

**July 14, 2020**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular meeting of the Zoning Hearing Board was held Tuesday, July 14, 2020 at 1:00 P.M.

As the result of both state and local government restrictions on public gatherings, the hearing was held via the on-line website *Zoom Webinar*, at the I.D. bearing no.: 846 1780 1469.

Special instructions for the applicants were provided in advance. In addition, anybody wishing to provide public comment were also provided with instructions, contained at [www.erie.pa.us](http://www.erie.pa.us), the official City of Erie Homepage.

**-- MINUTES --**

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal No. 12,221 by Dena Rupp (4001-119)** concerning property located at 28 and 30 West 8<sup>th</sup> Street in the Masonic Temple Building. The appellant is seeking a use variance to operate an Animal Care Facility at this location. Per Section 204.17 of the Erie City Zoning Ordinance, Animal Care Facilities are not a permitted use in a C-3 zoning district.

**NOTE:** Four of the Board members, as well as their solicitor and the City's chief zoning official were in visual and audio contact with one another throughout the hearing (one Board member was in audio contact only during the hearing). The witnesses were in audio contact with the Board throughout the hearing; with the appellant, Ms. Rupp, also being in visual contact.

**Findings of Fact**

1. The appellant, Ms. Dena Rupp represented herself at the hearing, and told the Board that she hopes to open and operate a "cat cafe", a business operation that has not previously been seen in Erie, but has become very popular in cities throughout the country in recent years. Ms. Rupp explained that the operation is a combination cat day care and service facility, and adoption center, all of which satisfying an increasing need in the City for abandoned cats.
2. The "cafe" portion of the facility would essentially be a small coffee shop, serving between 10-15 patrons, by invitation only. The purpose of the coffee shop, which would be accessed from the 8<sup>th</sup> Street side of the building, is to have people interact with, and hopefully decide to adopt, one or more of the cats that are housed at the facility.
3. According to the appellant, there is a far greater need in the Erie area for the adoption of cats than there presently is for dogs. The community has enthusiastically supported the dog adoption centers (e.g. the "Anna" shelter), but there is no comparable effort to deal with the increasingly large number of feral cats in the City.
4. As to the facility itself, Ms. Rupp said that she has spoken to the Health Dept., and is aware of the many health and safety regulations that she must follow in order to operate

such a facility. On the other side of the facility, where the cats are housed, the appellant said that there will be someone on duty at all times overseeing the cats.

5. The appellant presented a very detailed information packet with her application. The packet included a site plan, aerial views of the property, photographs, and even a spreadsheet, broken down by quarters, itemizing the economic feasibility of the proposal. The appellant said that the goal is to create the establishment with the least modification to the existing site as possible, while enhancing the downtown neighborhood with the new business endeavor.
6. The site is uniquely suited to making the proposal an asset to the downtown community. It would provide a space where students, corporate and small business employees, together with regular day to day foot traffic can enjoy a relaxing establishment, while at the same time supporting a worthwhile project that will benefit the community.
7. In addition to the appellant, the Board also heard from Mr. Ethan Sykes. Mr. Sykes, who is the president of the Masonic Temple, the site of the proposed facility. In addition to testifying in support of the project, Mr. Sykes also wrote a letter in favor of the proposal, in which he detailed for the Board some of the work and planning that has gone into the project.

### **Conclusions**

1. The appellant is proposing the opening of a “cat café” in the Masonic Building on the corner of West 8<sup>th</sup> and Peach Streets. The facility would be a combination coffee shop-type operation on one side, and a cat day care / adoption center on the other side.
2. There is a demonstrated need in the area to respond to the increasing number of feral and abandoned cats, similar to the way the community has enthusiastically supported number of dog shelters in recent years. The appellant indicated that the “cat café”-style of operations have been successfully springing up in cities throughout the country.
3. According to Section 204.17 of the Erie City Zoning Ordinance, Animal Care Facilities are not a permitted use in a C-3 zoning district.
4. The location is uniquely situated to attract the diverse group of people (e.g. business people, students, downtown visitors, etc...) who would hopefully support what the combination coffee shop / animal shelter offers.
5. The appellant indicated awareness of the many safety and health regulations associated with both parts of the facility (i.e. serving beverages and caring for animals). There will be somebody overseeing the cats at all times.

### **Decision**

By a three to two decision, the Board approved the appellant’s request for the use variances to open the animal facility. Board members Mike Hornyak, Jeffrey Johnson and Edward Dawson all voted to approve the variance request.

Board members John Reitingger and Selena King voted to deny the request.

### **It is So Ordered.**

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**Appeal No. 12,222 by Bernie Slomski (5026-217)** concerning property located at 604 East 23<sup>rd</sup> Street in an R-2 zoning district. The appellant is seeking a dimensional variance for a 16' x 16' addition that exceeds permitted lot coverage. Per Section 205 of the Erie City Zoning Ordinance, 50% coverage is permitted; 64% is being proposed.

**NOTE:** The entire Board, including their solicitor and City's chief zoning official were in visual and audio contact with one another throughout the hearing (one Board member was in audio contact only). The witnesses were in audio contact with the Board throughout the hearing

### **Findings of Fact**

1. The appellant, Mr. Bernie Slomski, was filing the variance application on behalf of The Society of Holy Trinity. Mr. Slomski described the organization as an "important anchor" for the East 23<sup>rd</sup> and Ash Street neighborhood; in great need for the traditional eastside community.
2. The appellant is proposing to add an enclosed deck addition to its building, which would accommodate smokers. The Society of Holy Trinity is planning to abolish smoking when they reopen after the government-mandated Covid-19 shutdown. While the organization would have eventually gone non-smoking at some time in the foreseeable future, the appellant indicated that it is very important that the change is made immediately, as there is considerable documented evidence that the said Covid-19 virus is spread more rapidly in an environment with second-hand smoke.
3. The proposed roofed structure is designed to be 16' x 16' in size. The new deck will be constructed entirely on club property on the existing gravel surface. The structure will not be visible to passersby because of a white vinyl fence that encloses the property, so it will not have any negative effect to the surrounding neighborhood.. The application included site plans of the proposed structure for the Board to review, drafted professionally by an architecture company.
4. In addition to Mr. Slomski, another witness, Ms. Heather Caspar, representing the Sisters of St. Joseph neighborhood improvement group, also spoke in favor of the appellant's proposal. Ms. Caspar reiterated the importance that the Society of Holy Trinity has to the eastside community, and added that the appellant's ongoing efforts is in conjunction with other neighborhood action groups, like the Sisters of St. Joseph, who work on behalf of improving the Erie community.
5. Ms. Caspar compared the proposed addition to recent construction at the Nuova Aurora Society, a traditional west side club similar to the Society of Holy Trinity. She said that the renovations to that organization provided an important improvement to the traditional neighborhood establishment, which in turn provided a benefit to the changing west side community; a change which would be similar, she feels, to the one that would result to the changes being proposed by Holy Trinity.

### **Conclusions**

1. The appellant is seeking a dimensional variance to construct a roofed, deck-like structure for smokers at the Society of Holy Trinity social club. The appellants presented evidence

- from professional architecture and construction companies showing the need for the proposed facility to be 16' x 16'; which is slightly larger than the City Ordinance allows.
2. According to Section 205 of the Erie City Zoning Ordinance, 50% coverage is permitted for this type of structure. The appellant's proposed deck would be 64% of the establishment's surrounding property.
  3. The appellant indicated that there is a hardship that has come to light recently, making the variance all the more important at this time. While the establishment would have likely gone non-smoking eventually, it is important that they make this accommodation now. The reason is that it has been determined that the Covid-19 virus – the government mandated reason why the facility is presently closed – is spread more rapidly among second hand smoke. Therefore, the facility must make a change before its reopening.
  4. The proposal will not have any negative effect on the surrounding neighborhood. It will be constructed on the existing gravel surface, and not visible to the public because of a white vinyl fence that surrounds the entire property.

### **Decision**

By a unanimous decision, the Board voted to approve the appellant's request for the dimensional variance. Citing the need in the importance that the Society of Holy Trinity has to the traditional eastside community, Board members John Reitingner, Mike Hornyak, Selena King, Jeffrey Johnson and Edward Dawson all voted to approve the variance.

### **It is So Ordered.**

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**Appeal No. 12,223 by the Sisters of St. Joseph Neighborhood Network (6009-203)**  
concerning property located at 1816 Myrtle Street, in an RLB – Residential Limited Business - zoning district. The appellant is seeking a dimensional variance to construct an accessory structure associated with an urban garden that exceeds the permitted square footage. Per Section 305.56(b) of the Erie City Zoning Ordinance, urban garden accessory structures shall be no larger than 100 square feet. A 432 square foot structure is proposed. .

NOTE: The entire Board, including their solicitor and the chief zoning officer for the City were all in visual and audio contact with one another throughout the hearing (one Board member was in audio contact only). The witnesses were in audio contact with the Board throughout the hearing

### **Findings of Fact**

1. The appellant is the Sisters of St. Joseph Neighborhood Network (hereafter referred to as "S.S.J."), a community action group that has been successful in recent years in helping to revitalize the old "Little Italy" area of Erie's west side. The appellants were represented at the hearing by Sister Phyllis Hilbert and Ms. Heather Caspar. The S.S.J. are in a unique situation legally with respect to their ownership of a vacant parcel of land near West 18<sup>th</sup> and Myrtle Streets.

2. Ms. Caspar explained to the Board that the parcel in question was deeded to the S.S.J. in 2019 via a quit claim deed – a type of deed that provides no guarantees, or “warranties,” on the status of the title of land being transferred from one owner(s) to another. In the case of the parcel in question there are many liens on the property that may take some time to be resolved before the lot can be sold, or re-titled, to another party. Therefore, the options for the S.S.J. with respect of the property are very limited at this time.
3. The appellants are involved in many renovation and improvement projects in the west side neighborhood. One of these projects has been to promote a large urban garden, known as the Little Italy Farmers Market, with the goal of promoting the growing of food for those area residents in need. The need to have an enclosed facility to house all of the equipment and supplies connected with the garden project gave the appellants the idea of utilizing the vacant property on 18<sup>th</sup> and Myrtle Streets, which cannot be sold or transferred due to the aforementioned liens on the property.
4. The S.S.J. wish to erect an “Urban Garden” accessory shed-like structure that would serve the purpose of being a storage facility, on the encumbered property. The proposed structure is designed to be 432 square feet, built on the natural ground (no cement foundation), with no electricity. Because of its size, in addition to receiving the variance, the proposed structure would also be required to meet building code approvals.
5. Sister Hilbert also addressed the Board on behalf of the S.S.J., reiterating much of what Ms. Caspar had testified about, including the strong commitment that the neighborhood group has demonstrated in its efforts to improve the community. The proposed structure is needed, and would be a great help in that community improvement effort.

### **Conclusions**

1. The appellants propose building a shed-like storage facility in order to house the equipment and supplies that they use in other community improvement projects; specifically in housing equipment associated with the urban gardening initiative that the appellants have operated to provide food for neighborhood residents in need.
2. The proposed storage facility is to be built on a parcel of property that was deeded to the appellants, but has so many encumbrances (liens) on the property that it would be very difficult for the appellants to transfer ownership of the unused property at anytime in the foreseeable future.
3. According to Section 305.56(b) of the Erie City Zoning Ordinance, urban garden accessory structures shall be no larger than 100 square feet.
4. The appellants proposed storage facility is designed to be 432 square feet, built on the natural surface (no cement foundation), without electricity.
5. The appellants claim that the proposed storage facility would provide a valuable benefit to one of their most important neighborhood revitalization efforts (urban gardening). The property is vacant, and currently not transferable because of the many liens; the proposed structure would not have any negative effect on the neighborhood.

### **Decisions**

By a unanimous decision, the Board voted to approve the use variance to erect the shed-like storage facility. Citing the need for the proposed structure and the work the appellants have done

in recent years, Board members John Reitingger, Mike Hornyak, Selena King, Jeffrey Johnson and Edward Dawson all voted to approve the variance.

**It is So Ordered.**

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**Appeal No. 12,224 by Bhuwan Monger (5161-108)** concerning property located at 3304 McClelland Avenue in an I.P. (industrial park) zoning district. The appellant is seeking a use variance to operate a church at this location. Per Section 206(B) of the Erie City Zoning Ordinance, churches are not a permitted use in an industrial park.

NOTE: The entire Board, as well as their solicitor and the City's chief zoning officer were all in visual and audio contact with one another throughout the hearing (one Board member was in audio contact only). All of the witnesses who testified were in audio contact with the Board throughout the hearing

**Findings of Fact**

1. The appellant, Bhuwan Monger, together with Pastor John Rai, addressed the Board on behalf of the proposal, speaking for the small but close-knit local refugee community of residents from Nepal. They have been seeking a suitable location for a church, a very important part of an immigrant community that is struggling with the cultural, language and economic difficulties associated with moving to an entirely new country.
2. According to Pastor Rai, even in their home country, the Church provided more than just a place to pray, but also served as a source of community and fellowship in overcoming the difficulties of life in an impoverished area. Therefore, the Pastor said that the requested variance is particularly important in helping the elderly and other members who cannot speak English, overcome their anxieties and transition into their new environment.
3. Most of the locations that the appellants have looked at in search of a suitable building for a church have been too small and/or too expensive. The proposed property is large enough and affordable, but just as important it is located near where most of the Church members live. The building is far enough away from residential properties that it will not negatively affect the nearby neighborhood.
4. The building was formerly used as a day care center; a zoning certificate, issued in 1996 for that purpose, was attached to the variance application. The day care center recently closed. If approved, the new church would be used for worship purposes only; it would no longer be used for a day care center.
5. The real estate agent who listed the property, Mr. Pat Grab, also testified before the Board. He indicated that the conversion to a church would be an ideal use for the building as it sits. Pastor Rai did indicate that some internal remodeling would have to be done to transform the interior of the former day care center into a church, but reiterated that the new Church would not affect the surrounding neighborhood, nor alter any of the activities of the nearby residents.

## Conclusions

1. The appellants represent a small immigrant community from Nepal, who have been looking for a suitable location for a new church. The small number of locations that they have previously seen are either too small and/or too expensive for the appellants.
2. Finding a church is very important to the immigrant community that has great difficulties adjusting to the cultural, language and social changes involved with such a dramatic change in their lives. The Church would provide an important function in helping those community members adjust to the many changes.
3. According to Section 206(B) of the Erie City Zoning Ordinance, churches are not a permitted use in an IP industrial park zoning district.
4. The proposed building was formerly a day care center. If approved there would be some interior changes required to transform the former facility into a church.
5. The proposed location is close to the homes of many of the Church members. Its location would not have a negative effect on the nearby neighborhood.

## Decision

By a unanimous decision the Board voted to approve the use variance to permit the former day care center to become a church. Board members John Reiting, Mike Hornyak, Jeffrey Johnson, Selena King and Edward Dawson all voted to approve the variance request.

## It is So Ordered.

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**Appeal No. 12,225 by Kulwant Lakhman (6016-204)** concerning property located at 607 West 18<sup>th</sup> Street in a C-4 Traditional Neighborhood Commercial zoning district. The appellant is seeking a use and dimensional variances to operate a gasoline station with Associated Convenience Store at this location. Per Section 204.18 of the Erie City Zoning Ordinance, gasoline service stations are not a permitted use in a C-4 district. Per Section 305.43(b) of the Code, stores in a C-4 zoning district shall not exceed 2,500 sq. ft. and shall not have fuel pumps. The existing structure is 3,715 square feet; and, the installation of pumps is proposed. Per Section 305.12 the building shall be at least 50' from an "R" district. The existing structure is 23' from the "R" district.

**NOTE:** The entire Board, as well as their solicitor and the City's chief zoning officer were all in visual and audio contact with one another throughout the hearing (one Board member was in audio contact only). All of the witnesses who testified were in audio contact with the Board throughout the hearing.

## Findings of Fact

1. The appellant Kulwant Lakhman addressed the Board on behalf of the proposal. The appellant is seeking to install a convenience store and self-service gas station at 607 West 18<sup>th</sup> Street; at the southwest corner of West 18<sup>th</sup> and Cherry Streets.

2. The location, presently vacant, has in recent years been a restaurant (circa early 2000's); a convenience store / gas station (circa late 1980's early 1990's); and previous to that, a gas station (1970's). The variance application included old building permits and zoning permits identifying the property's varied uses in the past fifty years.
3. As indicated, the property on the corner of West 18<sup>th</sup> and Cherry Streets is vacant, but houses an unused building that had formerly been a restaurant. The appellant hopes to renovate the existing building into a convenience store, and utilize more of the unused lot to install three (3) gasoline pumps. The proposed store / gas station would be similar in look and design to facilities built at three other locations by the appellant – a.k.a. “C-Stores” – at 1725 Parade Street, 1001 East Avenue, and 1150 East Lake Road, in the past ten to fifteen years.
4. The appellant and his team have demonstrated a successful business model that has provided a significant economic benefit to the Erie eastside community. The current proposal is for a west side property that has been vacant and unproductive for many years, but most recently housed a restaurant. (The restaurant was owned by the same family-run business that also operated a food warehouse, food store and delicatessen, bakery and delivery service, all located in the same 1½ block area as the restaurant-around the area of West 17<sup>th</sup>-18<sup>th</sup> and Cherry Streets. Like the vacant restaurant, the other businesses are no longer in operation.)
5. Given the recent history of the property, as part of a family-owned food service operation that is no longer in business, the 18<sup>th</sup> and Cherry lot is very difficult to find a new owner. The appellant, however, is seeking to expand his chain of C-Store locations. He sees the property, which was formerly a convenience store / gas station, as a site that he wants to develop.
6. As with the other C-Store locations, in addition to gasoline, the proposed store would also offer groceries, hot and cold beverages, cigarettes and other tobacco products and the lottery. The facility would have access to both Cherry and West 18<sup>th</sup> Streets. The appellant is aware of all of the various local and state Codes and regulations that must be satisfied given the location of the store and the products and services that it will offer.
7. The store would not have a negative effect on the neighborhood. Rather, a well run convenience store / gas station would be a welcome addition to the economically depressed area.
8. A restriction on the deed prevents the appellant from building a convenience store on the site for twenty (20) years since it was sold in 2001. The appellant indicated that he will wait the additional year before installing the proposed convenience store.

### **Conclusions**

1. The appellant is seeking to install a convenience store / gas station at the vacant property on the corner of West 18<sup>th</sup> and Cherry Streets, in a C-4 zoning district.
2. The appellant has transformed three other properties, all previously unused and on the east side of the City, into similar stores.
3. According to Section 204.18 of the Erie City Zoning Ordinance, gasoline service stations are not a permitted use in a C-4 district. Also, according to Section 305.43(b) of the Code, stores in a C-4 zoning district shall not exceed 2,500 sq. ft. and shall not have fuel pumps. The existing structure is 3,715 square feet; and, the installation of pumps is

proposed. Section 305.12 of the Code requires that commercial buildings shall be at least 50' from an "R" district. The existing structure is 23' from the "R" district.

4. In addition to requiring the use and dimensional variances, the appellant also has a restrictive covenant in the deed of the property which would prevent him from opening (at least) the gas station portion of his proposal for an additional year (until 2021).

### **Decision**

By a unanimous decision, the Board approved the use variance and all of the dimensional variances requested by the appellant. Citing the appellant's record of successfully transforming unused and unproductive properties in the City into thriving businesses, Board members John Reitinger, Mike Hornyak, Jeffrey Johnson, Selena King and Edward Dawson all voted to approve the variance request.

### **It is So Ordered.**

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**Appeal No. 12,226 by Chester Vendetti (Nos. 5173-100, 103 and 107; 5241-101; 5174-100, 101 and 103** concerning seven parcels located at the northeast corner of McClelland Avenue and the Bayfront Connector. The appellant is seeking use variances to create a planned residential development on these parcels. Per Section 204.16 of the Erie City Zoning Ordinance, planned residential developments are not permitted in the C-2 zoning district, and per Section 204.17 of the Code, planned residential developments are not permitted in C-3 zoning districts.

NOTE: The entire Board, as well as their solicitor and the City's chief zoning officer were all in visual and audio contact with one another throughout the hearing (one Board member was in audio contact only). All of the witnesses who testified were in audio contact with the Board throughout the hearing.

### **Findings of Fact**

1. The appellants, the Vendetti Brothers Associates, was represented at the hearing by the company's senior partner, Chester Vendetti. Vendetti Bros. Associates owns approximately forty (40) acres of undeveloped property near the area of McClelland Avenue and the Bayfront Highway, in Erie's upper eastside.
2. In the prepared statement that accompanied their application, the appellants said they hope to serve that segment of the community that wishes to own, rather than rent, their own homes, but are often prevented from doing so due to the high cost of home ownership. The statement went on to say that it would be a poor use of the property to not develop it, as it is large enough to accommodate various sizes and types of houses, and would provide easy access to all parts of the City and surrounding area via the Bayfront Connector Highway.
3. Mr. Vendetti stressed that the variance that his company is seeking is only to examine the feasibility of developing the property. No specific plans have been made at this point, he

- said. The appellant added that they have a year to conduct environmental and other studies to determine any development designs, if they receive the requested variance.
4. The property owned by the appellants is divided between two zoning districts, with some of the land in a C-2 – General Business District; and the rest in a C-3 – Central Business District.
  5. The appellant made reference to and quoted portions of the Erie City Zoning Ordinance, dealing with Planned Residential Development (hereafter referred to as “PRD”). Section 308 of the City Ordinance states in part:

“The purpose of PRD regulations is to encourage the flexibility in the design and development of land in order to promote its most appropriate use; to encourage grouping ...of housing types...to facilitate the adequate and economical provisions of streets and utilities; and to preserve the natural and scenic qualities of open areas.....”
  6. The PRD development program is applicable to Residential (“R”) Zoning Districts only. It is a special exception in all “R” districts in the City, except Waterfront Residential Districts.
  7. While the PRD is not a permitted use nor special exception in Commercial “C” zoning districts, which is where the appellant’s property is located, Mr. Vendetti said that they are encouraged to possibly put homes on their property because of the City’s “L.E.R.T.A.” program; the Local Economic Revitalization Tax Assistance program, which provides tax incentives for newly constructed or renovated housing.
  8. A number of nearby residents addressed the Board in opposition to the proposal. [It was also pointed out by one of the opposition witnesses that there were several other members of the area who are opposed to the development proposal, but could not voice their disapproval because they were unable to participate in a web-based hearing.]
  9. The witnesses in opposition mainly expressed concern about the natural, wildlife-friendly beauty of the undeveloped land.
  10. In response to the opposition witnesses, Mr. Vendetti once again reiterated that this would only be a first step, and is not an approval to go in and build. Any environmental impacts, development studies, etc... would only be determined if and when they receive the variance. He added that the 40 acre property is a beautiful area, and said that a subdivision on it would be a nice place for everyone to live, potentially bringing more residents into the City where the population has been declining.

### **Conclusions**

1. The appellants own forty (40) acres of undeveloped property in the area of McClelland Avenue and the Bayfront Connector Highway. The appellant’s property is divided into seven parcels, with some being in a C-2 – General Business Zoning District; and the rest in a C-3 – Central Business Zoning District.
2. The appellants are seeking use variances to create a Planned Residential Development on these parcels.
3. According to Section 204.16 of the Erie City Zoning Ordinance, Planned Residential Developments (PRD) are not permitted in the C-2 zoning district, and according to Section 204.17 of the Code, PRDs are not permitted in C-3 zoning districts.

4. The PRD development program is applicable to Residential (“R”) Zoning Districts only. It is a special exception in all “R” districts in the City, except Waterfront Residential Districts.
5. As a result of the PRDs not being permitted in “C” zoning districts, the appellants would require a variance to create a planned development on their property. If approved, the variance is not an approval to begin to build a development. It would only be the first step; any developmental studies would only be determined if the appellants receive the variance.
6. The appellants are also seeking to possibly develop their property under the City’s “L.E.R.T.A.” program; the Local Economic Revitalization Tax Assistance program, which provides tax incentives for newly constructed or renovated housing.
7. The Board concluded that the L.E.R.T.A. program was designed for situations like the appellant’s proposal.

### **Decision**

By a four to one vote, the Board approved the variance request. Citing the fact that the L.E.R.T.A. program was adopted to investigate the potential development of these type proposals, and that the variance would only be giving the appellants permission to look into the possible creation of a Planned Residential Development on the property, Board members Mike Hornyak, John Reitingger, Edward Dawson and Jeffrey Johnson all voted to approve the request for the use variance.

The lone dissenting vote was cast by Board member Selena King.

**It is So Ordered.**

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