr. Smith said Ms. Rauch is probably aware since it is in her Planning Report that it is placed on the Ohio Historical Inventory as of August of 1975 and the National Register of Historic Places as of 1979. Mr. Loveland asked if she knew why it was placed on the National Register of Historic Places to which she answered she did not. Ms. Rauch said she has done research and has the documentation regarding the listing. Mr. Loveland asked what made it historically significant. She again referred to her Planning Report where it states it is one of very few properties of this age and design and that is what makes it significant.

Mr. Loveland asked Ms. Rauch if she agrees that many restoration issues need to be addressed to which she answered affirmatively.

Mr. Loveland noted where Ms. Rauch stated in her report that Planning and Building Standards find that the documentation submitted and the results of the site visit are insufficient to demonstrate that demolition is the only alternative. He asked Ms. Rauch if she had any engineer, architect, or other construction professional provide her with input upon which to make that finding. Her answer was no.

Mr. Loveland asked if she had any specific disagreement with any of the facts stated in the structural engineers report. Ms. Rauch answered no.

Mr. Smith said we have established she is not an engineer.

Mr. Loveland asked Ms. Rauch if she had any dispute about the qualifications of the engineer. She said she did not know the answer to that question.

Mr. Loveland asked Ms. Rauch if she had any dispute over the opinion of the engineer that the cost of repair outweighs the historic significance. Ms. Rauch said she did not know the answer to that. Mr.

Loveland asked her if she just disagreed with that. Ms. Rauch reported the statement also says in the engineer's report that the current state of the house could be repaired. Mr. Loveland qualified that by stating it says if a tremendous amount of money was invested. Ms. Rauch affirmed that was the statement. She said our recommendation was that demolition was not necessarily the only alternative. Mr. Loveland noted one of the experts said for \$900,000 this house could be made habitable. He asked her if she found that to be economically reasonable. Ms. Rauch said she did not know the answer to that.

Mr. Smith objected.

Mr. Loveland read from the Planning Report "Staff respectfully disagrees and notes that the historic value to the community is worth the investment to preserve and restore it to its original character". He asked Ms. Rauch how Staff measured the historical value.

Mr. Smith said Ms. Rauch has answered this question when she already noted on several occasions to the questions that it is one of only a few houses outside the Historic District of this age. Mr. Loveland asked if the age is the only thing that makes this historically significant. Ms. Rauch said it was not; the age, design, and the significance of the original. Mr. Loveland asked if she agreed that the home had multiple design attributes. Ms. Rauch said yes and that was stated in the Planning Report. He said it is not typical of any one design. Ms. Rauch said the information provided is that it is Victorian, Italianate, and Queen Anne styles. Mr. Loveland asked if she knew of any other house that had that combination of styles. Ms. Rauch replied there are other structures within the Historic District that have similar features but obviously no two houses are alike.

Mr. Loveland asked if there is a level where the cost of restoration would far exceed any value increase. Ms. Rauch said she did not know the answer to that.

Mr. Loveland concluded Ms. Rauch's position is that the remote view has great value.

Mr. Smith said Mr. Loveland has asked this same question in different forms and Ms. Rauch has answered it. Mr. Smith said she has talked about the value of the property and the architectural style.

Mr. Loveland asked Ms. Rauch if she had any appraisal input to get to these conclusions. Ms. Rauch said her job is to look at the material provided and make a recommendation. Mr. Loveland confirmed that Ms. Rauch determined that all four criteria were not met based on everything that has been discussed. Ms. Rauch confirmed economic feasibility was not submitted for the demolition request.

Mr. Loveland referred to the Planning Report, which states "Planning and Building Standards agree the structure has suffered from deterioration and neglect" to which Ms. Rauch confirmed was true. He said she also states "she is not convinced the information provided demonstrates the deterioration has progressed to the point where it is not feasible to restore the structure". He asked her how she determined this. Ms. Rauch restated that demolition was not the only option. Mr. Loveland questioned the basis of her findings.

Mr. Smith said even in Mr. Loveland's testimony or opening speech, he indicated it could be repaired. Mr. Loveland said if someone is a billionaire, a billion dollars is not too much. Mr. Smith said he read the whole transcript of the first hearing along with all the documents and he never saw a billion dollars as the figure to fix this house. Mr. Loveland said there is some level where it is cost ineffective.

Mr. Loveland read "the property has been identified as vacant for several years by the applicant". Ms. Rauch confirmed that was the applicant's statement. He read "it appears minimal efforts have been made to protect the structure" and asked her what efforts had been made. Ms. Rauch said her knowledge is based upon information she was provided.

Mr. Smith restated Ms. Rauch has indicated the Planning Report is a compilation of information and she is telling Mr. Loveland that is the information that was provided to her.

Mr. Loveland read "while the effects of the lack of maintenance cannot be reversed". He asked if that was the opinion of Staff. Ms. Rauch restated it was based upon information provided.

Mr. Loveland said Ms. Rauch indicates in the next criteria that the narrative states that a new structure would fit more appropriately given the site location outside the District in the residential subdivision surrounding the site. Ms. Rauch stated the applicant's narrative states that. Mr. Loveland stated the property is located outside the Historical District and it is surrounded by relatively new residences and a new structure would fit.

Mr. Loveland questioned Ms. Rauch about the intent of this and again the value. Mr. Smith restated this has been asked and answered several times. Ms. Rauch confirmed the Planning Report is generated by Staff to make a recommendation. Mr. Loveland asked if the Planning Report was the official position of the City of Dublin. Mr. Smith said yes, the Staff speaks for the City of Dublin. Mr. Loveland asked if City Council agreed with Ms. Rauch. She replied City Council did not review this application. Mr. Loveland concluded the Planning Report is the personal opinion of Staff. Ms. Rauch said yes, this is our recommendation.

Mr. Loveland said the report points out the existing structure is located within close proximity to two additional historic properties. Ms. Rauch confirmed those addresses.

Mr. Loveland asked if this property had brick, stone, or stone walls. Mr. Smith said the City does not just preserve brick and stone. Ms. Rauch referred to Exhibit 3 under ARB's review, "shall promote the educational, cultural, and economic well-being of the community through the preservation and maintenance of the District and historic sites." Mr. Loveland asked how this piece of property promotes the educational well-being of the community. Ms. Rauch said it is a piece of history because there is a story behind the family that lived there and how this particular property came to be. He asked if this property has been the subject of any classes at schools or educational programs. Ms. Rauch said she would have no knowledge of that.

Rion Myers said in Leadership Dublin, they were provided a tour of Historic Dublin and this property was one of the houses that was spoken about; it was an educational experience. Mr. Loveland asked if the property promotes the cultural well-being of the community. Mr. Myers responded it did. Mr. Loveland asked Mr. Myers if it contributed to the economic well-being of the community and its citizens.

Mr. Smith said questions to the witness are more appropriate than to the Board. Mr. Loveland said he is getting testimony from the bench right now. Mr. Myers answered it brings great things to the City.

Mr. Loveland said he did not have any more questions.

Jessica Kittrell, 8888 Cruden Bay Court, Dublin, thanked the Board for the opportunity to present their proposed plans and the reasoning behind the demolition request of 5051 Brand Road. She said their goal is not just to remove a historic home but to find a way for the property to be maintained whole and honored throughout the future. She said her husband Thad is present and they are residents of Muirfield Village and have been for the past nine years. She said they specifically chose Dublin as the place to raise their four children. She said they opened their first restaurant in Dublin and hope to spend many years here both professionally and personally. She said they are not developers or real estate investors attempting to tear down a perfectly good historical home.

Ms. Kittrell said the home and barn at 5051 Brand Road, through no fault of their own, deteriorated to the point that is beyond what is reasonably feasible to restore. She said there are foundation issues,

significant structural issues with the entire west and north framing of the home, significant water intrusion, mold, and termite damage. She indicated the entire home requires replacement of all siding and reframing is likely to be needed once the walls are peeled back and the full extent of the water damage is revealed. She said neighbor Dave Jenkins gave testimony at the ARB hearing citing an attempt to help Mrs. Herron repair the siding on the north side of the home. She reported he stated that upon removal of the siding there was so much termite damage he had nothing to adhere the new siding to and was forced to improvise because Mrs. Herron could not afford to repair the major structural issues that she was aware of back then. Reframing the roof structure and shingles she said would also be necessary. She said the porch and rear addition need to be removed and properly built with adequate foundations. She indicated any restoration at this point would amount to nearly a replica home and not an example of a historic property. She said ultimately the question is - What is a reasonable cost to acquire a private homeowner to spend on restoration for the benefit of the City in the interest of preservation versus the historical value of this property and private property owner's rights?

Ms. Kittrel said this structure contains no features of architectural or historical significance to the character of the area in which it is located. She said this is the first criteria. Clearly, she said the house has historical significance or we would not be here tonight. She indicated the history as explained to them and in the Historical Registry, amounts to the age of the home – the style characteristics and the idea that the original owner, JC Thompson, was (as the Registry states) the first Master of the Masonic Lodge, which was located in Worthington. She said Italianate architecture became popular during the 1840's on the east coast and moved inland. She indicated Cincinnati, Ohio actually boasts the largest collection of Italianate style homes in an area called Over the Rhine. She said this style is not called out as a style indicative of the Dublin, Ohio area. She said the Historic Registry states stone farmhouses and stone walls became a local tradition and architecturally the buildings are significant for the typicality rather than their uniqueness. She further reported - here and there one sees a touch of ornament; practicality was valued more than display. While the home exhibits characteristics of an Italianate style home, she said it lacks window symmetry, the corbels do not wrap the house but only the façade, admission or craftsman style windows that were popular from the late 1800's and early 1900's that are in the rear of the home, which otherwise lacks any windows at all.

Ms. Kittrell presented pictures of classic Italianate style architecture and pointed out the arched windows and bay window and the corbels in an asymmetrical design on the Brand Road home. She presented the east side of the home's porch addition and noted the windows begin to change. She said the corbels do not continue on the east side of the home. She presented the rear addition that is at a different level than the home along with a classic Craftsman style. She presented the west side of the house where windows are popping or breaking and siding is buckling and the entire side is caving under the pressure. She said the interior floors slope in this location six inches. She presented the massive holes on the front and where animals and water have intruded for quite some time.

Ms. Kittrel said the very nature of the age of the home makes it valuable, however this does not exceed any cost in their opinion. She said she has read the only sentence written in the Register of Historic Places about the Thompson home. She indicated the stone walls seen throughout are mentioned numerous times however even the City with respect to historic stone walls along the current Dublin Road bike path extension had to draw a line with how many resources were appropriate in allocating to the preservation and did not replace the walls.

Ms. Kittrell said after analysis with Mark Wing of Wing Inspection Group, who has been in business for more than 20 years, and with the contractor with over a million square feet of historical restoration experience we collectively determined there is minimal historic value remaining. She said their concern now has become to keep the five-acre parcel intact with a single-family home made of quality materials that will withstand the next 100 years. She said it is the Herron's and surrounding neighbors wish that this happen as well.

Ms. Kittrell presented pictures of the beautiful land including Indian Fork Creek winding through the back part of the property. She showed pictures of the fawns that were there all summer long. She said there are many fruit and nut trees in the center that are in need of pruning and it would be a shame to see the parcel get divided.

Ms. Kittrell said under criteria two from the ARB there is no reasonable economic use for the structure as it exists or as it might be restored and there is no feasible and prudent alternative to demolition. She said the home cannot be lived in, rented, or used in its current state. She indicated their realtor brought this property to them given their desire for a large mature parcel in Dublin and their love of old homes. After touring the home and noting the condition had further declined since the realtor last saw it, she said he thought we should get inspectors' reports as well as a general contractor with experience in historical restoration to ensure we knew what we were getting into. She said William Lett, Lett Construction and owner of multiple historic homes himself, toured the property and read the inspectors' findings. She noted in his professional opinion, the home is in very poor condition and would be in the range of \$225 per square-foot for the 2,695-square-foot home just to get it to a livable condition - not including any upgrades. She described the home as having three-bedrooms upstairs and one bathroom that is off the kitchen downstairs. She remarked obviously this is not up to Dublin standards.

Ms. Kittrell said the home is currently appraised at \$305,000 combined with the restoration costs of over \$600,000 is not a reasonable economic use and could not be substantiated. She indicated there are no homes with 2,600 square feet, 3 bedrooms, and 1 bathroom that would be worth over a million dollars in Dublin regardless of the amount of land unless that land was split and developed, which is against the wishes of all those closely involved. She reported the inspector from the Wing Inspection Group also said their experience strongly suggests any restoration costs would be excessive. She said this approval condition does not state the property can or cannot be restored at any cost but a reasonable economic use. She said investing over \$1 million to have a house in the end worth \$550,000 is not a reasonable use of economic resources. She said restoration is not feasible or prudent and not feasible to place another home onto the site without removing the house and developing the entire acreage, which they are here to prevent.

Ms. Kittrell said their intention is to build a new home on the same general site. She indicated there have already been multiple people over the last ten years who have determined this is not economically feasible to do and during that time, the condition of the property has only worsened. She said the property is currently owned by the trust and Don Herron is the trustee. She said he provided a letter that states they were aware of the serious structural issues even prior to his father's death in 2005 but his mother did not think she had the assets to undertake a project of that magnitude. She indicated because Don has fiduciary responsibilities to beneficiaries of the trust, he also determined it was not economically feasible to undertake the correcting of the serious structural problems. She said the trust did not and does not currently have the funds to undertake such an open-ended project. During the past years, she said the house has been vacant; the Herrons have been in negotiations with a potential buyer who was attempting to restore the house. She indicated that buyer was trying to parcel off the back portion of the property and sell the parcels to the Coventry Woods residents whose properties back to the 5051 Brand Road property on the east side. She said in the end, that buyer was not able to make it work.

Ms. Kittrell reported Richard Taylor, an architect, stated in his letter that waiting would not hurt. She indicated it would not hurt him or her but would hurt the Herron family.

Ms. Kittrell said any other land parcel of this size in this location would sell for \$400,000 but questioned what the Herron family could sell it for if this demolition request is again denied. Meanwhile, she said Don will continue to spend \$6 each week mowing and maintaining the property. She said another way to interpret this criteria is the house could be used for a museum, hotel, or another revenue generating entity but this is unrealistic for several reasons:

- The property is long and narrow
- It is in the middle of a residential neighborhood
- No other businesses exist
- There are six properties adjacent
- The neighbors would not support a Bed and Breakfast in their backyard

Ms. Kittrell said the home itself does not have enough revenue generating attributes inside or out to make it a tourist attraction where one would pay a fee.

Ms. Kittrell referred to the third criteria – Deterioration has progressed to a point that it is not economically feasible to restore the structure and such neglect has not been willful. She referred to the letter from Don Herron. She referred to the inspector's report, listing all the issues with this home. She presented some interior photographs and pointed out the water damage and mold.

Ms. Kittrell said criteria four is that the location of the structure impedes the orderly development substantially interferes with the purposes of the District or detracts from the historical character of its immediate vicinity or that the proposed construction to replace the demolition significantly improves the overall quality of the Architectural Review district without diminishing the historical value of the vicinity or the district. She indicated if it refers to the neighborhood and the surrounding properties in general, we feel that by maintaining the large parcel and surrounding area will maintain the character of the area by ensuring that a developer does not try to turn this into a new small neighborhood with five to ten homes if or when this house falls down. She said they have spent a lot of time at the house and spoken with many neighbors and they have all been very supportive and excited about the prospect of a Dublin family buying the property as opposed to a developer. She said all that we have spoken to have indicated their number one priority is that the parcel remain intact. She referred to the letter written by Roger Rabold whose property is adjacent to the falling down barn. She indicated Roger reviewed both structures as safety hazards. She said Roger and his wife reside with their two boys, ages 7 and 9 and their swing-set sits only 75 feet from the dilapidated barn.

Ms. Kittrell concluded by addressing a request to demolish the home prior to approval for a floor plan. She said the reason they are requesting immediate demolition of the property is due to the declining conditions and safety concerns to the neighbors and themselves. She reported there is no fencing around the property and one side of the barn collapsed last year. She contends that they should not be required to put additional money into maintaining a home that will be torn down in the future. She said if the Board approves the demolition, whether the house is raised now or after future plans are approved, plans must still be approved whether they have plans in 8 months or 18 months from now; the property is not going to be in better condition. She said they want to find just the right professionals and make sure the property is done justice with a home that will survive the next 100 years. She said the plan approval is a separate issue but the type of home they would hope to place on this property would be a custom farmhouse style incorporating a mixture of exterior materials, likely including stone, wood, standing seam metal, and tall windows.

Don Herron, 1305 County Line 5 North, Zanesville, Ohio said he was the trustee of the Herron trust. Mr. Loveland asked him if the home was the only remaining significant asset in the trust to which he replied affirmatively. Mr. Herron confirmed it has been a financial burden to pay the taxes, insurance, and maintenance, etc. He confirmed the home has been available for sale since his mother died in 2012.

Mr. Loveland asked if anyone else had expressed interest in the home before the Kittrell. Mr. Herron said there was a young couple before the Kittrells but that fell through. Mr. Herron said he has received mail in the past four years expressing interest in the property. He said no offers to buy it have been made since the last hearing and all mail of that nature has ceased.

Mr. Loveland confirmed with Mr. Herron that nobody has come along with a plan to restore this home and he himself cannot afford it and it is not worth it to rehabilitate this home. He confirmed the property is not generating any income and that Mr. Herron is familiar with the construction attributes of the home and that half of the house is on a stacked limestone foundation and those walls are failing in several places. Mr. Herron confirmed there has always been water infiltration because it has a flat roof, which had been replaced several times but there were always problems with box gutters and keeping it maintained.

Mr. Loveland confirmed with Mr. Herron that he and his brother are the beneficiaries of the trust and they are both 75 and older and do not live in the Dublin area. Mr. Loveland asked Mr. Herron if this refusal to allow the demolition of the home was causing financial hardship. Mr. Herron responded it is getting there.

The Chair called for a brief recess at 8:00 pm. He resumed the proceedings at 8:07 pm by stating that was the conclusion of the applicant's presentation. He asked if anyone from the public would like to speak with regard to this case.

Mr. Smith said he did not believe that any of the members who raised their hand were sworn in earlier.

The Chair swore in anyone wishing to address the Board on this case this evening.

Kevin Walter, 6289 Ross Bend, said he did speak at the ARB hearing so he referred the Board to those minutes. He said he understands there are four criteria incumbent upon the applicant to demonstrate that at least two of those criteria are met in order for demolition to be approved. He said the applicant and his attorney have indicated that acquiring and restoring the property would equate to about \$1 million. He said looking at other properties along Brand Road there are properties that are in excess of \$1 million on significantly smaller lots and with less historical value. He said for the applicant to indicate it is economically not viable for them to that, he would challenge that; therefore he does not believe that criteria is met. He said he appreciates the Herrons are not in a position to maintain the property but they indicate that their lack of maintenance on the property has not been willful when in fact it was since the property is not listed publically for sale and funds are not available to maintain the property. He referred to the minutes from the ARB meeting where he spoke specifically about the historical nature of the home and what it means to the Dublin community. He said it is one of the original homes from the original homesteaders within Dublin. He said the family that built that home is one of the founding families. He said the research that he did was not from hearsay or Facebook postings as the applicant's attorney would indicate. He said he looked at the Confederate War records, the National Registry, the Ohio Historic Inventory, and published accounts of the history of Dublin. He said he visited first-hand the cemetery in Dublin to indicate the lineage of the residents of that home. He said the Thompson family was the original owner of that property and that has great historical significance to the City. He concluded by stating three of the criteria are not met.

Tom Holton, 5957 Roundstone Place, said he is president of the Dublin Historical Society. He said just because Italianate architecture is not seen very often, does not mean that it was not there. He said the hooded windows for example are a feature shared by the Dublin Village Tavern, which is also Italianate style architecture in the Historic District. He added the school building that used to stand where the library is today was Italianate, which stood from about 1870 to 1980 or so, again with the hooded window feature. He said most of the homes were more simple style or brick farmhouses. He said this home is unique and that is why it was featured so often in City publications and noted on driving tours as part of the character and culture of Dublin even as it was 260 feet from the road. He indicated it was featured prominently on the cover of the City's 2003 Annual Report.

Mr. Holton said the ARB had the ability to modify the application and the decision and make suggestions to the applicant but they did not do that. He suggests that the applicant stabilize the façade of this

building as that is the important part. He said over the years the building has changed as shown on the other three sides not unlike many of the buildings in Dublin over the years. He stated definitions are important; we have heard restoration, preservation, rehabilitation, etc. He said stabilizing takes the unsafe or deteriorating structure and keeps it from further damage or deterioration. He is suggesting the façade be stabilized and anything else can be done to the rest of the building. He said rehabilitation means returning a property to a state of rigidity through repair, alteration, while preserving those portions of the property that are significant to its historical, architectural, culture values. He said it is not restoration or reconstruction. He said rehabilitation would be building a new house behind that stabilized façade. He said keeping such things as the wood work, staircase, and masonic symbols recall the history of the house. He referred to Ms. Kittrell's statement from the ARB meeting that she wanted to keep that staircase, woodwork, and masonic symbols because she liked them and the façade would only be restored if possible. He said restoration is the act or process of accurately recovering form and details of a property (in this case a façade) it is a particular period of time.

Patty Vetter, said they have been residents at 5071 Winchell Court since 1989, one of the first in the Coventry Woods Subdivision that back up to this property. She said the Herrons are absolutely wonderful neighbors and it saddens her to think that the family would be denied for reasons where no one is stepping up to even take over the property. She said she thought the City would take over but nobody is doing anything. She said we have this beautiful family that would respect the wishes of the Herron family. She said they are restaurateurs and would benefit from all of these fruit trees and she can see them planting blueberries and doing all these things being respectful of the property and what it was meant to be all along since the original owners were here. She said the Herrons had animals on the property for 4-H and she sees Don Herron coming over trying to maintain the property and it has become unbelievably difficult. She said it is unsafe; she has a three-year-old grandson. She said the Herrons have always been nice to let all the neighbors use the property for playing baseball, taking walks, and letting the dogs roam, etc. She indicated she took an architect friend over to see the property; he took one look at the foundation and he remarked how unsalvageable it was. She said what could be more beautiful than a family that wants to maintain this property the way the Herrons had. She said this is history right here; we will miss the opportunity to have a chef and people who run restaurants to live in that house. She questioned who would buy it and parcel it off, running off the current abundant wildlife. She indicated she believes this family will maintain the history of the property by being the family they are and that is how this should be.

Donna O'Connor, 5065 Winchell Court, said her husband and Roger Rabold and her have an adjoining property in the backyard of the Herron property. She said she spoke at the August ARB meeting so there should be record of her words there. She said it is important to respect the property and to keep the parcel intact. She said the previous interested buyers wanted to divide the parcel, which saddened them. She said when the Kittrells started looking at the property, they immediately introduced themselves and became easy companions talking about the property, etc. She concurs with Patty and John as far as allowing a Dublin family, who are business owners, to take over that property and maintain the parcel to join the neighborhood and create new history at that historic parcel. She indicated that was how all the adjoining property owners felt is most important. She said her sons are not allowed anywhere near the barn; she has witnessed the wood deteriorating. She said she worried about her young curious boys' safety. She concluded by stating she wanted to see the Kittrell's application approved.

Ron Geese, 5584 Brand Road, said he is the sixth generation of the Charles Mitchell family to be in Dublin. He said they were part of the founders of Dublin along with the Sells family. He said as a kid, he lived on Brand Road from the fourth grade on at the corner of Coffman and Brand and in the sixth grade worked for the Dublin Food Market, which was the Herron family business. He said Mr. and Mrs. Herron paid his way through college so he knows the history of the home. He indicated it was a beautiful home and there was a farmhouse across the street that was pretty nice at one point in time but then someone in Dublin let them tear it down and now there are 20 homes on that site. He said the thing that bothers him is that it is just worn out. He said he has had to go in and out of the house many times and it was

furnished with nice antiques. He said he is here to support the demolition because it needs to be done and he wanted to echo what he heard from the last two speakers. He said he attended the ARB meeting and Mr. Musser voted to have it demolished because everyone adjacent to the house wanted that. Mr. Geese said he wants everyone to realize that he learned to respect what the neighbors want. He concluded they need to keep one house on this property, keeping the five acres intact.

The Chair invited further public comments. [Hearing none.] He said under Dublin Ordinance 153.230G, he asked Jennifer Rauch to present her case.

Jennifer Rauch presented the site to orient everyone, pointing out the location of the house on the northern portion of the site with the barn further to the rear. She said the structure was built in 1880 by the Thompson family. She noted there are other historic sites around this particular property. She said a family trust is responsible for the property. She said the applicant has provided evidence showing the structure as deteriorating over several years.

Ms. Rauch stated this case was reviewed by the Architectural Review Board on August 4, 2015, in which the applicant applied for demolition based on meeting two of the four criteria. She said the recommendation in the Planning Report to the ARB was disapproval as all four criteria had not been met and the Board upheld that recommendation; subsequently the appeal was filed.

Ms. Rauch said the applicant's request for demolition would have to meet two of the four following criteria (Zoning Code §153.176) in order to be approved:

1. The structure contains no features of architectural and historic significance to the character of the area in which it is located.

Ms. Rauch said the first criteria was not met. She said the structure has historical significance through its original owner and is listed on the National Register of Historic Places. She said the unique architectural style, the age of the structure, and the unique location outside the Historic District reinforce the importance to the historic character of the City and the area.

2. There is no reasonable economic use for the structure as it exists or as it might be restored, and that there exists no feasible and prudent alternative to demolition.

Ms. Rauch said the second criteria was not met. She said there are obvious restoration issues based on the information provided. She said the information provided by the applicant states the structure could be repaired and that it would be a cost to the applicant. She said Staff's finding was the historic value to the community is worth the investment. She said the applicant's documentation did not demonstrate that demolition was the only option and there might be other alternatives to consider.

3. Deterioration has progressed to the point where it is not economically feasible to restore the structure and such neglect has not been willful.

Ms. Rauch said the third criteria was not met. She said Staff agreed deterioration and neglect have occurred, but are not convinced the information provided demonstrates it has progressed to the point where it is not feasible to restore the structure.

4. The location of the structure impedes the orderly development, substantially interferes with the purposes of the District, or detracts from the historical character of its immediate vicinity; OR, the proposed construction to replace the demolition significantly improves the overall quality of the Architectural Review District without diminishing the historic value of the vicinity or the District.

Ms. Rauch said the fourth criteria was not met. She said the structure as it exists does not impede orderly development of the area and it provides significant value to the community as well as the character along Brand Road and demolition would further diminish the unique character of this area.

Ms. Rauch said the recommendation to the ARB was disapproval. She highlighted that a one-year waiting period to decide was presented as another option at that time. She restated the Board disapproved the request with a vote of 4 – 1.

The Chair asked if there were any questions for Staff. [Hearing none.] He clarified Staff found all four criteria not to be met and the applicant is required to meet two of the four criteria. He closed the public portion of the meeting and opened the request up to the Board.

Jamie Zitesman said people are saying the home is worth restoring but there does not seem to be anyone interested in stepping up to the plate. He said we have heard there has been one other interested buyer over the years but the property turned out to not be economically feasible for them. He said they tried to subdivide it so it might be affordable but even that did not pan out. He said he does not agree with the idea of dictating somebody else's money. He said evidence has been brought forth from expert testimony that state this will cost a lot of money and that it will never be worth it; there is not any way to ignore the reports. He said the property has already been on the market three or four years and we have to listen to the market as to the real liability, the economics, and the feasibility of this situation.

Mr. Zitesman said he has lived in this area for 22 years, has probably driven by Brand Road property practically every day, and does not remember truly seeing this house until he sought it out for this case. He questioned that if it is of such significant importance historically to our community, it should not be hidden. He said the road is never going to get closer to the house and with it being private property, nobody can go on it.

Mr. Zitesman questions who would benefit from prohibiting the demolition and who wins if the BZA says the ARB was correct and we have to make sure the property stays the way it is. Mr. Zitesman said it has outlived its useful life and is beyond repair economically. He said this is one of the reasons I am here and glad to be on this Board of Zoning Appeals - to deal with cases like this. He said sometimes, people make wrong decisions. He said he does not agree with the recommendations of Staff, the conclusions are aspirational that there is scarcity of these homes. He said it is nice to say there is importance here but we cannot find any objective standards to say how this has a significant impact on the community, to enable the City to tell the Herrons they cannot sell.

Mr. Zitesman said he has significant safety concerns and liability issues for the current owners if something were to happen there. He said he cannot see any reason at all to uphold the ARB decision.

Martha Cooper said the ARB suggested there be a year delay and we are here now six months later from the ARB's decision. Mr. Smith clarified the ARB had the opportunity to impose up to a year waiting period and they did not as part of their decision.

Martha Cooper said we do not have a plan for a new development yet and she thinks that was a concern of the ARB as well. She said she understands the Kittrells do not want to submit a plan until they have approval for demolition.

Mr. Zitesman said he would trust the Planning Department to impose the normal Dublin standards and make sure we have a home that measures up with the other new homes on Brand Road, which are outstanding.

Rion Myers said the one hang up for him is “no reasonable economical use for the structure as it exists or it might be restored”. He said he reads that as reasonable being something that somebody can afford. He said having known the prior couple that considered this property, it was not economically feasible for them. He asked if there was ever a discussion about restoring the façade and the structure to keep the character of the home as part of the tear down and rebuild. He questions if a new house could be built that has the same features to keep that character.

Ms. Rauch said the information provided by the applicant showed simple architecture. She said we would not want them to build a replica.

Mr. Myers asked if the ARB would review that as a new structure. Ms. Rauch said yes because it is listed in the Code as a property that has to be reviewed by the ARB. Mr. Myers said the criteria that the ARB adheres would ensure the new structure would fit within the character of the area.

The Chair asked to clarify that should they demolish the house, the applicant will have to get approval from the ARB to build a new house. Ms. Rauch answered affirmatively, as the Code is written.

Ms. Cooper asked if that was because it is listed in Appendix G and Ms. Rauch said that was correct. Ms. Cooper confirmed that does not require them to come in with an 1880’s Italianate style.

Mr. Gunnoe said Mr. Zitesman said everything he wanted to say. He said this is a really interesting case. He said when he saw the word “willful”, and heard the comments from the public, “willful” to me when I see pictures or run by it or drive by it, you would expect the windows to be left open on purpose and the owner mowing the grass would not be expected. He said he thinks they shepherded this building along as far as it will go. He said with that, and looking at those three criteria, he is in agreement with Mr. Zitesman. He asked the applicants if they would consider keeping the façade since this was built 15 years after the Civil War, which makes it amazing that it is still standing there.

Ms. Kittrell said as it stands, the façade could not be kept, it would be a replica. She said when the owners re-sided it previously, they found termite damage so she believes it could not be saved. She said it could be re-created.

Ms. Cooper said she believes the applicant has demonstrated two of the four criteria are met. She said she agrees it is a significant historic property by its age but criteria 2 and 3 have been met.

### **Motion and Vote**

Mr. Gunnoe made a motion, seconded by Ms. Cooper, to overturn a decision by the Architectural Review Board to disapprove the request for demolition of a historic single-family structure finding the request meets two of the four review criteria. The vote was as follows: Mr. Myers, yes; Mr. Zitesman, yes; Mr. Todoran, yes; Ms. Cooper, yes; and Mr. Gunnoe, yes. (Approved 5 – 0)

Mr. Gunnoe said the next meeting is scheduled for February 25, 2016, and adjourned the meeting at 8:48 p.m.

As approved by the Board of Zoning Appeals on March 31, 2016.