

**MINUTES  
PLANNING AND ZONING COMMISSION  
MAY 8, 2002**

A regular meeting of the City of Powell Planning and Zoning Commission was held on May 8, 2002, and called to order at 7:31 p.m. by Chairman Don Emerick. Other Planning and Zoning Commissioners present were Tom Counts, Roger Coville, Donald De Palma, Brian Murphy, Kevin Futryk, and Dan Wiencek. Also present were David Betz, Director of Development; Shawn Leininger, Development Planner; Dawn Nauman, clerk to the Planning and Zoning Commission; residents; and representatives of the press.

**HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA**

Nancy Rees 675 Middlebury Way, said that her first concern is the 15-acre parcel south of the Powell Place subdivision and West of Liberty Road. She said that she understands that the builder, Fiori, has filed bankruptcy and someone else has bought them out. Mr. Betz said that Casto has bought Fiori, and the project will continue. Ms. Rees expressed concern about the pace at which the project is developing. She said they are supposed to be planting shrubbery along the mound so that adjoining homeowners do not experience mud debris from this development. Mr. Betz said he will follow up with them, but that it has been extremely wet and the rain is impacting the project.

Ms. Rees said her other concern is that there are some homeowners in Powell Place phases 1 and 2 trying to get a variance to allow vinyl siding on their homes. She said that vinyl siding was allowed in the 3<sup>rd</sup> and 4<sup>th</sup> phases of her subdivision because there was concern that the houses along the railroad wouldn't sell. She said there was a siding problem experienced by homeowners in phases 1 and 2, but she asked that vinyl not be permitted as a replacement. She said that her main concern is that the people who want to use vinyl want to put it over the existing problem siding so they can sell quickly and move. She said that future homeowners would experience problems if this siding was placed over the existing poor siding. She asked that the Commission not allow vinyl siding unless a condition is made that it not be applied over existing siding.

Commissioner Emerick said that he is not aware of anyone asking to use vinyl. Mr. Betz said there have been inquiries but no application.

Doug Ritchey, 882 Bovee Lane, said that there are a number of Powell Place homeowners that will soon be asking for a change in the zoning text or a variance to allow vinyl siding. He said this is not just to sell his home, and that his intent is to remove the hardboard siding that is deteriorating on his and many homes in Powell Place. He said this siding is making the neighborhood look bad. He said that phases 3 and 4 already have vinyl siding and some people with the poor siding are interested because their neighbors across the street have vinyl siding. He said cost is an issue, and vinyl is more affordable than cedar.

Commissioner Emerick thanked everyone for their comments. He closed the public comment session.

**APPROVAL OF MINUTES**

The minutes of April 10, 2002 were amended and approved.

**ZONING TEXT AMENDMENT (Reconsideration)**

**Section 1147.14 Recreational Structures**

Mr. Betz said that since this zoning text was amended, and Staff has begun enforcing it, many residents have been concerned with the new regulations for basketball goals being prohibited from rights of ways. Council has asked the Planning and Zoning Commission to review this issue and to allow further public input. Staff has researched this issue among other Central Ohio communities and compiled policies from various municipalities. He said that many communities do restrict recreational structures in the public rights of way, mainly for safety reasons. He said there are concerns that such structures could obstruct vehicles and pedestrians, or fall over in a wind storm and cause damage to persons or property. Mr. Betz reviewed a series of photographs of portable basketball hoops placed in the sidewalk and overhanging the street in a way that a delivery truck could hit the net. He reviewed one at the end of a dead end street. He said that one of the reasons for this ordinance was for safer roadways. He said that they did find that Dublin has regulations regarding playing on dead-end streets and culdesacs, in that they have identified "play streets." He said that any possible amendment that would come out of the public hearings with the Planning and Zoning Commission would then be reviewed by Council.

Commissioner Emerick opened this item public comment.

John Brehm, 140 Squires Ct., said that he attended two Council meetings where he presented his opinion on this issue, and that is why it is before the Commission now. He said that last summer he purchased a basketball goal for his daughter, and contacted both the City offices and his to ask if there are any guidelines for such a goal. He was told there were none. He purchased the goal, and secured it with 500 pounds of sand as recommended. He said it is very secure, and in recent storms, it has withstood the wind better than his roof. He expressed concern

that he wasn't notified about this ordinance and wasn't present to give public comment earlier. He said he believes it is safer for him to have his goal where it is right now down the street, rather than in his slanted driveway that is close to a through street. He said he is hoping to find some alternatives for placement of such goals. He said he recognizes this could be a danger on a through-street. He asked if homeowners' associations can be involved in creating a policy that provides for alternatives to the current ordinance.

Tom Clevin, 251 Hopewell Ct., said that he has had a basketball hoop in the right of way for about 7 years with no problems. It was properly anchored. Since it has been moved to comply with the new law, it has blown over twice. He said it is fine in the street, and that his kids play there all the time. He said he is also on a culdesac, and agrees with Mr. Brehm's comments about finding some alternatives and addressing culdesacs and through streets.

Patty Larson, 347 Olenview Circle, agreed with Mr. Brehm and Mr. Clevin. She said she has had a basketball goal at the end of her culdesac for 10 years without any problems. She said she would like to know if there have been any problems with the goals in Powell, and she offered that she has not heard of any. She agreed with getting the homeowners' associations involved.

There being no further comment, the public hearing was closed.

Commissioner De Palma asked what precipitated this debate. Mr. Betz said that residents were concerned about the law changing and the fact that the City did not notify all existing basketball hoop owners in the City. He said that Staff did follow the proper notification requirements outlined in the Zoning Code. He said that people have been used to using them on the street and taking them to the curb or sidewalk and leaving them there. Residents have asked Council to reconsider the law.

Commissioner Murphy asked what is the enforcement mechanism of this ordinance. Mr. Betz said that if Staff sees a hoop in the right of way, they send a letter notifying the property owner of the ordinance asking them to move it within a certain time period.

Commissioner Wiencek asked how many people were notified that they were in violation. Shawn Leininger, Development Planner, said there were 48. Commissioner Wiencek asked if those 48 were notified of tonight's meeting. Mr. Leininger said they were.

Commissioner Emerick said he would like input from the fire department or other emergency service departments on this issue.

Commissioner Futryk asked about the regulations of other area communities. Mr. Betz said that Staff asked many neighboring communities, and received information from Westerville and Dublin. Mr. Leininger said that neither Grove City nor Delaware had regulations, and that Gahanna asked for a copy of Powell's. Commissioner Murphy asked if Gahanna has a policy. Mr. Leininger said that they have a comprehensive right of way ordinance. They require a permit for structures in the right of way, but have made it an administrative policy not to approve them. He said they do have a grandfather clause. Commissioner Counts asked if there such right of way regulations in Powell. Mr. Betz said that any obstruction of the right of way could be an offense for which the police could write a ticket.

Mr. Brehm said that this has been policed very closely since the ordinance was passed, and he feels that people in violation of the proposed ordinance could have easily been notified to be part of the original public discussion. He said that Powell is a family-oriented community and one of the things that goes along with families and children is the opportunity to play basketball in a safe environment. Mr. Betz reminded the Commission that the recreational structures ordinance didn't just address basketball hoops. He reiterated that the proper notification procedures were followed.

Commissioner Coville said that the City is at risk with their insurance coverage if this policy is removed. Mr. Betz agreed that the City's insurance carrier admitted that the right of way doesn't fall under the City's coverage for recreational areas, as would a park. Commissioner Coville asked about addressing a culdesac as an acceptable recreational area. Mr. Betz said that the insurance carrier said that any change in the ordinance should include logical reasoning and establishing the background for change.

Mr. Counts asked what is Council asking for. Mr. Emerick said that they would like a recommendation from the Planning and Zoning Commission to keep or change the ordinance. Mr. Betz said the Commission can also request additional information or study, such as to consider culdesacs, dead-end streets, etc.

Commissioner Wiencek said that definitions should be considered. He said he thinks of his street as a culdesac, but it really is a thru-street. He said he has two neighbors effected by this ordinance. One was already in the

habit of moving the structure at the end of the day. The other has had his in the right of way hanging over the street for a number of years, and he understands the purposes for the regulation and is complying with it by moving it back and forth. He said that he, like Mr. Brehm, has a slanted driveway that is awkward for basketball.

Commissioner Wienczek said that he looked around at basketball goals within the community, and most of them are half way up the driveway regardless of the slant. He said he thinks the Commission was deliberate in enacting this ordinance, but he also thinks it is appropriate to study this further and gather input on other options. He said that if the Commission determines to identify different regulations for culdesacs, loop streets, or streets based on traffic counts, he would like to know the legality of treating one set of citizens different than another by the fate of where they live. Mr. Betz said he can review that with the City Attorney. Commissioner Wienczek added that there is an aesthetic value to not having these structures on the street, and that should be considered.

Commissioner De Palma said that he is hesitant to try to reverse an ordinance that was enacted properly by Council.

Commissioner Murphy said he would be in favor of re-addressing culdesacs, dead-end streets, and considering grandfathering certain existing structures where there aren't safety concerns. He said he doesn't think such structures should be permitted on a through-street.

Commissioner Coville said he is not in favor of reconsideration. Commissioner Counts said he is not in favor of reconsideration. Commissioner Emerick said that he lives on a culdesac that still gets quite a bit of traffic, and that there are still safety concerns with culdesacs. He said he would be willing to give some consideration to reasonable adjustment. Commissioner Wienczek said he is not opposed to more input, although his initial consideration is to leave it as it is.

Commissioner Futryk said that he thinks that portable basketball hoops are a growing phenomenon, and he would like Staff to do some additional research to see how area communities address them.

Commissioner De Palma said that he had a portable hoop in his driveway for years, and it never occurred to him put it in the right of way. He said he doesn't like the idea of children playing in the street. He said he does think there are safety issues even in culdesacs. He said at night, he can envision cars running into them. However, he is not adverse to further consideration. Mr. Betz said that Staff will complete more research and report back at the next meeting with possible alternatives. He said he will also review the issue with the fire department.

#### **PRELIMINARY DEVELOPMENT PLAN (Tabled at April 10, 2002 Meeting)**

**Applicant:** Newbury Homes  
**Location:** 10331/10571/10441 Sawmill Road  
**Zoning:** PR, Planned Residence District  
**Request:** Approval of a Preliminary Development Plan for 16.454 acres on the east side of Sawmill Road and west of Lakes of Powell for 15 two unit condominium buildings (30 units) on 10.4 acres and an existing church on 6.25 acres

Bob Shepherd, Architect, reviewed that since the last review, they have reduced the number of units from 34 to 30 to address some concerns about providing space along Zion Drive. He said that at the last meeting, there was discussion about mounding, an entrance on Zion Drive, and about changing two buildings from doubles to singles. He said that they feel single buildings won't fit the market they are trying to reach, and there are problems architecturally with such size buildings. They also feel there is no benefit to an entrance along Zion Drive. They have also obtained additional property and changed the site plan so that no homes back up to Zion Drive. He reviewed the water feature and fountain, the bank, and then the buildings. He said the closest building is 65 feet away, some are 170, and some are 200 feet. He said they have no problem having some 3-bedroom units as discussed, but they would like to do it based on demand and sales. He said that they are concerned that too much mounding would make this look like a tunnel.

David Betz, Director of Development, gave his Staff Report on this issue (Exhibit). He reviewed the recently acquired land which will have to be annexed, and noted that the City can plan for land outside its border.

Commissioner Emerick opened this item to public comment.

Janelle Mead, 473 Zion Drive, thanked the Commission for not asking them to put the entrance off Zion Drive because her kids and dog run into the street and there is quite a bit of traffic. She said she has concerns with the drainage ditch between this property and hers and said that her yard is a wetland with the recent rain.

Dave Blahnik, 520 Eagleview Court, said this is a great plan, and he really appreciates it, but he still has problems with density requirements. He asked that the Commission decide what the density requirements are and make everyone follow them. If they don't make everyone follow them, they should be "taken off the books."

Ray Wasielewski, 514 Eagleview Court, agreed that this is a much better plan for adjacent properties, and it proves the process works. He agreed that the density issue needs to be resolved so that developers know what to expect so that then they would come to the Commission with a project that contributes enough to the community that the density they would like is approved.

Butch Knowlton, 563 Zion Drive, said he is the spokesman for the Lakes of Powell, and he agrees with what has been said. He said this has come a long way, and he appreciates the changes since the first meeting. He said he would still like to see a little more distance between this development and his, but that most residents, if not all, are pretty pleased.

Nancy Rees, 675 Middlebury Way, agreed with comments about density. She said it seems that every developer wants a certain density over that which is set. The City keeps giving them additional density. She said that the Commission should set a certain density and stick with it.

Don Eger, Interim Pastor, Zion Christian Fellowship, said that he believes that Newbury Homes has made every effort to comply with reduced density. He said that affects the church as well, and the density in this revision is as low as the church can go and still get out of debt, which was their goal with this project to begin with.

There being no further public comment, the public hearing was closed.

Commissioner De Palma said that he likes this plan much better than the original presentation. He said that his concerns about the view from Zion Drive have almost been eliminated. He said he is disappointed that there are no upgrades proposed on the rear of the units, because he believes the backs of units 1-3 and possibly 4 and 8 will be visible from Sawmill Road and/or Zion Drive. Other than that, he doesn't have any other major concerns.

Commissioner Futryk commended Newbury Homes and Mr. Shepherd for the considerable turnaround from the first plans. He asked about the drainage ditch that has been mentioned and asked if the developer can work on improving the drainage. Mr. Betz said that Staff will have to take a look at that when they do more engineering work on site. The City Engineer will be able to address how the system works. Commissioner Futryk asked if that should be a condition of approval of the preliminary plan. Mr. Betz said that plans to handle stormwater are typically part of the engineering review. Staff will probably start working on that after the preliminary plans are approved.

Commissioner Counts asked, with the addition of two buildings and additional land, what is the density. Mr. Betz said it is 2.9 d.u./acre. Mr. Counts asked how that compares to Murphy Park. Mr. Betz said he will look into that.

Commissioner Counts asked what siding material will be used. Mr. Shepherd said they do not plan to use vinyl.

Commissioner Coville echoed Ms. Rees' comments about density. He said that the perception is that it is positive that this went from 3.5 d.u./acre to 2.9 d.u./acre, but he feels that the density actually went up from the permitted 1.7 d.u./acre to 2.9 d.u./acre.

Commissioner Murphy asked if there is a bikepath on the north side of Zion Drive. Mr. Betz said there is a sidewalk that runs the entire length to Sawmill. Commissioner Murphy said that he would like inclusion of the path with a public access easement around the pond itself. Mr. Betz said there possibly could be a loop around that pond, and that would provide more public green space verses something strictly enjoyed by residents. He said that would be a good way to provide a public benefit. Commissioner Wiencek asked if the City got an easement in the Murphy development that created a path around the pond. Mr. Betz said there is a pathway through the condos at Murphy along Sawmill and then onto the site through the park. Commissioner Wiencek said there is a path around the pond at Gray Oaks Drive. Mr. Betz said there is.

Mr. Betz said, in answer to Commissioner Count's previous question, that the density at the Villages at Murphy Park is 5.5 d.u./acre net and 2.69 d.u./acre gross. Murphy Crossing has a net density of 3.58 d.u./acre and a gross density of 2.69 d.u./acre.

Samantha Shuler, Attorney for the applicant, said that this is the first time they heard about a path around the pond, and she is concerned about liability and security. She said without knowing all of the answers to their concerns, they would rather not agree to the path tonight. Commissioner Emerick suggested that Staff work with the applicant on addressing some of those issues.

Commissioner De Palma said that this development has gone from neighbors saying they were assured that this was always going to be a green space to talking about different density levels that would be appropriate. He said that the Commission needs to be flexible when it looks at different pieces of property like this, which may not be

appropriate for single family development. He said that density should be addressed on a case by case basis, and he is comfortable with this development.

Commissioner Wiencek said he is also pleased with how far this plan has come. He said he is happy to forgo the entrance on Zion because the pond amenity far outweighs his desire for the other entrance. He said that on any new development, drainage needs to be controlled so it does not exceed what currently existed. Mr. Betz agreed. Commissioner Wiencek said that with the recent heavy rains, many residents of Grandshire noted what they perceived to be greater flow through their pond coming off the Murphy development. The City Engineer spent close to a week re-evaluating the results of the calculations he made using real life examples from the rains two weeks ago. What those residents saw was a higher level than they were used to because of the amount of rain and because the water ran for a longer period than it normally would have. He said that that may happen here.

Commissioner Wiencek said that when he first came on the Commission, over three years ago, he had that same opinion that the 1.7 d.u./acre requirement should be met. He said that he now believes that density is more than a number on a piece of paper. He said other things should be considered, such as the impact of the development on the community, schools, and roads, and whether there is a positive impact on taxes. He said that in the Lakes of Powell Area, density concessions have been made that make it impossible to hold this development to these density requirements. He said he thinks this density is okay, in large part because of the precedent of previous developments (Woods of Sawmill notwithstanding) adjoining it. He said it makes it impossible to develop this property as the code allows. He said if one goes north to Golf Village, it becomes easy because the precedent has been set. He said it is difficult to hold the line when everything else around it has been developed at a higher density.

Commissioner Wiencek said that he would like the developer to address the rear façades of these buildings by determining in advance which units will be 3-unit buildings. He said that the rear façade on the 3-bedroom building is broken up by gables. Pat Igoe, Newbury Homes, said they plan for 5 3-unit buildings. She asked if some of the 3-bedroom units can be determined by the buyer. After a brief discussion, the Commission determined that units 8, 2, and 15 should be 3-unit buildings because they have the greatest visual impact on the neighbors.

Mr. Shepherd expressed concern about the cost impact of a requirement that all units have stone chimneys. Commissioner Wiencek said that the elevations provided by the applicant showed stone chimneys, and that is what he would like to see. Commissioner Emerick agreed. Commissioner Futryk said that stone would dress up the building, but asked if there is a middle ground to requiring them for all units. Mr. Betz suggested that be considered during the final development plan. Commissioner Wiencek said that this issue impacts not only those residents adjacent to this development, but also those within it. He said that is the kind of amenity that makes a development "first class."

Pat Igoe, Newbury Homes, asked if cedar siding and stucco or stucco stone would be permissible materials if fiber-cement siding is not used. The Commission responded favorably to the use of natural materials.

**MOTION:** Commissioner Wiencek moved to approve the Combined Preliminary and Final Development Plan with the following conditions:

1. That the applicant work with Staff on the alignment of the bike paths.
2. That the applicant determine the extent of the wetland delineation, provide Staff with a copy of the study, and determine how the applicant intends to mitigate.
3. That the applicant add landscaping to the landscape bays of the parking lot for the church.
4. That Staff approve the layout of underground utilities and that the utilities avoid treed areas.
5. That storm water feasibility calculations be provided to ensure the proposed retention pond is large enough to accommodate the development site, including the church.
6. That units 8, 2, and 15 are required to be 3-bedroom buildings.
7. That the applicant work with Staff on the possibility of a path to or around the pond.
8. That exterior materials be finalized at final development plan.

Commissioner Counts seconded the motion. The motion was approved. Yes: De Palma, Emerick, Futryk, Murphy, Wiencek, Counts. No: Coville.

#### SKETCH PLAN

**Applicant:** Steve Moberger, Construction One, Ltd. (Goddard School)  
**Location:** 419 West Olentangy Street (Murphy Commercial)  
**Zoning:** PC, Planned Commercial District  
**Request:** Review of Proposed 8,000 sq. ft. Preschool/Daycare Building on 1.23 Acres

Bill Moberger reviewed the plan, which was revised based on comments from the last meeting. He noted that the appearance has been changed dramatically. It went from an all brick building to a brick and stone building. He said they also dramatically increased the roof line and added a decorative fence material and recessed the roof to hide the mechanicals. They have added dormers to break up the mass of the roof line and changed the entry elevation to stucco. He said they have turned the building so that it is facing Powell Road. They don't think it will

be a problem to address Staff's concern regarding the dumpster. He said they are trying to save as many trees as possible but said that the playground locations makes some of the trees with berries, etc., undesirable.

David Betz, Director of Development, gave his Staff Report on this issue (Exhibit). He said that Staff will defer any architectural comments to the architectural advisor for the Commission.

Emil Slavik, Architectural Advisor, said that he did not see the previous proposal so he cannot comment on changes. He said he does have concerns that the fence could block the water table, so color is important. He said that the penetrations in the roof were handled well, and the gabling is a positive element. He said his concern is that the front elevation has a symmetry with which he's comfortable, but the side elevation does not. He said that the play structures in front of the side elevation will be colorful so he doesn't mind the side of the building being playful within that same context. He questioned the use of stone above brick, as the opposite is typically seen. He said that there is a lot of roof on this building, and that this is a "basic box." He said he doesn't have a problem with the screening of the roof but the color and texture is important.

Patricia Yongst, 348 Daylight Lane, said that she recently moved into the Village at Murphy Park condominiums. She asked where this daycare center will be. Mr. Betz reviewed the site plan. He noted that it is right next door to Colonial Fireplaces. Ms. Yongst said it was her understanding that this will be a park. Mr. Betz said this is in front of the park along Powell Road, and the park will be behind. Ms. Yongst asked if this is a "done deal." Mr. Betz said it is not, but the zoning is Planned Commercial. Mr. Betz reviewed the whole plan for the Murphy development and the location of the commercially-zoned property. Ms. Yongst said that they are selling the condominiums along the park for \$10,000 more for the view of the park. Ms. Yongst said that a daycare center would be too noisy for her. She said older people typically live in condominiums where there aren't many children. Ms. Yongst said she is sure they might bring the children to the park to play. Mr. Moberger said that may happen when parents pick children up but not during operation hours. Ms. Yongst commented that this is a "strange place for a daycare...right next to old people." Mr. Betz said there is a distance of about 350 feet from the property line to the condominium development.

There being no further public comments, the public hearing was closed.

Commissioner De Palma asked if this is the "new Goddard prototype." Mr. Moberger said they are trying to make it so. Commissioner De Palma said this is quite a difference, and he agreed with Mr. Slavik about the stone on top of brick, which to him, seems off-balance. He asked about the stone on the west elevation. Mr. Moberger said that the stone will be continuous. Mr. Betz noted that because of the location of Colonial Fireplaces, that west elevation will not be very visible from the street. Commissioner De Palma said he originally had issues with the mechanicals out of roof, and this is quite an improvement.

Commissioner Futryk agreed that this is a great improvement. He asked Mr. Slavik for suggestions for the brick and stone and breaking up the side elevation. Mr. Slavik said he doesn't have any information on the interior needs, but that fake doors or fake windows on the side elevation could help. He said that stone on brick can be done successfully based on how rugged of a design is desired. If it is a light, smooth stone, the brick below could seem right. He said he would rather see a stucco wall that is sculpted on the side elevation with fake windows that could provide regularity. He said that he doesn't have a problem with this looking like a school and commented that some schools today look more like corporate campuses. Commissioner Futryk asked for further details on the roof. Mr. Moberger described the way it is dropped down and the mechanicals sunken in.

Commissioner Wiencek expressed concern that the roof treatment is used nowhere else in town and he questioned whether it will be appropriate. Mr. Slavik said that the widows walk will make it different and hide something, but there are not similar elements elsewhere in the building. He said that this plan is much improved than what the Commission previously reviewed, but he expressed concern that this is a "franchise-style" building. He said he would like to see a rendering to make it clearer what the building will look like. Mr. Moberger said this is different than anything Goddard has done previously. He noted that similar materials were recently used at a strip center at Kenny and Henderson Road with great success. Mr. Betz said there is an office building south of Powell Road on Route 23 with the same application.

Commissioner Wiencek noted that some neighborhoods are experiencing mildew problems with their vinyl fencing and asked that an alternate material be considered for the widow's walk. He expressed a desire to make the elevations as architecturally interesting as possible. He asked if it is possible to consider a portico/porch or some kind of cover in the building. Commissioner Counts suggested where the gables are, creating a bump out. Commissioner Wiencek said that could create a false entry. He said there is quite a bit of exposure between this and the ASK building, and something is needed to break that up. He said the elevation to the rear has been an issue for adjacent developments, should also be considered here because of the condominium owners behind. Mr. Moberger said that the flat roof drains off the back, and he is concerned about any architectural feature there.

He said he hopes many trees will be left there. Commissioner Wiencek expressed concern about how "berry trees" or "nut trees" will be defined. Mr. Moberger said they will have an arborist do that.

Commissioner Counts said he supports the comments everyone has made. His other suggestion is fake dormer windows on the front so that it looks like there is a second story on this building and adds some variation.

Commissioner Coville agreed with all comments so far. His only difficulty is the fence in front of the east elevation. He said he would like to see a rendering of that. He said he would like to see something that ties the widows walk in with the fence.

Mr. Slavik said that there are fences in front of the HER and ASK buildings, then a fence on this building, and the widows walk fence above. He said they should all be reconciled. He said the widow's walk element can be moved down below for signage or some other purpose to unify the plane of the building.

Commissioner Wiencek added that he supports staff comments, particularly those about the bikepath in the front of the building and the footing landscaping. Commissioner Emerick said this is a drastic improvement from the last plan. Commissioner De Palma expressed concern that there is "too much geometry" in this plan, with many textures. Mr. Moberger suggested that a rendering will help make that more clear. He said they may consider a picket-style fence on the widow's walk rather than a "hex" print. Commissioner De Palma said that he actually likes the elevation drawing that shows parts or stone revealed and would support a "French country" look.

**MOTION:** Commissioner Wiencek moved to allow submittal of a Combined Preliminary and Final Development Plan. Commissioner Counts seconded the motion. The motion was approved. Yes: De Palma, Emerick, Futryk, Murphy, Wiencek, Counts, and Coville.

#### **CERTIFICATE OF APPROPRIATENESS**

**Applicant:** Shepherd of Peace Lutheran Church  
**Location:** 520 Village Park Drive  
**Zoning:** PC, Planned Commercial District  
**Request:** Approval of Fenced Recreation Area for Private School

Jim Clarke, Architect, said the fence was never reviewed with the earlier plan. He has been working with Staff to determine the appropriate location. He reviewed they are proposing a 50% open fence similar to what is across the street at the school.

David Betz, Director of Development, gave his Staff Report on this issue (Exhibit). He reviewed photographs of the area and identified the location of the playground.

Commissioner Emerick opened this item to public comment. Hearing none, he closed the public comment session.

**MOTION:** Commissioner Wiencek moved to approve the Certificate of Appropriateness with the addition of foundation landscaping along the northern portion of the fence. Commissioner De Palma seconded the motion. The motion was approved. Yes: Futryk, Murphy, Wiencek, Counts, Coville, De Palma, Emerick.

#### **CERTIFICATE OF APPROPRIATENESS**

**Applicant:** William and Pouneh Alcott, Village Academy School  
**Location:** 525 Village Park Drive  
**Zoning:** PC, Planned Commercial District  
**Request:** Approval of Free-standing Signs for Private Schools (Preschool and Jr. Academy)

David Betz, Director of Development, reviewed that the applicant has asked that this be tabled until the next meeting.

**MOTION:** Commissioner Wiencek moved to table this item until the next regularly planned meeting of the Planning and Zoning Commission. Commissioner Futryk seconded the motion. The motion was approved. Yes: Murphy, Wiencek, Counts, Coville, De Palma, Emerick, and Futryk.

#### **ADMINISTRATIVE REVIEW**

**Applicant:** Mike's BBQ and Ribs  
**Location:** 24 Grace Drive  
**Zoning:** PC, Planned Commercial District  
**Request:** Removal of Final Development Plan Approval Condition Prohibiting Use of Class D Liquor License for a restaurant at Grace Plaza

Mike Del Percio, Applicant, reviewed that they are opening a barbecued rib restaurant and Grace Drive and found out that there is a restriction by the Planning and Zoning Commission for a liquor license in that area. The City found minutes from July 10, 1996 where that restriction was placed. The City has reviewed this with legal counsel

who has determined that this restriction is not within the jurisdiction of the Planning and Zoning Commission. He asked that the restriction be removed.

David Betz, Director of Development, reviewed that there was a concern during the review of this development about establishments that serve liquor. The Planning and Zoning Commission placed this restriction to address that concern. He concurred that the case law they have on this issue (Exhibit 2) indicates that cities cannot place this type of restriction.

Bryan Smildges, 79 Trail Edge Circle, said that he was present when this building development was reviewed, and there were concerns about the service road that backs up against his property line. There was to be a requirement that the service road be for emergency vehicles only, but commercial vehicles and trash trucks use the road, and the condition has never been enforced. He said the residents believe that with the neighboring daycare center and residential properties, and a public park and school across the street, a liquor license isn't appropriate. He said that when this development plan was approved, the buildings uses were to be limited to "retail sales, professional office services and personal services only," which indicates that restaurants are not permitted. It also said that no restaurant shall be permitted to maintain a Class D liquor license. He said that he researched this issue with the Department of Liquor control and found various reasons not to permit a liquor license:

1. "if it is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace, or good order would result from the issuance." He said this would apply because of the adjacent daycare center and residential property.
2. "does not conform to the building safety or health requirements of the governing body... is located." He said this goes back to the original motion that no liquor license should be provided.
3. "that the place for which the permit is sought is situated with respect to any school, church, library, public playground, or hospital...that the operation of liquor establishment would substantially and adversely effect or interfere with any of these..." He noted the close location to the children's playground.

He said that residents are frustrated that 4-5 years of complaining has done nothing to control the vehicles on the service road. David Betz, Director of Development, said that those complaints have not been made to his office. Mr. Smildges asked if any of the other residents present contacted Mr. Betz about this issue. The residents indicated that they called Mr. Costanza, the owner of the development. Mr. Betz said if Staff had been notified, they would have investigated. Now that they know about it, they will enforce it. Mr. Smildges said he doesn't think it will be enforced.

Tom Brown, 93 Trail Edge Circle, said that he contacted Mr. Costanza whose response was "we got rid of the boat that used to sit back there, so what's your problem?" He said that they have tried to deal with them in a professional manner, and it has gotten them nowhere.

Mr. Smildges referred to Ohio Planning and Zoning case law regarding Mascot Petroleum where it was determined that a municipality could enforce zoning ordinances limiting the retail sale of alcoholic beverages within its boundaries in an area zoned commercial or industrial when residential areas are involved.

Mr. Del Percio said that he has not noticed any commercial traffic on the service road since he began working on his restaurant in February. He said that semis won't fit on the road. He said that he has had construction trucks offload equipment there. He said that Grace Plaza is historically a commercial establishment and there are several liquor licenses. He said they are not planning to open a bar but rather a family style restaurant that serves beer and wine. He said that if legal counsel for the City says the action taken by the Village wasn't appropriate, he would urge the Commission to listen to them.

Mr. Smildges said that last Saturday, there were four vehicles on the service road.

Mary Lou Tope-Lin, 121 Trail Edge Circle, said that they dealt in good faith with the Village at that time not to have a liquor establishment there. She said that maybe it was illegal, but the residents dealt in good faith, and that is what they expect in a residential area. She said if it needs to go in front of the state liquor board, that may be the next step.

Dawn Runyon, 37 Trail Edge Circle, said that they support the restaurant, but not having an establishment serving liquor. She said it is a breach of faith. It may not have been legal, but it was agreed to by the developer. She said the adjoining preschool and daycare should remove the possibility of a liquor license.

There being no further public comment the public hearing was closed.

Commissioner Emerick said that he was on the Commission when this development went through. He said he doesn't think that reversing of this condition of approval is allowing a liquor license. He said that this would just determine that the City doesn't have the authority to ban a liquor license, because that is up to the Department of

Liquor Control. Mr. Betz agreed and reviewed that any application for a new or transferred liquor license at this location would be reviewed by Council. He added that a restaurant is permitted in this location, as it falls under retail sales in the Zoning Code.

Commissioner Emerick said he has no recollection of a discussion that a restaurant is not allowed. He said the service sidewalk behind the building was narrowed to a width of 8 feet to discourage vehicular traffic. Mr. Betz concurred and said that now Staff realizes that the vehicular traffic is a problem, they will be able to enforce that. He said that they have never received any complaints about this, but they can and will enforce it.

Commissioner Wiencek said that the City prides itself on dealing with the kinds of issues like access to the service road in the rear. He said that Mr. Betz will take appropriate action to begin that enforcement process, but warned the residents that it sometimes takes some time to resolve non-compliance. He said the City does not back down on such issues and pursues them to their ultimate end. He asked, when the matter comes before Council and Council requests a hearing, whether public is allowed to speak at that hearing. Dawn Nauman, Clerk of Council, said hearings before the Liquor Control Board are public hearings, but she doesn't know whether they allow public comment. She said that Council could allow public comment at the Council meeting where they determine to have a hearing. Commissioner Wiencek said that means that residents who are concerned about a liquor license at this location should address Council when the time comes. Mr. Betz said he is unsure when that will be, as there may not be licenses available at this time.

Commissioner Wiencek asked if this requirement is considered something that the City put on the owner, or whether there was discussion whether the owner voluntarily allowed the condition. Mr. Betz said that according to the law director it doesn't matter.

**MOTION: Commissioner Wiencek moved to modify the final development to remove the restriction against a Class D liquor licenses. Commissioner Counts seconded the motion. The motion was approved. Yes: Murphy, Wiencek, Counts, Coville, De Palma, Emerick, and Futryk.**

Commissioner Wiencek noted that the Commission feels they have a legal obligation to remove this condition and it in no way expresses support of or opposition to a liquor license.

#### **Cement-Fiber Siding Discussion**

David Betz, Director of Development, said that the Commission has discussed at previous meetings that there is a desire to review amending the Zoning Ordinance to allow cement-fiber siding. A copy of the amendment that was previously considered was provided to the Commission (Exhibit 3) He said there is a lot of interest in this material and that the Commission has approved several developments with this material. The Historic District Commission (HDC) has also approved its use for buildings in the downtown area. He noted that a large amount of information has been provided to the Commission. He played a video from Hardiplank, but noted that Staff is not endorsing any one particular brand. He said that the video identifies two important things. The first is that it is very safe in its fire-resistance and that installation is very important.

Commissioner Emerick opened this item to public comment.

Chris Kelly, 118 Chenango Drive, said that this amendment to the Zoning Code will benefit all citizens of the City. He said that virtually every Maronda Home in Powell Place that isn't stucco needs to be resided, and the residents are looking for alternatives. He said he has used Hardiplank before and he likes it because it looks like cedar, applies like cedar, and gives a nice cedar plank look. He said it costs about 65 cents a linear foot versus \$1.75 per linear foot for cedar. He said it is also ecologically sound, as it is not created by harvesting trees. He said one of the reasons to put it on the market was the shortage of trees.

Dave Goodrich, 99 Chenango Drive, said he drove through his neighborhood and counted 59 homes that appear to have same problem with the siding that Maronda provided that he has. He said the siding is rotting, pulling away from the home, and taking away from its appearance. He said some homeowners in his neighborhood have replaced the siding with cedar, and the cost was around \$25-30,000 installed. He said that he thinks that is a little excessive for homes in the \$200-230,000 range. He said he discussed various options with a contractor that has installed Hardiplank on a number of his homes. He said that contractor is happy with the product because it lasts forever, it is durable, and looks much like cedar. He said he is looking to improve his home in the next year or two and he would like the option of using this material.

Bob Carpenter, 772 Bovee, said that he supports replacing this ugly siding with almost anything. He commended any homeowners wanting to improve their property. He said it sounds like there should be a stipulation that the fiberboard siding should be removed and checked for rot and infestation before new siding is installed. He said the new siding shouldn't be nailed on top of the problem that exists now.

Tom Fipps, 44 Chenango Drive, said that he too is experiencing the siding problem and that he received an estimate of \$25,000 to install Hardiplank. It will cost nearly \$50,000 to install cedar. He said he discussed this material with the Fire Chief who feels this is an excellent material. He said the chief expressed concern about the existing siding.

Doug Ritchie, 882 Bovee Lane, said that he also has hardboard siding that has been recalled. He said he supports Hardiplank as a good material that will keep the neighborhood looking nice. He said that he will probably be asking the Commission to permit him to use vinyl siding on his home because when he received quotes on replacing his siding, cedar would cost \$25,000, Hardiplank would cost \$13,000, and vinyl would cost \$7,000. He said that the siding is beginning to rot and something needs to be done.

Commissioner Emerick reviewed that the siding that was installed on many homes in Powell Place was a pressed board siding that was not stored properly on site as the houses were being built. This created a lot of moisture problems, and the siding has buckled and caused many problems. Commissioner Futryk asked how that material was permitted if it was not natural wood. Commissioner Wiencek said the Zoning Code has been changed, and that material is one of the reasons why.

Commissioner Wiencek said that this material was most recently approved for the condo development on the Murphy property, and because there is a concern about the proper installation of this siding, the Commission required that it be installed by someone certified by Hardiplank. He said that if the Commission is going to go down this path, he wants to be confident that installation issues have been addressed. Commissioner Wiencek asked if any Homeowners' association restriction against this material would be superceded by this change in the zoning text. Mr. Betz said that if a deed restriction requirement only allows other materials, that would have to be addressed by the homeowners. Commissioner Wiencek asked if any of the manufacturers provide trim or end pieces. Mr. Betz said that Hardiplank does, but he doesn't know who else does. He said there are separate installation requirements if their own trim and end pieces are used. Commissioner Wiencek asked about the HDC allowing this material. Mr. Betz they have, and they require a 4" lap. Commissioner Wiencek said that while Hardiplank is a good simulation of cedar, it is still a simulation. It doesn't have the 3/4" thickness that cedar does. It is better than vinyl by far, but it is not cedar. He said he would favor requiring specific types of this material and prohibiting the flat, non-textured stucco look. He said he also has problems with Hardi panel.

Commissioner Emerick echoed Commissioner Wiencek's concerns about installation. He said that this material is very open to water damage if it is not properly installed. He said that on the homes in Powell where this material was previously installed without approvals, the siding is wavy. He said that cement fiber siding will follow any irregularities in the framing, which doesn't happen with cedar siding. He said he agrees that the smooth product is not desirable.

Commissioner Counts said that he thinks installation is a concern with any material, wood, brick, or cement fiber siding. If it is installed wrong, it is going to fail. He said it seems to him that installation requirements are probably the way to go. But he doesn't know whether there are also requirements for brick, and other materials.

Commissioner De Palma asked how that requirement can be met. Mr. Betz said there are installation requirements from each manufacturer and that there are companies that evaluate how products should be installed that are always referenced in the building code. He said the ordinance could be made clear that the material needs to be installed according to the manufacturer's specifications and those of the building code. He said the building inspector would have to make sure that the siding is installed properly. Commissioner Wiencek asked if the Commission can specify a certain brand of cement-fiber siding. Mr. Betz said he would highly doubt they could, but that he will review it with legal counsel. Commissioner Counts said that he thinks the same specification would have to be made for other building materials such as brick. Commissioner Coville asked if dimension minimums could be determined. Mr. Betz said that the Commission could determine what reveal they think is appropriate. Commissioner Wiencek asked if every cement fiber material should be submitted to the Commission for approval. Mr. Betz said he doubts it, and he doesn't think the Commission would want to do that, because they'd have to then approve brick, stucco stone, etc. Commissioner Wiencek said the Commission regularly approves materials. Mr. Betz said they do, but not for single family homes.

Commissioner Futryk asked if there are any industry approvals that could be required or referenced. Emil Slavik, Architectural Advisor, recommended that if the Commission allows an "experimental material" such as this that they do so on an individual basis rather than amending the code. He said that Hardiplank is very strong in the market, but it does have installation problems. He said that from his perspective, it can comfortably meet the look of cedar.

Commissioner Coville said that the building inspector did not catch the difference in what siding was applied to the Powell Place homes and what was approved by the Commission. He was dubious that the building inspectors would be able to enforce the installation requirements. He said that his research about the installation shows that



