



MEETING MINUTES

Planning & Zoning Commission

Thursday, June 21, 2018

AGENDA

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| 1. BSD SRN – Hen Quarter
18-040WR | 6628 Riverside Drive
Waiver Review (Disapproved 2 – 5) |
| 2. BSD SRN – Bridge Park, Block H
18-041WR | PIDs: 273-012751 & 273-012752
Waiver Review (Tabled 7 – 0) |

ANNEXATION PRESENTATION

The Chair, Victoria Newell, called the meeting to order at 6:33 p.m. and led the Pledge of Allegiance. Other Commission members present were: Steve Stidhem, Warren Fishman, Kristina Kennedy, William Wilson, Bob Miller, and Jane Fox was late. City representatives present were: Vince Papsidero, Thaddeus Boggs, Lori Burchett, Jimmy Hoppel, Richard Hansen, and Laurie Wright.

Administrative Business

Motion and Vote

Mr. Stidhem moved, Mr. Miller seconded, to accept the documents into the record. The vote was as follows: Ms. Newell, yes; Mr. Fishman, yes; Ms. Kennedy, yes; Mr. Wilson, yes; Mr. Miller, yes; and Mr. Stidhem, yes. (Approved 6 - 0)

Motion and Vote

Mr. Stidhem moved, Mr. Miller seconded, to approve the minutes from the meetings on May 3, May 9, and May 17, 2018, as presented. The vote was as follows: Ms. Newell, yes; Ms. Kennedy, yes; Mr. Wilson, yes; Mr. Fishman, yes; Mr. Miller, yes; and Mr. Stidhem, yes. (Approved 6 - 0)

The Chair explained the rules and procedures of the Planning and Zoning Commission. She said the Block H case was on the Consent Agenda but several of the Commissioners would like to hear it in its entirety before voting. She determined the cases would be heard in the order as published on the agenda.

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| 1. BSD SRN – Hen Quarter
18-040WR | 6628 Riverside Drive
Waiver Review |
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The Chair, Victoria Newell, said the following application is a proposal to allow for the installation for the use of a non-permitted material to allow the installation of operable weather screens on the first floor of an existing tenant space in building C2 of the Bridge Park Development. She said the site is northeast of the intersection of Riverside Drive and Bridge Park Avenue. She said this is a request for a review and



approval of a Waiver Review under the provisions of Zoning Code Section 153.066. She said the Commission has final authority on this case and witnesses will have to be sworn in.

The Chair swore in the witnesses.

Lori Burchett presented an aerial view of the site and pointed out the tenant space is in Building C2, east of Riverside Drive at the intersection with Bridge Park Avenue.

Ms. Burchett presented the east elevation that shows the patio and site improvements including the canopy with the filigree pattern that were approved as a Minor Project Review. She presented the south elevation from Bridge Park Avenue. She said the location of the requested material was shown in the proposed site plan illustration. She said the vinyl enclosure would be placed under the canopy and used during inclement weather events. She presented illustrations of the proposed elevations from two different angles with the screen and vinyl materials both up and down.

Ms. Burchett described the proposed materials as being similar to other materials requested throughout Bridge Park and used in Central Ohio. She presented a rendering of the materials as they would appear rolled down from a table within the patio. She said the gray frame fabric for the vinyl portion is designed to match the posts that are part of the canopy. She said with the screens down, the filigree pattern of the hen on the west side will be visible. She presented graphics of this material being used at other locations for examples with the screens rolled down.

Ms. Burchett said Staff and the Administrative Review Team (ART) had weighed this application against the Waiver Review criteria and both groups found the criteria has not been met or the criteria is not applicable. She said there were multiple reviews conducted by the ART and their stance was, even though the material has been proposed and used elsewhere, due to the prominent location, they are recommending disapproval. She added the PZC is the final reviewing body for Waiver Reviews. She said as Staff prepared this application for review by the PZC, conditions were drafted for the Commission's consideration, similar to what has been approved for the Cap City Diner application in 2017, if they choose to approve the Waiver request.

The Chair asked if the Commission had any questions for Staff.

Jane Fox asked if suggestions were made for alternative materials. Ms. Burchett answered Staff and the ART recommended the applicant use a permitted material, which could be glass for this type of application. Ms. Fox asked if glass could not be used from a building standpoint. Ms. Burchett said there were no concerns for the use of glass from the Fire Department or the Building Standards Department. She indicated the applicant can better speak to their reasons for selecting one material over another.

Warren Fishman said he is concerned with the durability of the product proposed. He asked what the objection was from the applicant for using glass. Ms. Burchett indicated there was discussion during the ART meetings in terms of the specific use of glass. Mr. Fishman asked if the vinyl material can change its shape. Ms. Burchett said that was the determination by the ART because the material is not very firm and is flexible and again were concerned about durability and maintenance.

Steve Stidhem asked how this material compares to the one used at the Cap City Diner. Ms. Burchett answered the proposed material is the same brand but there are some specifications that are slightly different and most of that is due to the color and perhaps the thickness, which the applicant can address specifically.

William Wilson asked how the material is operated whether it rolls up manually or electronically. Ms. Burchett answered the material is rolled up and there is an opening for patrons and Staff to enter and exit the patio area. She said the ART had similar questions for how this would function during a weather event.

Bob Miller said he did not recall the exact conditions of approval placed on the Cap City Diner for their screens. He remembered though that one of the conditions was that the shades would be up the majority of the time but it seems to him as he drives by, the screens are always down and asked if this is an enforcement issue. He said he did not think the intent of what the Commission was hoping for actually transpired, even with the conditions. Ms. Burchett agreed and reported that Code Enforcement has visited the site and spoke with Staff about the conditions at the Cap City Diner and asked them to determine how they were going to meet the conditions. She said Code Enforcement will follow up with Cap City to ensure that is being adopted. She said the General Manager on site that spoke with our Staff said he was going to further communicate the conditions with other employees.

Mr. Miller said his editorial comment is that the City was put in a tough spot because that application for a western facing property is a different situation than this application tonight. He indicated the Commission acquiesced to a certain extent and the City is now in an enforcement position that they probably did not need to be in. Vince Papsidero said Staff would agree with that commentary.

Mr. Papsidero said that as Staff creates the design guidelines for the district, this situation needs to be addressed and clarify the parameters; currently it is an ad hoc situation now on a case-by-case basis. He said we need to provide guidance so the products are limited to certain locations under certain circumstances.

Mr. Fishman suggested the Commission probably should not put the City in that enforcement position. He said when looking at other screens used in the region, he found one north of Upper Arlington, which he knows has been there for years and the product was very worn; he said it did not look anything like it did when it was new.

The Chair invited the applicant to come forward since there were no more questions for Staff.

Brian Sell, Moody Nolan, 9093 Riverside Drive, and Ron Jordan, Jordan Restaurant Group, 6628 Riverside Drive, introduced themselves. The Chair asked if they had a formal presentation for the Commission to which Mr. Sell answered he just wanted to address the questions already posed. He said they studied the possible use of glass and they considered glass garage doors that led to a half-height Nana Wall system, similar to what is used at RAM Restaurant and Brewery in Bridge Park. He said they found they did not have the head room for the glass garage doors because they wanted the smaller scale patio and the heights to tie-in with the existing canopies. He explained the Nana Walls fold and slide against a column so they would have to install theirs between all those columns and they intrude into the seating area, becoming a nuisance. He said the goal of this patio is to have the screens up, most of the time. He said they could not afford to have glass windows always open but taking away valuable seating space and intruding into the right-of-way when in the open position because this patio is situated right on the face of the right-of-way. He said they found the most efficient products for this use are the roll up vinyl screens that disappear up into the canopy like what is used at the Cap City Diner or The Avenue. He said the goal of this patio space is to be open and engage the urban fabric much like how Pins Mechanical Company works in Bridge Park.

Mr. Sell said this is a very important site due to its prominence and the (future) Pedestrian Bridge that will land across to Riverside Drive, creating a lot of pedestrians and cyclists right there. Across the river, he said, the bridge will land at The Avenue restaurant, with the same windows, and it faces the plaza.

Mr. Sell said they created the filigree “shade” facing west. He said not only would it screen the sun but also for the branding identity element and that motif goes around the entire canopy and at night, it will be visible inside from the wine room.

Mr. Stidhem asked how the quality of the material compared to what is used at The Avenue or Cap City Diner. Mr. Sell answered it is a similar specification. He passed around a sample of the material that will go on two rollers and be used as a shade cloth when the sun is intense and the other is the material used as the fabric border around the vinyl, which he did not have a sample of. He said the satin color of the border material matches the satin paint that will be used on the columns, canopy, and is complimentary to the filigree so it will blend in to what is there. He said these products are from the same system used at Cap City Diner and The Avenue but a different color. He explained the marine-grade vinyl inside will be much thicker than the banding that surrounds it.

Mr. Stidhem asked the applicant to provide a scenario of when the vinyl shades would be down. Mr. Jordan said it is an operational challenge with the Ohio weather. He said they would want the vinyl enclosure down in inclement weather and have them up when it is a 65-degree day in February or December like we have seen at times in Ohio. He said they intend for this to be a walkable, urban environment, and this will contribute to that. He indicated it would be best if guests can be sitting out in the patio during all seasons. He said they are promoting it as a great place to entertain and would rent the patio out for private parties. He concluded the goal is to have the screens up as often as possible.

Mr. Stidhem clarified that Mr. Jordan said the shades would be down in cold weather and rainy weather. He said with the foot traffic and cyclists the applicant is expecting, the street could get kind of loud so he asked the applicant if the screens would be down, used as a noise buffer, too. Mr. Jordan answered they would not.

Mr. Fishman said he is disappointed the applicant did not bring the material he is trying to get approved. He restated he is concerned about the durability and the vinyl material in Upper Arlington has been there a long time and it looks very worn. He asked how much distance there is between the patio posts and the street. Ms. Burchett said the planters that run along between the posts are on private property. She explained the patio is slightly elevated to accommodate the grade change. Mr. Fishman asked how deep the planters are. Mr. Sell answered the flower box is about a foot deep. Mr. Fishman said he asked for dimensions because he has seen glass window partitions that do not stick out. Mr. Jordan said there would be an operational constraint and would reduce the internal seating. Mr. Fishman said the Nana Walls would not take up much room. Mr. Sell explained the narrower they get, the more is needed and then needs to be stacked, which closes down the opening. Victoria Newell said Nana Walls can either close by sliding or close like bi-fold doors. Mr. Sell said they would still intrude into the seating space as the sliding doors would need to come inside because there would be a track. Mr. Fishman concluded that using glass should be explored further because the vinyl would always be down and Mr. Sell disagreed.

A re-review in a certain time period was discussed and Mr. Fishman said it is a burden on the City and Code Enforcement does not have the time to enforce this.

Ms. Newell told Mr. Fishman since he was not here for the Cap City Review that the re-review for Cap City was a compromise because they had the same discussions as we are having this evening about the Commissions’ fear of seeing the vinyl shades down all the time. She said her impression by the applicant this evening is that these shades will be down most of the time in the winter because the outdoor space is intended to be used continuously. She said she could not recall the exact wording of that condition of approval.

Thad Boggs read the conditions placed on the Cap City Diner application for the use of the screens – That the applicant would only utilize the screens during inclement weather and as a shade for patio patrons; That the screens are only permitted to be lowered during patio operation hours when patrons are present and screens shall be raised at all other times; That the screens be replaced every five years or sooner as needed; and That the applicant come before the Planning and Zoning Commission after two years after occupancy to ensure suitability of the product.

Ms. Fox said she sympathizes with the applicant because the Commission wants to see the patio used as much as possible. She said her concern was that the patio is intended to be used year-round. She agreed that every time she has been at Cap City Diner, the shades have been down and from the street, they do not make a very good presentation and look like plastic over windows. She suggested a canopy of windows that swing out as an option over garage doors as the applicant does not have the overhead space for the latter. She encouraged the applicant to explore other techniques for using glass instead of asking the Commission to bend on the vinyl. She said she would like the applicant to use glass because the City is not equipped to enforce the vinyl shade limitations.

Mr. Sell said they explored that type of window, which scissors up, and this system is being used on a project in the Short North area. He said they worked at that location because they are pulled back from the right-of-way. He said they are nice because they create somewhat of an awning. He said here, they would project into the right-of-way when they are open. Ms. Fox asked if they would be acceptable to the City to use that product and have a Waiver that permitted the glass to encroach into the right-of-way.

Ms. Burchett said the Economic Development Agreement allows for some encroachments on 50% of elevations so this could possibly fall under that. She said Engineering would need to review that because encroachments are usually at the ground level but there are some for bridges and similar encroachments.

Mr. Sell said this would be the same as the garage door issue – at a corner, they would not be able to execute because they would scissor up and hit each other and at the end they would then have to have a fixed glass and that is not what they want, as it would no longer seem like a patio.

Ms. Kennedy said, since the Cap City application came before the Commission before her tenure, she asked what type of shading Cap City is using. Mr. Sell said they have just the vinyl shades. Ms. Kennedy suggested being consistent with these types of conditions when approving materials.

Mr. Fishman said sometimes the Commission makes mistakes and with Cameron Mitchell restaurants, the City found it was not able to enforce the conditions thus far. He indicated that he did not want the Commission to be set on the idea of precedence because the Commission has to change if something does not work. Ms. Newell said the Commission is not setting a precedence if they approve something different. She explained the Commission gave 'an out' for the first application because they were very leery of approving it so they set the times of when they could be used so the City could monitor the situation.

Ms. Newell said when an outdoor space is desired to be used all four seasons, then it has to be designed that way from the very beginning and not come to the Commission after the fact wanting to use it all seasons. She thought that if this Waiver was granted to Hen Quarter after Cameron Mitchell restaurants, albeit they are limited to a certain time, the Commission is getting to the point where there is no stopping. She pointed out there are a number of outdoor seating areas in the Historic District (area also in the BSD, that function without sun or inclement weather protection. She indicated this is a bigger decision before the Commission because then they would have to be prepared to accept these shades throughout the City.

Mr. Miller said his recollection is exactly what Ms. Newell said but for members that were not on the Commission then, he reported they struggled with the Cap City Diner as the patio faced west so there was a much stronger sun issue that they were contending with and the Commission tried to protect themselves as much as possible while still permitting the materials. He stated now he thinks a patio should be open. Ms. Newell said that was her point as well. Either spaces are designed as a patio or designed to be used year-round. Mr. Miller added, as an operator, he would want the materials down as much as possible because then if it rains, he does not have to clean it up; it is easier to keep them down so that is why we are seeing them down consistently and he thinks the Commission made a mistake on that earlier decision.

Mr. Wilson asked if there would be air space between the planters and the columns. Mr. Sell answered they would be tight as possible but there will be a gap. He asked if the screens would come down all the way to the flowers or continue to the ground. Mr. Sell answered the latter. Mr. Wilson said he is trying to figure out this use. He said, in the winter, it is going to be cold. He suggested exploring suspending glass from the top that come down about halfway, so at least there is an opening and the patrons could have a connection to the pedestrians and activity outside. He said glass is a permitted material and perhaps the applicant could get it tinted to help with the sun.

Mr. Jordan said Ms. Kennedy pointed out the consistency factor and the Commission had a rebuttal for that but Cap City Diner is not the only example that has been approved. He noted The Avenue. Ms. Burchett pointed out that establishment was under a different reviewing body.

Mr. Sell said they are designing this patio area to be a three to three and a half season space. He said they proposed a material that exists around the area. He indicated they were confident proposing this material because it was approved for Cap City Diner but understands the City has had some issues with the operation of the screens. Then The Avenue used it as well, so they thought in a sense it was an acceptable material even though it needs to be discussed on a case-by-case basis, and understanding the importance of maintenance and cleaning because the vinyl can be scratched and yellow over time.

Mr. Stidhem indicated he likes sitting outside in restaurants and even with the vinyl down, especially when it is really cold and the establishment has heaters; the temperature does not bother him. He said the concern about Cap City Diner having their blinds down more than expected, does not make him recoil. He said this space would allow for more business and outside dining in that space is exactly what we want in this urban environment. He said he is not opposed to the proposal as he is not bothered by it. He said his only complaint is the applicant did not bring a sample of the vinyl for the Commission to consider.

Mr. Jordan said when Ohio gets a few snowstorms per year, the patio becomes a completely unusable space. Or, if they did not have it available, there will be increased wait times, which nobody likes to see. He said the reason people go to restaurants is they want a 'dining experience' but if there is a lack of seating or lack of opportunity based on the space procured, this would be a way to aid in that.

Ms. Newell said she is bothered most by Cap City's black screens being down constantly because pedestrians cannot see through them and darkness takes away the whole purpose of having that patio in the first place; it is a walled off space by dark screens. She said if a space is going to be used all year long, and not as a patio, there is a responsibility to design it that way from the beginning. She said there were other avenues that could have been pursued that would have been permitted per the BSD Code that would have provided the applicant to have any table count desired.

Mr. Jordan said using glass was his goal and he pushed the team in that direction and was very disappointed when he could not have glass. He said, due to the restrictions from Crawford Hoying, it was

almost unavoidable to get to this situation and it was not from a lack of planning. He explained there was not enough room to match the specifications of the patios adjacent to make it an indoor space. He said there was four feet of concrete underneath the space so they were not able to dig it out with jackhammers as well as other challenges placed upon them by the developer that did not allow for plumbing underneath, etc. that would be needed for an indoor space.

Ms. Fox asked if the roofline could be changed to provide more headspace for glass to be lifted up. She asked the architects if there is some way to alter the shape of the canopy roof to allow for glass to be pushed up as she would like to see this as a four-season outdoor space. She stated the screening is too dark and would love to see more transparency. She concluded she appreciated the filigree and the design.

Mr. Sell said due to the orientation and since they have the sun shade built in on the west façade, they are willing to forego the screens.

Ms. Fox encouraged the applicant to find a way to get the glass inside the roofline or come back and she would be more open to a Waiver on glass encroaching into the right-of-way above the heads of the pedestrians. She said vinyl everywhere and all over the City is going to be a problem because the Commission will not get the quality appearance they want and the owners will not get the quality appearance they want, either.

Mr. Sell said he looked at the height and existing window mullions in that storefront. He said with the height currently, light flows into the interior and if they move it, all that light would be blocked. Architecturally, he said, raising the height is not something they want to do from a scale standpoint.

She asked if it is possible to have a sloped roof above the filigree to allow for a rail to run up the slope to allow for more space. Mr. Sell answered they considered that and ran into issues with the roof and they would not have anywhere to tie it off.

Mr. Fishman said he liked Mr. Wilson's idea of using glass. Mr. Wilson explained the glass forms he was talking about is where the fascia ends, coming down maybe three feet. So the patrons seated would be protected from the rain. To Ms. Fox's point, he said, there could be a glass structure that would swing out. He said the clear glass could be consistently up or down whereas shifting the vinyl up and down could be a logistical headache.

Ms. Newell asked to see the conditions of approval that were created for Cap City Diner. She suggested that if the Commission were to consider approving this Waiver, there should be similar conditions for this Waiver to what was placed upon Cap City Diner. She asked if it is acceptable to have the same two-year limitation as was a condition before to be consistent. Ms. Newell said she could be more comfortable with clear vinyl than any system with dark shades. She emphasized if there is to be a three to four season room, it needs to be designed that way from the beginning. She said the Commission can chalk that up to a lesson learned.

Ms. Fox asked, if at the end of two years, the Commission finds the vinyl is not appropriate, where the applicant goes from there. Ms. Newell said they would have to return to the Commission with another solution. She said maybe we are always putting ourselves in a position that there will always be an exception or force the applicant to redesign their outdoor space so it is appropriate to use all year long and complies with the Code. She said she is only comfortable with this Waiver if the condition of approval is in a temporary mode like they placed on Cap City Diner. She said this should be taken into consideration as the City updates the Zoning Code because it is not appropriate to have vinyl covers on

every outdoor patio space we have. Mr. Fishman said the applicant should have the opportunity to come up with a different solution.

Mr. Stidhem asked for clarification on the conditions. He said he has found there are always a couple of nice days in January and February so he did not see wanting to limit months of the year the patio can be used. Ms. Newell added there were 70 degree days in February this past year but the expectation of the Commission was not to have blinds down all the time in the winter. Mr. Miller asked to see the Waiver criteria analysis.

The Chair called for a motion for the approval of the Waiver Review.

Motion and Vote

Mr. Stidhem moved, Ms. Kennedy seconded, to approve the request for a Waiver Review with five conditions:

- 1) The applicant will install Corradi USA-SL 135 hand crank system with shy zip tracks, finished to match patio columns, fascia and existing canopies. Material is 8" woven acrylic borders (SergeFerrari Soltis Proof 502 (formerly Preconstraint 502) with 10 year warranty, 502V2-2167C, 'concrete') with clear vinyl windows (O'Sullivan Films-O'Sea clear vinyl; .030 gauge, marine grade) which is the same product as shown to the Planning Zoning Commission at the public hearing;
- 2) The applicant will only utilize the screens during inclement weather events;
- 3) The screens are only permitted to be lowered during patio operation hours when patrons are present. At all other times, the screens shall be raised;
- 4) The screens shall be replaced every five years or sooner as needed; and
- 5) That the applicant come before the planning and zoning commission after two years from occupancy to ensure suitability of the product.

The vote was as follows: Mr. Wilson, no; Mr. Fishman, no – based on Criteria 1, 2, 3; Mr. Miller, no - based on Criteria 1, 2, 3; Ms. Newell, no – based on Criteria 1, 2, 3; Ms. Kennedy, yes; Ms. Fox, no; and Mr. Stidhem, yes. (Disapproved 2 - 5)

**2. BSD SRN – Bridge Park, Block H
18-041WR**

**PIDs: 273-012751 & 273-012752
Waiver Review**

The Chair, Victoria Newell, said the following application is a proposal to allow an alternative material on the exterior elevations as architectural detailing for Block H of the Bridge Park Development. She said the site is southwest of the intersection of John Shields Parkway and Dale Drive. She said this is a request for a review and approval of a Waiver Review under the provisions of Zoning Code Section 153.066. She said the Commission has final authority on this application and witnesses will have to be sworn in.

The Chair swore in the witnesses.

Lori Burchett presented an aerial view of the site. She reported the Commission had previously approved a Site Plan for the development of the townhomes in Block H and this request would affect many of the elevations that were approved as part of that Site Plan Review. She presented the approved site plan and the approved elevation for building H2W, the west elevation, which will serve as an example for all elevations as all the elevations were marked provided in the packets. She said Fypon molded millwork is proposed to only be used in the trim details, which are highlighted. She said basically where EIFS was previously approved, the Waiver Request is to use the Fypon material instead; the requested material:

- Only to be used in areas where EIFS was approved;
- Limited to trim and detail work;
- Color, consistency, and finish to match the approved plan; and
- No changes are to be made to other materials

Ms. Burchett said Staff has reviewed the Waiver against the criteria and found all the criteria has been met where applicable. She said Staff and the ART recommend approval of this Waiver request with no conditions. She concluded the applicant is present to answer any questions and is providing the material sample.

Steve Stidhem asked if this alternative material is sturdier. Ms. Burchett said Fypon requires less maintenance overall.

Victoria Newell asked what other product this was compared to. Ms. Burchett said EIFS was one of the materials and Staff also communicated with the applicant about using an approved material (wood, brick, metal, and stone) and none of those would fit the aesthetic and the architecture already approved.

Ms. Newell clarified Staff said stone would not have met but cast stone products are available to create those cornice lines. Ms. Burchett said through communications with the applicant, cast stone would not be able to provide the fine detail needed for the trim.

Jane Fox noted the ART report stated the product would be painted. She asked if the materials will be painted per the warranty of that product.

The Chair invited the applicant to come forward.

David Keyser, DKB Architects, 52 E. Lynn Street, 3rd Fl.

Ms. Newell asked the applicant directly about cast stone and fiberglass trim. She said she does not have an issue so much with Fypon as a product, but looking at the elevations, the Fypon products that were listed specifically in the Commission's packet are not as tall as the elements illustrated on the buildings. She pointed to the top cornice line. She said she counted that the product crosses five and a half courses of brick, and she thought that would equate to about 14.5 inches tall and Fypon is only 9.25 inches tall. She said that was a red flag just because there will not be the same scale as what were presented in the approved elevations. She thought the applicant is limited to the Fypon product to not being able to get something taller whereas fiberglass can mimic the exact same shape and potentially 30 inches in height. She said EIFS will not provide crisp lines and details that Fypon has and Fypon meets all the warranty ratings that EIFS does not.

Warren Fishman asked how the product would be attached. Mr. Keyser answered mechanically fastened.

Mr. Fishman asked if the same size can be produced as EIFS. Mr. Keyser answered Ms. Newell was correct in the decreased size and profiles. He said part of what Ms. Newell was seeing was coping, potentially, rising in a vertical dimension. He said he thought the original profile piece they had was around 12 inches.

Ms. Newell encouraged the applicant to take an elevation and truly illustrate the proposed material, (same size and profile) so the Commission could see it. She thought the alternative product will have an impact on the elevations. She said in the end, everyone may believe it looks great on the building and not an issue but it is one of the things that bothers her as an architect – when something is presented in

an illustration, it must be scaled accurately because when a change is made, clarity of the detail is lost on the building and that affects how the building looks in the end. She said there are other products available she thought the Commission could support that can provide the 14-inch height as opposed to 9.25-inch Fypon. She said fiberglass is geared toward commercial construction whereas Fypon is geared toward residential construction and that is why it is limited in the scale of the product.

Bob Miller said he had no problem with Fypon at all but he did not catch the size differential. He said Fypon is a longer lasting material than EIFS and there would be less water intrusion. To Ms. Newell's point, he said the Commission needs to see the profile of the building so they can see the true impact. He thought the buildings were so high that it may not matter but restated the illustration needs to be seen before it is approved.

Warren Fishman agreed with Ms. Newell and said he has approved a material that was a little smaller or slightly different and then when the building is constructed, it appears much different from the original illustrations. He said the durability of the material is great and it is a shame it does not come in a larger size because he thinks there will be a visible difference. Mr. Miller restated that is why the Commission needs to see the difference illustrated in order to make a determination.

Ms. Newell added that as a designer, they are put in a position where they design a building with a pretty product that is 14 inches tall and then when they go to purchase the product, it is not available to the same specifications and they have to go with something else and find it is not at all what they envisioned in the first place. She emphasized that scale is important.

Ms. Fox agreed scale is important and appreciates Ms. Newell catching the height difference.

Ms. Newell said, when the Site Plan came through, she said the same level of detail presented needed to be constructed because she feared getting these presentations later, knowing the scale of what is there. She restated there are other products that can be used that will provide the same height and appearance as the original. She said either the applicant has to show the Commission the building as it would appear with the alternative material so they can compare or propose a material to the Commission that will match the appearance and scale of the building, as approved.

Mr. Miller asked if Fypon is more expensive than the EIFS. Mr. Keyser said the alternative material is not a cost savings; it is pretty much a wash.

Mr. Keyser said the warranty could not be achieved for EIFS by the builder.

Kristine Kennedy said she agreed with Ms. Newell that requesting a before and after illustration from the architect with the correct dimensions seems like the right path forward.

Mr. Stidhem said it sounds like the applicant should consider a material with the same scale and design as was approved. Mr. Keyser said he thought the scale of the proposed piece would look okay in the end and is comfortable in the change of material but understands exactly what is being suggested.

The Chair asked the applicant how he would like to proceed this evening. His answer was to table the application.

William Wilson asked for clarification on the use of materials and their proposed locations as well as how this proposed material would be attached. Mr. Keyser provided an explanation.

The Chair called for a motion to table the Waiver Review.

Motion and Vote

Mr. Stidhem moved, Ms. Fox seconded, to approve the request to table the Waiver Review. The vote was as follows: Mr. Miller, yes; Mr. Fishman, yes; Ms. Kennedy, yes; Mr. Wilson, yes; Ms. Newell, yes; Ms. Fox, yes; and Mr. Stidhem, yes. (Tabled 7 - 0)

The Chair thanked the applicant for his willingness to come back with a realistic illustration of changed materials.

ANNEXATION PRESENTATION

The Chair, Victoria Newell, said this is an overview of the types of annexations and their processes that allow parcels to be incorporated into the City of Dublin.

Thad Boggs said he was asked to present different forms of Annexation. He said for a growing community like the City of Dublin, many things come before the Commission after having been annexed into the City. He said the Planning and Zoning Commission itself does not really play a role in the annexation process on the front end but certainly in terms of knowing the context of what has happened is relevant to the Commission when an application might be coming forward from that annexed area.

Mr. Boggs said there are five types of Annexation and he explained each: Regular Annexation: Majority of Property Owners (Traditional/Non-Expedited); Type 1: Expedited 1 Annexation (Consent of All Parties); Type 2: Expedited 2 Annexation (With or Without Consent of Township and Municipality); Type 3: Expedited 3 Annexation (Significant Economic Development Project); and Annexation by Petition of a Municipality for Municipal, County, or State-Owned Land.

Mr. Boggs said the City only consents to Expedited Type 2 Annexations, if the property to be annexed is already located in Washington Township. Annexations from other townships must follow the regular, non-expedited process. The three expedited procedures require that the annexation petition be signed by all of the landowners within the territory to be annexed. When a valid landowner's petition is filed that includes all the necessary signatures and includes a request that one of the three expedited procedures be applied in lieu of the regular annexation procedures, then that expedited procedure generally will apply.

Expedited Type 2 Annexations - Petitions With or Without the Consent of Municipality & Township (R.C. 709.023): relates to the annexation of land that is not to be excluded from a township; no prior agreement between the township and the annexing municipal corporation required; and notice and other procedural requirements are greater than the first expedited procedure.

Mr. Boggs said the City must adopt an Ordinance or Resolution within 20 days after the petition is filed that states the services to be provided and an approximate date by which it will provide those services to the territory proposed for annexation; and file an Ordinance stating that if municipal zoning adopted would allow a clearly incompatible use as compared to the use in the surrounding unincorporated area, the City agrees to require a buffer between the uses.

Mr. Boggs noted a city and/or township may, within 25 days of the petition being filed, pass a resolution consenting to the annexation or objecting to the annexation; failure to act is deemed to be consent.

Mr. Boggs said if either the municipality or an affected township files an Ordinance or Resolution within the 25-day period objecting to the proposed annexation, the Board of County Commissioners must review the petition between 30 and 45 days after its filing, to determine if all of the following conditions are met:

the petition was properly filed pursuant to 709.021; all the appropriate landowners must have signed the petition; annexation territory does not exceed 500 acres; five percent of the perimeter of the annexation territory shares a contiguous and continuous boundary with the city; no islands of unincorporated territory surrounded by annexed territory exist; the City has agreed to provide services; and the City has agreed to assume any road maintenance problems.

Although the Board of County Commissioners must determine if these conditions are met, Mr. Boggs said the statute governing the process does not allow a hearing or appeals process. The remedy to find that the County Commissioners have not performed their duty would be a writ of mandamus.

Mr. Boggs said if the Board of County Commissioners finds that all of the above conditions have been met, it must grant the Annexation. If the Board finds that any of the conditions have not been satisfied, it must enter upon its journal a resolution that states which of the conditions it finds has not been met and that denies the petition. Unless provided otherwise in an annexation agreement or CEDA, he said the territory can never be excluded from the Township.

Some of the Commissioners had questions throughout the presentation thus far but most were not on record and they were scenario-type questions posed by the members to gain a better understanding, which Mr. Boggs addressed.

Mr. Boggs noted two Miscellaneous Provisions. The First-Filed Rule: The law provides that a Board of County Commissioners shall hear and decide annexation petitions in the order in which they were filed. If a petition is granted, which contains territory in another petition, the particular territory in the second petition shall be deleted from the subsequently filed petition. Where the same territory is involved in multiple appeals, each court shall decide the appeal on the first filed petition before considering appeals of subsequently filed petitions.

Substantial Compliance: The law provides that the procedural requirements set forth in R.C. 709.02 to 709.21 are "direct in nature." That section provides that "substantial compliance with the procedural requirements of both sections is sufficient to grant the Board of County Commissioners' jurisdiction to hear and render its decision..." and that a Board shall cure a procedural defect rather than deny a petition solely on the basis of procedural defects.

Mr. Boggs noted Tax Implications of Annexation: Annexations processed and approved under the expedited procedures or annexation of municipal-, county-, or state-owned property result in the territory annexed remaining within the township, and, therefore, the territory remains subject to the township's real property taxes; when land is annexed and removed from the township of origin following the non-expedited process (ORC 503.07), the law requires that the municipality receiving the territory provide compensation for lost property tax to the township of origin; and the law provides for a 12-year declining payment schedule when land is excluded from the township.

Mr. Boggs noted Pre-Annexation Agreements: For annexations accompanied by planned economic development (that may or may not meet the substantial economic development project requirements), municipalities and potential developers often enter Pre-Annexation Agreements; these set forth responsibilities of the municipality and developer: may address responsibility for the township reparation payments, if there will be a boundary adjustment; and may state expectations for development agreements, economic incentives, and tax revenues and amenities to be developed on the site; and Pre-Annexation Agreements are subject to approval by Council. Mr. Boggs concluded his presentation by asking if there were any further questions.

Ms. Newell thanked Mr. Boggs for the really nice presentation.

Mr. Wilson asked if the Commission would get annexations. Mr. Boggs answered the Commission would not get the actual mechanics of the annexation; all of the processes operate at the Council level. He said the Commission will see zoning, PUD types of requests, and Preliminary Development Plans that are annexations in the works as well, relatively frequently.

Communications

Vince Papsidero said there is one meeting in July on the schedule and at this point there are no cases so it could be cancelled but will confirm when we get closer to the date.

Steve Stidhem inquired about the pond at the (former) Montgomery Inn. He asked what the plans are for the pond. Mr. Papsidero said he did not know of any discussions with Crawford Hoying Development Partners regarding the site or the pond. He said there have been discussions in the past about redevelopment but that has been nine months to one year ago. Mr. Stidhem said his point on the pond itself is that it is bit of an eyesore right now. Mr. Papsidero said he can get Code Enforcement to look into it. He said this could be a beautiful area but the pond is only about 10 percent full of where it should be, so he is concerned about the wildlife being impacted. Mr. Papsidero thought the pond was probably designed to retain water from the shopping center so with the rain, the water level should rise. Mr. Papsidero pointed out that any redevelopment to that site would need to adhere to stormwater requirements but there have been talks of having parking structures or a larger building so there would not be room for a pond but that is all theoretical. He added that today, this property is under the BSD and stormwater cannot be supported by a pond in that district; redevelopment necessitates some other solution from a stormwater standpoint. Ms. Burchett said what Mr. Papsidero said is correct but the redevelopment could use the pond as a feature. Mr. Papsidero concluded he would have Code Enforcement as well as Engineering look into this issue.

The Chair, Victoria Newell, asked if there were any further items to discuss. [Hearing none] She adjourned the meeting at 8:38 pm.

As approved by the Planning and Zoning Commission on August 9, 2018.