



Board of Zoning Appeals

Jim Hrivnak Randy Duncan Janice Hitzeman Greg Short Ryan Brickner

**MEETING MINUTES
March 18, 2021**

Board member Jim Hrivnak called a Zoom (virtual) meeting of the Board of Zoning Appeals to order on Thursday, March 18, 2021 at 6:30 p.m. Members present included Jim Hrivnak, Randy Duncan, Janice Hitzeman and Ryan Brickner. Board Member Gregory Short was absent. Also, present were Jeff Tyler, Community Development Director; Claudia Husak, Planning Director; Elise Schellin, Development Planner; Karen Mitchell, City Clerk; Pam Friend, Planning & Zoning Clerk; Sandra D. Kin, Certified Senior Digital Reporter, US Court Support and interested parties.

OATH OF OFFICE FOR RE-APPOINTED & NEWLY APPOINTED MEMBERS

Karen Mitchell, City Clerk, delivered the Oath of Office to re-appointed Board Member Randy Duncan and newly appointed Board Member Ryan Brickner.

VICE CHAIR NOMINATION AND VOTE

Janice Hitzeman nominated Randy Duncan as the Vice Chair. Jim Hrivnak seconded the nomination. By unanimous consent of all Board members present, Randy Duncan was elected Vice Chair for the Board of Zoning Appeals.

Vote: Y-4 N-0 (Absent: Short)

APPROVAL OF MINUTES

MOTION: Board Member Ryan Brickner moved to approve the minutes of July 9, 2020. Board Member Janice Hitzeman seconded the motion. By unanimous consent of all Board members present, the minutes were approved.

STAFF ITEMS

Jeff Tyler, Community Development Director - Shared the organizational chart for the new Community Development Department.

HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA

Chairman Hrivnak: We will open the public comment session for items not on the agenda. Hearing no comments, he closed the public comment session.

APPLICATION FOR VARIANCE (Case 2021-07V)

Applicant: Tony Hudson, JS Brown and Company
Location: 595 Retreat Lane N
Existing Zoning: (PR) Planned Residential District
Request: Review and approval of a variance to reduce the required side yard setback for a detached garage addition. The request is to reduce the 25' required side yard setback by 5'-2".

Chairman Hrivnak: If you would raise your right hand please. Do you solemnly swear and affirm that the testimony you are about to give in this hearing before the City of Powell Board of Zoning Appeals is the truth, the whole truth and nothing but the truth so help you God? If so please answer with I do.

Tony Hudson, JS Brown and Company, 1522 Hess Street, Columbus, OH 43212: I do.

Chairman Hrivnak: Thank you. Mr. Hudson the floor is yours.

Tony Hudson: Elise, I do think the homeowner was trying to be part of this meeting. I do not know if he has responded.

Elise Schellin: Yes, I just moved him to a panelist. Jonathan is now on the call.

Mr. Hudson: What we are proposing here is the homeowner would like to create a detached garage. When we first started this process with the original plans, we thought we would have enough space but as the homeowner did a little investigation and sorted out where his property lines were we were concerned. When we got the boundary survey, it confirmed what we saw. The issues that we are running into is with the landscaping, there are a couple of nice trees that we would have to eliminate if we were to take the garage addition closer to the house. Our design thought was that we really wanted to keep the footprint of the garage no farther back than the existing house so that we weren't creating a detached garage that was floating somewhere in the backyard. I think we have created a very nice auto-court with this design from street level and the rear yard. This feels connected to the house to me.

Chairman Hrivnak: Jonathan if you have anything to add, I will need to swear you in to speak.

Jonathan Dotson, 595 Retreat Lane N, Powell: Yes.

Chairman Hrivnak: Please raise your right hand. Do you solemnly swear and affirm that the testimony you are about to give before the City of Powell Board of Zoning Appeals is the truth, the whole truth and nothing but the truth, so help you God. If so, answer with I do.

Mr. Dotson: I do. I appreciate you giving me the opportunity to share. The only other thing that Tony did not really elaborate on is the other reservation I have to moving it closer to the house is we have a sunroom with nine natural windows. If we push the garage closer even if we had to eliminate that tree, it really creates an unsightly view, which we did not want to do. The reason that we set the proposed location where we did is so that we could continue to enjoy the natural landscape of what we have in the Retreat.

Chairman Hrivnak: Elise can you run us through the staff report.

Ms. Schellin: The applicant is proposing a two-car garage that is 22' X 24', which would be going into the 25' setback. This request is to reduce that setback by 5.2'. This parcel is just over an acre and they have about 170' of frontage. The architectural detailing will be matching the existing house.

Variance Standards:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property; this property will still be useful as a single-family residential lot with the garage addition.
2. Whether the variance is substantial; this variance is not substantial.
3. Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact as a result of the variance; accessory structures, such as detached garages, are permitted in both the Retreat Development Text, as well as the Planned Residence District code. Many other property owners in the neighborhood have made improvements to include accessory structures. The neighbor directly to the west has also provided a letter in support of the addition.
4. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage); delivery of governmental services will not be affected.
5. Whether the property owner purchased the property with knowledge of the zoning restriction; the applicant has stated the property owners were not aware of the side yard setback restrictions.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; the property at 595 Retreat Lane N is large enough to build a detached garage in another location, which would not require a variance, however, the applicant has provided multiple reasons as to why this location is preferred.
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; this request does not go against the spirit and intent of the zoning code.

Overall, staff would recommend this approval for the variance to decrease the west side setback from 25' to 19.8'; also, we received a letter from the Retreat Homeowner's Association stating that the architecture is approved.

Chairman Hrivnak: Thank you Ms. Schellin. Mr. Hudson or Mr. Dotson any comments regarding the staff report.

Mr. Hudson: No, I tend to agree with it.

Chairman Hrivnak: Are there any questions or clarity from Mr. Hudson or Ms. Schellin for the Commission? If none, I would like to open the public comment portion. Are there public comments submitted?

Ms. Schellin: We do not have any public comments other than the letter in your packet. Are there any participants on this Zoom call that would like to speak? Please raise your hand. It looks like we do not have any.

Chairman Hrivnak: We will close the public comments portion and move to the Commission for discussion and comment.

Board Member Randy Duncan: No, it is a well thought out design.

Board Member Janice Hitzeman: No comments from me. I agree with Randy's comments.

Board Member Ryan Brickner: I agree as well, no comments.

Chairman Hrivnak: Mr. Dotson thank you for allowing me to look at the property the other evening. I did make a trip out to the property and did see the situation first hand. I agree when you look at the size of the landscaping trees and the idea that the sunroom does have a view looking that way I think this is a good compromise. I think the garage is just far enough away to save the trees and the view and yet not too far away to encroach grossly on this setback. Are there any final comments.

Mr. Dotson: Thank you to everyone for working through this process with us. I am appreciative of your opinions and comments.

Mr. Hudson: I want to thank Elise for all of her help. She has been very attentive and it is nice when you are working with various municipalities to get that guidance. I really appreciate it.

MOTION: Board Member Janice Hitzeman made a motion to approve the variance as submitted. Board Member Randy Duncan seconded the motion.

Vote: Y-4 N-0 (Absent: Short)

APPLICATION FOR VARIANCE

Applicant:	Justin Del Col, Shearer Landscaping
Location:	2446 Friesian Lane
Existing Zoning:	(PR) Planned Residential District
Request:	Review and approval of a variance to reduce the required rear yard setback for a
screened	porch. The request is to reduce the 30' required rear yard setback by 14'-2".

Chairman Hrivnak: The next item on our agenda is an application for variance. The applicant is Justin Del Col, and existing zoning is (PR) Planned Residential. Mr. Del Col if you would raise your right hand please. Do you solemnly swear and affirm that the testimony you are about to give in this hearing before the City of Powell Board of Zoning Appeals is the truth, the whole truth and nothing but the truth so help you God? If so please answer with I do.

Justin Del Col, Shearer Landscaping, 3362 Marcliff Drive, Lewis Center, OH 43035: I do.

Chairman Hrivnak: Thank you. Mr. Del Col the floor is yours.

Mr. Del Col: The homeowners are trying to find space in their backyard to have a shade style structure. The screened porch is something that many have in the neighborhood. We were not aware that there is a 30' setback from the rear of the property line. We were just aware of the 15' easement and the side yard setback of 14'. The rear of their house is 30.5' from the property line, so without a variance they will have no ability to do any type of shade structure. The sad thing is the rear of the property faces north so they get blazing sun all day every day during the summer, which is very uncomfortable to enjoy patio space.

Chairman Hrivnak: Can you explain the layout?

Mr. Del Col: On the left side you have the patio with a fire pit area and grill island next to the screened porch, which is going to be constructed to match the house with the same siding and stone veneer.

Claudia Husak, Planning Director: The property is in the Reserve at Scioto Glen subdivision. It is a little over a quarter of an acre. It has frontage on two streets, Friesian Lane and Isabella Blue Drive that are required to have a 30' setback, which pushes the house to the side and back limiting the location for any outdoor amenities. The applicant is requesting a variance particularly for the covered portion of the patio. The code allows the entire paved portion of the patio to be in this location. There is an encroachment allowance of 50% into the rear yard setback. We have stated in the staff report that the applicant be required to get permits for the patio, as well as for the fire pit. The variance is for the covered portion, which the code will not permit to encroach into a setback.

Variance Standards:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property. Staff concurs that this proposal will yield a reasonable return and benefit.
2. Whether the variance is substantial; the location of the home and the shape of the lot limit the area for exterior amenities as sought by the homeowners.
3. Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact as a result of the variance; while it is unclear how, when or if cited properties were permitted; Staff agrees that the proposal would not adversely affect the neighborhood. Staff has received two letters of support from neighbors and no opposition after notices were mailed.
4. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage); there will be no disruption to these services.
5. Whether the property owner purchased the property with knowledge of the zoning restriction; as the applicant stated the homeowners were not aware of the limitation for the proposed construction.
6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and while a screened porch is permitted in the neighborhood, this particular lot does not have adequate rear yard space for such a structure. The shape of the home, the frontage on two streets and the required 30' front yard, are limiting the rear yard space.
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. The spirit and intent of the zoning requirement would be observed. The screened porch covers a small portion of the rear yard space and aligns with the permitted patio.

Staff has determined that all standards have been met and is recommending approval of this variance to encroach 14.2' into the required rear yard.

Chairman Hrivnak: I have a question for clarity. It looks like we are extending into the setback but the 15' drainage easement is not encroached, is that correct?

Ms. Husak: That is correct.

Chairman Hrivnak: Are there any other questions? Mr. Del Col do you have any questions or comments?

Mr. Del Col: No, I just want to say that I agree with staff that there is no other place to put a shade structure on the property.

Chairman Hrivnak: Are there any questions or clarity from Mr. Del Col or Ms. Husak for the Commission? If none, I would like to open the public comment portion. Are there public comments submitted?

Ms. Schellin: We do not have any public comments other than the letter in your packet. Are there any participants on this Zoom call that would like to speak? Please raise your hand. We have no public comments.

Chairman Hrivnak: Thank you. I will call on the Commission for discussion and comment.

Board Member Brickner: Are there are any other methods to obtain the shade they desire?

Ms. Husak: I would let Mr. Del Col speak to that because other than umbrellas, we have not identified any other means to do so.

Mr. Del Col: I would agree other than umbrellas there is no other means to provide shade structures other than obtaining this variance.

Chairman Hrivnak: Randy do you have any comments?

Board Member Duncan: None from me.

Chairman Hrivnak: Janice?

Board Member Hitzeman: I wanted to tell Claudia and Elise that I appreciate the review and analysis of the variance standards. I think that is very helpful and you have done a nice job putting this together. I don't have any comments or questions.

Chairman Hrivnak: I had an opportunity to look at this property and you will notice it is a very irregular shaped lot. It is pie shaped on the corner and if you look down the street the house is actually pushed back from the street a little further and to the side. In fact, you cannot even step out of the back of the house without being into the setback. I think the variance is warranted in this case. Mr. Del Col do you have any further comments?

Mr. Del Col: I appreciate everything that Claudia and Elise have done. They have been a big help throughout this process. Thank you for setting up a virtual meeting to be able to meet and get the variance for them.

MOTION: Board Member Ryan Brickner made a motion to approve the variance as submitted. Board Member Randy Duncan seconded the motion.

Vote: Y-4 N-0 (Absent: Short)

CONDITIONAL USE PERMIT (Case 2021-09CU)

Applicant: Dave Kaldy, Architectural Alliance
Location: 4301 Home Road
Existing Zoning: Liberty Township Farm Residence District
Request: Review and approval of a Conditional Use Permit for the Horse Power Farms, Phase 2 master plan and remaining 5 buildings.

Chairman Hrivnak: The next item on our agenda is application for a Conditional Use Permit. The applicant is Dave Kaldy, and existing zoning is Liberty Township Farm Residence District. Mr. Kaldy if you would raise your right hand please. Do you solemnly swear and affirm that the testimony you are about to give in this hearing before the City of Powell Board of Zoning Appeals is the truth, the whole truth and nothing but the truth so help you God? If so please answer with I do.

Dave Kaldy, Architectural Alliance, 49 E 3rd Avenue, Columbus, OH 43201: I do.

Chairman Hrivnak: Thank you Dave. Please tell us about the project.

Mr. Kaldy: First, I want to thank you for taking the time to do these types of meetings. These meetings are much more convenient and I appreciate you carving out a few hours of your evening to do this for us. A few years back we did Phase 1 and that submittal showed (7) buildings in total out on the Horse Power Farms site. Tonight we are going for the remaining (5) buildings that are to the south. When we put this design together a few years ago, we had dropped in a module and copied that down a few more times with a smaller building over to the side. When we started to get into the nuts and bolts about how to put this together we found a few opportunities with some land was not being utilized so that is the primary difference of our submittal tonight. As you can tell, the modules are not exactly the same as before. The buildings have some nodes on the ends and building #6 did remain the same. All the other things on the property are essentially the same, so there is no real difference in design concept. The look and feel of these buildings will match the look and feel of the existing buildings with the same materials, which are very nice, very upscale quality, first class.

A few other small details have happened that are being recorded into this document. One of which is the curb cut alignment onto Home Road has now been aligned with the curb cut adjacent to it. In addition, an entry gate is going to occur at this location. Other than that, the building footprints are slightly different. As part of our submittal, we have given a detailed landscape plan that shows the landscaping around the perimeter, which is essentially the same as the original submission. We have also given a site lighting photometry plan that uses similar fixtures, the same as Phase 1. We gave you the floor plans for each one of these condo units as well as building elevations.

Chairman Hrivnak: Thank you Dave. Mr. Vance do you have things to add? If you would raise your right hand please. Do you solemnly swear and affirm that the testimony you are about to give in this hearing before the City of Powell Board of Zoning Appeals is the truth, the whole truth and nothing but the truth so help you God? If so please answer with I do.

Chip Vance, Horsepower Farms, 4301 Home Road, Powell, OH 43065: I do.

Chairman Hrivnak: Ms. Schellin will give the staff report.

Ms. Schellin: This is a Conditional Use Permit for Horse Power Farms, Phase 2 and as Jim mentioned earlier this is zoned Liberty Township Farm Residence District, please keep in mind it does not comply with our normal Powell zoning. Some background on the case, the Board of Zoning Appeals approved a Conditional Use Permit for Horse Power Farms development on July 9, 2018 with 9 conditions. The first condition was the approval shall be granted for the completion of Phase 1 only and that all future phases should come back before the Board of Zoning Appeals. Additional conditions were satisfied at a meeting in December 2018. I want to note that this property was approved for the Conditional Use Permit for the construction of a sportsman club so that is not in question tonight. This review is essentially just a formality to satisfy that original approval and condition that future phases need to come back to the Board of Zoning Appeals. What we are looking at tonight is to make sure this matches the Phase 1 site plan and architecture.

We do have some architectural comments that we received from the City of Powell Architectural Advisor, Steve Reynolds that I wanted to run through. The first is a question of could there be an opportunity to introduce a shed dormer on the elevations that face each other? This could provide additional daylighting and help break up the extensive roof. The second comment is for building (7) because 7A and 7B are not the same length, could they be the same depth and height. The last question is could the lighting, could the architectural wall sconce be changed to a gooseneck to match what is on the site? Those are the only comments and staff would recommend approval of the Conditional Use Permit for Phase 2 with the condition that the developer addresses the comments made by the Architectural Advisor.

Chairman Hrivnak: Are there any questions or clarity for Elise?

Mr. Vance: Could we get a little more detail on the first comment from the architectural review? I am not sure I understand what that is.

Ms. Schellin: What he is saying is that when the two buildings are facing each other he recommended a shed dormer to increase some variety within the buildings. I would defer that comment to him and we can connect you with him after the meeting to get that resolved.

Chairman Hrivnak: If there are no further questions, we will open the public comment portion. Ms. Schellin has any public comment been submitted or requested.

Ms. Schellin: We do have one attendee that would like to speak. Tracie Jenkins you are now able to speak on this matter. Please state your name and address for the record.

Chairman Hrivnak: Tracie I will need to swear you in because this is a court proceeding. Would you raise your right hand and allow me to swear you in please. Do you solemnly swear and affirm that the testimony you are about to give in this hearing before the City of Powell Board of Zoning Appeals is the truth, the whole truth and nothing but the truth so help you God? If so please answer with I do.

Tracie Jenkins, 4319 Home Road, Liberty Township: I do.

Chairman Hrivnak: Thank you. Please tell us what is on your mind.

Ms. Jenkins: I am right next door to it and Chip Vance did approach me and told me that there will be no landscaping along the east side of my house, so I will be looking directly into the building and light so I want that to be noted publicly. I received a letter from his attorney about the property where my driveway and where the property line runs. Part of my driveway is on his property and the reason they are not able to have any landscaping is that my cement pad, where I park, is right on the property line. The plans that he is showing you are not showing the lack of trees and I am sure as close to the buildings that my property line is there will be probably not be any landscaping on the south side of my house. I just want to make that very clear.

My other statement is I am very concerned about water pressure; my water pressure has dropped since the development came in west of me. I have no idea of how Del Co. is going to handle all these buildings plus maintain proper water pressure for everyone, but whatever happens, happens I guess. As far as noise concerns there was an incident where I was woken up at 5:00 AM with cement trucks and a giant construction light shining in my bedroom window. I talked to a neighbor later that day and she said they actually started at 4:30 AM. Chip Vance apologized to me three times, I appreciate that, and there has been no incidents since then. I am grateful to have Saturdays and Sunday is off with no noise so I really appreciate the cooperation. As far as the property with my driveway and the location of that, we will proceed with two attorneys discussing what I need to do. As a possibility, I may need to move my driveway or an easement. I am just making a statement and I just wanted everybody to know publicly what is going on.

Chairman Hrivnak: Tracie, thank you. Elise do you know where this property is or can you give us more information. Is it on the plot plan we are looking at?

Ms. Schellin: I actually do not know.

Mr. Vance: It is the house that is kind of cut out of the property all by itself on the northwest corner. The concrete portion of her driveway encroaches onto the Horse Power Farms property. We are trying to work out a compromise. If we were to landscape all the way to the end of our property line, we would be landscaping in her driveway. Obviously, we want to come up with an amicable solution. Some of the shrubbery that would be right there to the east of her house cannot happen because it would have to be planted in her concrete pad. My attorney and her attorney will come up with something that is amicable for both of us.

Chairman Hrivnak: Ms. Schellin can you zoom in? Unfortunately, it does not show the driveway.

Mr. Vance: You can pull up the Delaware County Auditor's website to see the property line, but it is vague. There is a section of her driveway, encroaching on our property, which we are not going to ask her to tear out the driveway.

Chairman Hrivnak: Ms. Jenkins, do you have any further comment?

Ms. Jenkins: No, that is all I have to say and thank you for letting me speak, I appreciate it.

Chairman Hrivnak: You are quite welcome, staff any comment regarding the situation next door.

Ms. Schellin: No, it sounds like a private matter that will be taken care of. We will step in to mediate if need be.

Chairman Hrivnak: Very good. Ms. Schellin is there any other public comment.

Ms. Schellin: No, that is it.

Chairman Hrivnak: Ok, we will close the public comment and go to Commission discussion and comments. I will begin. It appears to me that we recall that the Conditional Use Permit was issued for Phase 1 and as far as Phase 2 goes it is evident to me that it is very similar to what was initially proposed. The architecture is the same, the building layout are very similar. We do notice the driveway into the property is changed to match up with the adjacent drive at the Library, which I believe is a worthwhile improvement. I have no concerns or questions regarding issuing the use permit for Phase 2, I find it to be very much like it was planned and the architecture is very similar to the existing buildings. As far as the architectural comments, I do not believe they are a requirement, just items for the applicant to consider.

Board Member Hitzeman: I have a question and maybe just a point for discussion. Ms. Jenkins' concern with the noise related to the construction would likely be temporary. In Subsection G of the application, it talks about the fact that this conditional use will have a nominal impact on noise to the adjacent property owners and I wanted clarification about what would be the sources of the noise with this unique use of the property. Is there something unique that would be outside of a standard residential development?

Ms. Vance: As part of our owners' documents, we have in our bylaws there is to be no un-muffled engines before 8 AM and after 10 PM at night. Obviously, with construction we were permitted to start at 7 AM. Once this is complete, we have fairly strict covenants in our bylaws that preclude our property owner's from running un-muffled engines outside of those hours. I would like to point out that it's a pretty low impact. Once we are fully built and fully occupied, we will be one of the quietest neighbors that Ms. Jenkins is going to have.

Board Member Hitzeman: Ok. I am a little bit concerned that the plan that is being presented is not showing the driveway encroachment and showing landscaping that won't be there. I do not know if other Board Members share those same concerns and I am not sure that it will impact where I go on this. It was well presented and well put together and I appreciate the time that was put in both by the staff and the presenter.

Board Member Brickner: To expand on Ms. Hitzeman's concern on the landscaping, I also have some concerns; it appears to be a natural boundary between residential districts to separate the two types of properties in the vicinity so I think that is an important item to include. I know it is shown on the drawings so I would like to see that continued through construction. There was a comment about un-muffled engines as part of the bylaws for the property. Are there any other restrictions or methods to prevent loud noises for the neighborhood, such as certain RPM?

Mr. Vance: No, the only thing we have in our bylaws is no un-muffled engines outside of a structure before 8 AM and after 10 PM to try to be good neighbors. I think it is important to point out that in the end, there will be 69 individual properties and of those, you might see two or three people at any given time. It should be quiet, no louder than any other neighborhood. The people are high-end clientele with respect for law and order so I expect them to behave themselves and not disturb the peace.

Board Member Brickner: Thank you. No further questions.

Board Member Duncan: As you mentioned Jim, it is similar to what we approved in 2018. I think most of the concerns were discussed back then and it seems like a good development just continuing from Phase 1.

Chairman Hrivnak: If there are no further questions from the Commission, I will ask for final comments from the applicants Mr. Kaldy and Mr. Vance.

Mr. Kaldy: I think the primary concern is for the landscape issue and Chip I think you defined it really well of the steps to find a resolution. I am certain Chip would be more than willing to share what that outcome is with the Commission. Obviously, we are trying to put the landscaping in and if the driveway were not there, it would go in. Chip and I can go through the architectural comments and come up with a response related to those.

Mr. Vance: I agree. We will work out a compromise. In our original plan, we had not served that western border so we did not know at the time that the concrete pad encroached on the property. It is my intent to come up with something that is a compromise that my neighbor and I am happy to share that with the Commission when we reach the agreement.

Chairman Hrivnak: If Ms. Jenkins would like to give a final comment, we can do that.

Ms. Jenkins: If it means tearing up the cement pad and narrowing that area, I would rather not. If I have to stare at the building then I guess I will have too. I just want to make a point that the landscaping will not exist because of the property lines. I have never had a problem with part of my driveway when the farmer owned it. He never approached me so I just assumed that it was ok and there was not any issue. I do not want to spend a bunch of money with the City of Delaware because I am in the county not the City of Powell, but if I have to move my driveway I can do it, but it will be a large expense for me.

Ms. Schellin: Mr. Chairman, I would like to interject, since all of the planting in this landscape plan is what was submitted with the Conditional Use Permit that is something that the City would probably hold the developer to. Any discussions moving forward we may want to be part of that since we were not aware of the driveway issue.

Chairman Hrivnak: Are you suggesting we make that another condition.

Ms. Schellin: Since this has caught us off guard, that is something Claudia and I would probably have to discuss.

Chairman Hrivnak: It appears to me that the parties are working to get an amicable resolution. I do understand the fact that the driveway is encroaching on to the Horse Power Farms property and that is why the landscaping cannot be there, but I am also confident that the parties can work something out. Ms. Jenkins stated she would rather forego the landscaping if it means saving her driveway so I do not know that we need an extra condition to the Conditional Use. In my opinion it probably does not go down to that type of detail, whether a bush is here or not there. What do the other Commissions think? Are you confident the parties can reach an agreement or what would you like to do?

Board Member Hitzeman: Jim, I am open to discussion on this, but I am wondering if this is premature to approve it when we know that there is this dispute? Would it make sense to continue it to the next meeting so that they can work this out?

Ms. Husak: If I may, I would agree with the Chair that this is not part of the Conditional Use review process, but I also would suggest that we add a condition that goes along the lines of the applicant addressing the neighboring concern and coordinate additional landscaping so that all three parties could be involved in that review.

Chairman Hrivnak: So we could vote on a Conditional Use, and it would be approved now and stay approved if there is a satisfactory agreement in the near future?

Ms. Husak: Correct.

Chairman Hrivnak: Does that sound agreeable to the Commission?

Board Member Brickner: I agree with that approach.

Board Member Duncan: Seems like a good solution.

Board Member Hitzeman: I agree.

Chairman Hrivnak: Mr. Kaldy and Mr. Vance are you comfortable with that.

Mr. Vance: That sounds like a good approach. I am confident that Tracie Jenkins and I will be able to come up with a compromise that she will be able to live with. I cannot plant any bushes or trees in her concrete driveway, but we will bring our landscaping right up to it. I have measured the amount of the encroachment and it is approximately 3' but it is a long length, but we will come up with a reasonable landscape plan that gives her some buffer from the property and allows her to not tear up her driveway. From the very beginning of this project, I have tried to be a good neighbor and most of the neighbors are fairly supportive. It is unfortunate that her driveway is where it is. We will come up with a solution that everyone can live with.

Chairman Hrivnak: Thank you Mr. Vance.

Mr. Kaldy: I have no further comments.

Chairman Hrivnak: Thank you Dave. Any further comments from the Commission? Hearing none, we will entertain a motion, which will have two conditions.

MOTION: Board Member Janice Hitzeman made a motion to approve the Conditional Use Permit subject to the following conditions:

1. The property owner work with the adjacent neighbor at 4319 Home Road and with the Planning & Zoning staff to come up with an amicable agreement on the landscaping and the driveway encroachment.
2. The developer address comments made by the Architectural Advisor for the City of Powell.

Chairman Jim Hrivnak seconded the motion.

Motion Passed: Vote: Y – 4 N – 0 (Absent: Short)

OTHER COMMISSION BUSINESS

Chairman Hrivnak: The next scheduled meeting is April 8, 2021.

ADJOURNMENT

MOTION: Board Member Randy Duncan moved to adjourn the meeting at 8:05 p.m. Board Member Ryan Brickner seconded the motion. By unanimous consent of the remaining Board Members, the meeting was adjourned.

DATE MINUTES APPROVED:

	4/16/2021		4/16/2021
Jim Hrivnak	Date	Pam Friend	Date
Chairman		Planning & Zoning Clerk	

