



**DEVELOPMENT DEPARTMENT REPORT
March 2021**

CODE ENFORCEMENT REPORT

March 2021 – Nothing to Report.

PLANNING AND ZONING COMMISSION

March 10, 2021 – Draft Minutes Attached

CERTIFICATE OF APPROPRIATENESS

Applicant: Huli Huli
Location: 26 W. Olentangy Street
Existing Zoning: (DB) Downtown Business District
Request: Review and approval of patio improvements at the back of the existing building.

*Request Approved w/Conditions

CERTIFICATE OF APPROPRIATENESS (Case 2021-06CA)

Applicant: Nocterra Brewing Co. c/o Shyft Collective
Location: 41 Depot Street
Existing Zoning: (DB) Downtown Business District
Request: Review and approval of an accessory structure adjacent to the southeast corner of the existing building.

*Request Approved w/Conditions

March 24, 2021 – Draft Minutes Are Being Drafted

PRELIMINARY DEVELOPMENT PLAN (Case 2021-10-PDP)

Applicant: Good Night Investments LLC
Location: 80 E. Olentangy Street
Existing Zoning: (DB) Downtown Business District
Request: Review and approval of a Preliminary Development Plan for a proposed private social club on a 0.464-acre site.

*Request Approved w/Conditions

PLAT REVIEW (Case 2021-13_FP)

Applicant: EMH&T represented by Matt Kirk
Location: East of Steitz Road, south of Hunters Bend
Existing Zoning: (PRD) Planned Residence District
Request: Review and recommendation of approval to City Council of 2 Final Plat phases for Carpenter's Mill for a total of 36 single family lots.

*Request Approved w/Conditions

MINOR AMENDMENT TO AN APPROVED DEVELOPMENT PLAN (Case 2021-14_AM)

Applicant: Ill Mannered Brewing Co. c/o Brian Mathias
Location: 38 Grace Drive
Existing Zoning: (PC) Planned Commercial District
Request: Review and approval of a Minor Amendment to an Approved Development Plan for a purposed patio addition.

*Request Approved w/Conditions

BOARD OF ZONING APPEALS

March 18, 2021 – Draft Minutes Attached.

APPLICATION FOR VARIANCE (Case 2021-07V)

Applicant: Tony Hudson, JS Brown and Company
Location: 595 Retreat Lane N
Existing Zoning: (PR) Planned Residence 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' at the front of the addition, and 3.1' at the rear.

*Request Approved

APPLICATION FOR VARIANCE (Case 2021-08V)

Applicant: Justin Del Col, Shearer Landscaping
Location: 2446 Friesian Lane
Existing Zoning: (PR) Planned Residence District
Request: Review and approval of a variance to reduce the required rear yard setback by for accessory structure from 20' to 16'-10" for a screened porch addition.

*Request Approved

CONDITIONAL USE PERMIT (Case 2021-09CU)

Applicant: Dave Kaldy, Architecture 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.

*Request Approved w/Conditions

HISTORIC DOWNTOWN ADVISORY COMMITTEE

March 2021 – No Meeting Held.



Planning & Zoning Commission
Donald Emerick, Chairman
Bill Little, Vice Chairman
Trent Hartranft

Shawn Boysko

Ed Cooper

Shaun Simpson

Elizabeth Bailik

MEETING MINUTES March 10, 2021

Co-Chairman Bill Little called a meeting of the Powell Planning & Zoning Commission to order on Wednesday, March 10, 2021 at 7:02 p.m. via Zoom. Commissioners present included Elizabeth Bailik, Shawn Boysko, Ed Cooper, Bill Little, Trent Hartranft and Shaun Simpson. Chairman Don Emerick was absent. Jeffrey Tyler – Community Development Director, Claudia Husak – Planning Director, Elise Schellin – Development Planner, Pam Friend – Planning & Zoning Clerk interested parties.

STAFF ITEMS – None

HEARING OF VISITORS FOR ITEMS ON THE AGENDA – None

APPROVAL OF MINUTES – None

CERTIFICATE OF APPROPRIATENESS

Applicant: Huli Huli
Location: 26 W. Olentangy Street
Zoning: (DB) Downtown Business District
Request: Review and approval of patio improvements at the back of the existing building.

Vice Chair Little: Our first case this evening is #2021-01CA. Do we have anyone representing Huli Huli to explain the proposal?

Ms. Schellin: Both Dustin Sun and Greg Bertison are here.

Dustin Sun, Huli Huli 26 W. Olentangy Street: Greg Bertison and Paul Butler of CCS Construction are the general contractors for the project. This is our third meeting at Planning & Zoning and we wanted to get back after our review from the Historic Downtown Advisor Commission to get the approval from Planning & Zoning on the project.

Greg Bertison, CCS Construction: We have been through several different iterations. We've had a lot of meeting with Steve Reynolds and staff at the City of Powell to put together something we feel fits well with the community and historic guidelines as well as being a benefit to downtown Powell.

Vice Chair Little: Elise can you give the Staff Report on the project.

Ms. Schellin: This proposal has been in front of the Commission a couple of times. It was originally reviewed as a Minor Amendment to an Approved Development Plan back in July of 2020, which you approved with the condition that the proposal comes back as a Certificate of Appropriateness once the architectural drawings were done. The Commission reviewed it as a Certificate of Appropriateness on December 9, 2020. It was tabled and the Commission sent it to the Powell Historic Downtown Advisor Commission to get their comments and recommendations before making a final decision. The packet that you received for tonight is the same that was given to HDAC on February 18.

The HDAC comments were very positive and the proposal was very well received by them and they recommended this move forward. You should have received HDAC draft minutes from the February meeting in your packets for tonight. The applicant met with staff following the last Planning & Zoning meeting where their application was tabled. Staff and

Steve Reynolds were able to help walk them through what they needed to do to get the application updated based on your previous comments. In the staff report you will also see a breakdown of the staff's parking calculations and this takes into account that the Final Development Plan was approved with the 50% reduction in parking, so Huli Huli needs to provide 13 parking spaces to stay consistent with that 50% reduction approval. Mr. Sun is able to provide 6 spaces on his site, 6 spaces with the parking agreement with Dr. Waddell down the alley and 3 on street parking spaces that are eligible to be counted through the downtown business district code. This totals 15 spaces and meet the requirement. Overall staff feels that this proposal is very beneficial to the downtown area and would recommend approval. I will refer any other architectural comments to Steve Reynolds.

Steve Reynolds, Shyft Collective: I don't think there is anything additional from comments I shared during our previous Planning & Zoning meetings. We did walk through the items with HDAC and as Greg and Elise mentioned we did spend a lot of time with the applicant. I would just reiterate that they have spent a lot of time listening to the feedback that we've given and I think what we see today is a much improved proposal versus what we saw the first time. We really appreciate their efforts to listen to us and make those changes.

Vice Chair Little: Do we have any public comments?

Ms. Schellin: Any attendees that wish to speak, please raise your hand. It does not look like we have any public comment here tonight.

Vice Chair Little: Hearing no public comment we will move to the commission for their comments.

Commissioner Cooper: I have no problem with the proposal since it has gone through HDAC. I think it is going to be a nice addition and hope Dustin gets it done soon.

Commissioner Bailik: Dustin we appreciate your attention to detail, following the process and that you care enough about Powell to make this happen. I think it will be a great addition.

Commissioner Boysko: I would agree that I do support this revision. I would like to hear from staff on their interpretation of these outdoor dining spaces and how that is going to affect other proposals regarding the requirement for parking or lack of parking.

Ms. Schellin: Are you asking about the need to park with patio spaces?

Commissioner Boysko: Right.

Commissioner Simpson: It's the same question we had two weeks ago with the sushi place.

Ms. Schellin: If you look at the code it is not specifically stated one way or another. Claudia and I had a discussion that most communities do not require additional parking spaces for patio because you assume that when people come to a restaurant and they have patio space more people want to sit on the patio than inside.

Commissioner Boysko: So that is sort of the premise that the patio seating is seasonal, but once you add a roof over that, it becomes more of a 3 or 4 season use. Does that change the interpretation?

Ms. Schellin: Since we do not have anything in the code, unfortunately there is no way to interpret that from my standpoint. I don't know if Jeff or Claudia have anything to add.

Ms. Husak: I would agree with that assessment and other than the roof it is still sort of open so I doubt that would be used in the winter, but the code does not speak to patio parking.

Commissioner Boysko: I agree with the development and the intent behind it. I think it is probably worthwhile for us to better define this because I think we are treading a fine line where we encourage this type of development. I think it's great but I think we need to make sure we have a consistent response in terms of parking. Other than that I think it will be a great addition.

Commissioner Simpson: We've been through this a few times and I appreciate Dustin's patience. I really don't have anything else to add. I was good with it last time and with HDAC's blessing just makes it even better.

Commissioner Hartranft: Thank you Dustin for coming back. I do have a question for either Dustin or Greg. What actual changes were made from the HDAC review? When I read through the meeting notes, it doesn't look like any changes were required.

Mr. Bertison: One of the main changes was in our meetings with Steve and taking advice from our previous conversations with Planning & Zoning was trying to reduce the massing and follow the roof line. Prior to the submission to HDAC those changes were already done. We tried to accommodate everyone's thoughts and interpret that into something that followed the roof line and didn't take up too much space and was as good of a design as we could come up with.

Commissioner Hartranft: Ok. I have been a fan of this since July 2020 so I think it is well past due and we should have had you building it by now.

Vice Chair Little: Dustin thank you for coming back and going through the process. I know it can be tenuous at times but getting the HDAC approval was critical and also I think we clarified the number of patrons that you are at least planning on. I agree with Shawn Boysko that we probably need to address patio parking as part of the calculation going forward. If we need to change the code, then we should. A place like Local Roots has a very large outdoor presence and that should be counted in parking calculations from my perspective.

A couple of administrative things that would get addressed in the motion would be that Huli Huli is going to maintain the 6 spots with the owner of 55 Scioto Street. I think you are still planning on having one handicap spot and then 5 other spots on the property. I think Elise has identified that in order for this to be functional if it wasn't in the historic district, as an example and not subject to parking discretion that you would require 26 parking spots so given the parking agreement you have and the onsite parking you also have it leaves us with 14 parking spots to meet the 26, which we assume would be public parking spots in lots or on the street. For the sake of future inventories of public parking spots, it looks like Huli Huli is counting on 14 from the City. Other than that I am good with the proposal and look forward to visiting there and enjoying the patio outside.

MOTION: Commissioner Little moved for an approval of a Certificate of Appropriateness for the property located at 26 W. Olentangy Street as represented by Dustin Sun and known as Huli Huli, subject to the following conditions:

1. The owner shall maintain a shared parking agreement for 6 parking spots with the owner of the properties at 49 & 55 Scioto Street; in the event that agreement is terminated the property owner shall work with City staff to determine if sufficient parking is available at the time to offset those 6 spots.
2. The owner shall designate 1 "Handicap Only" spot onsite at 26 W. Olentangy Street.
3. The owner shall maintain 5 other onsite parking spots for a total of 6 spots including the handicap spot.
4. The City has identified that based on an occupancy of 68 patrons that 26 parking spots will be required for the business currently located at 26 W. Olentangy Street in order to ensure functionality. Therefore, 14 public parking spots should be allocated by the City to support these uses.
5. The tenant shall continue to provide clear signage at the entrance showing that patron parking is limited to either onsite in the designated alleyway sites of 49 & 55 Scioto Street or in City owned locations.

Commissioner Cooper seconded the motion.

Note: *There was a discussion before the vote.*

Commissioner Hartranft: Just to clarify, the math that you are stating is not the same as in the staff report.

Commissioner Simpson: I don't think Bill was counting the on street parking.

Vice Chair Little: That is in the 14 spots.

Commissioner Hartranft: Staff report state 13 spaces are required.

Vice Chair Little: To clarify from the City's perspective do we need 25 or 26 parking spots?

Commissioner Hartranft: Staff report says 25.

Vice Chair Little: Let me modify the motion.

Commissioner Boysko: Bill before you modify can we get clarification from staff are we truly going to be allocating 14 public parking spaces for this property?

Ms. Schellin: I think what Bill is trying to show is staff would virtually allocate those parking spaces to our municipal lot so that in the future we can calculate whether we have virtually allocated to many spaces in that lot. I know that is not a great summary. I am not sure that is something we would want to put in the conditions because it seems like that is more for us as staff as an inventory for our public parking rather than Dustin's responsibility.

Mr. Tyler: Yes, that is an administrative issue. I am a little concerned that we are putting that into a motion on a private concern at this point. We certainly can take a look at the availability of parking and I don't want to muddy the decision at this point but I think specifically we need to talk about the requirements that Dustin has for parking. As I told you recently we are working on the parking issue to make sure that we address it for the entire district.

Commissioner Boysko: Me personally, I agree with Bill's interpretation, whether it's 25 or 26 spaces I think it should be documented somewhere otherwise that information gets lost. I think it is important that we do allocate spaces so we are not over parked in the public area. I feel like this should be attached to this property because we are allocating spaces for this property for this use.

Vice Chair Little: The issue you run into is that we've got a restaurant that had a parking agreement with someone else. That parking agreement expired and there was never any coordination of that to manage our overall parking situation. As we've discussed that is an open issue for the City to get a handle on. I think by documenting in these motions, which we've historically done, for those agreements in this public forum we have a record that Huli Huli in order to be functional is counting on what is now 13 public spots that they would use.

Commissioner Bailik: I do have a concern that when you put that type of a requirement on a business owner, how do you enforce that? How do you decide that what you are doing for this business owner is equitable and fair to the next business owner? I understand the concerns for parking but I have never thought it was good idea to put enforcement verbiage on the City's administrative staff that puts us in a potential to violate our own rules. If you are saying they need to have all these parking spaces from the City and they aren't able to provide those parking spots, then the City is in violation of the agreement and the owner is in violation of the agreement. I think at this point and time it's too hard to qualify all of that and we shouldn't hold the owner accountable for those spots.

Mr. Tyler: Let me remind you that you have a motion on the floor at this point. I think you need to deal with the motion first before you get into discussion.

Commissioner Boysko: The motion has already been seconded so the only way to eliminate that is if we reject it.

Ms. Husak: You could have the acting Chair withdraw the motion.

Vice Chair Little: I move to remove the current motion.

Commissioner Boysko: I second the motion.

MOTION: Commissioner Little moved for a withdrawal of the current motion.

Commissioner Boysko seconded the motion. By unanimous consent of all members present the motion passed.

VOTE: Y – 6 N – 0

Vice Chair Little: The problem we run into and I think as an example is close to where Dustin currently is you've got a successful business person that doesn't have any parking that has expanded what they are doing on their particular property and now they are having to find parking spots somewhere. Historically what we have done when we have someone that doesn't have adequate parking for their particular use we've made sure that we have at least identified the accounting that goes with that, which in some ways protects, I think Dustin going forward that he has been given approval to do something and in order to make that work the parking spots are public parking spots.

Ms. Husak: I think Mr. Little, if I understand you correctly, you are counting the spaces that Mr. Sun is providing as part of Huli Huli's public spaces?

Vice Chair Little: No, the way it reads, he has a parking agreement with Dr. Waddell for 6 spots. He has 6 spots on his property, one of which is handicap. So for the size of his business, which is a high-end use business, he has to have 25 parking spots. In order to do that, the assumption is that 13 parking spots that the City owns will be used by his patrons. So that allows us to keep that running tally in the event we get to a point where we decide we have to cease and assist and we have at least a record of how we got to that point.

Ms. Sun: May I say something? When we got approved originally, we were one of the last businesses to receive spots divided by 2, so that is why we only needed 13 to get approval to open our doors originally. Now we have 15 spots, so we actually gained a couple of spots because we are counting the parking that is in front of us that wasn't counted originally. My question now is the 25 or 26 spots you were asking about are you basically saying you are taking my original spots and dividing that by 2? Originally we needed 13, now we have 15 and if we are not counting the patio space that should not affect what we are doing.

Commissioner Hartranft: That is where my confusion is tonight because I don't know where the 25 came from. We always said that this was 13 spaces.

Vice Chair Little: When we approved the original motion we approved it based on the 50% reduction and then we identified that there were other places that patrons would park, including the railroad parking lot next to Olentangy Crossing.

Mr. Sun: I don't think we were allotted any parking spots outside of our own property and Dr. Waddell's, so I am just curious to see what allotted parking or public parking we were actually given.

Vice Chair Little: You aren't actually given any parking. An example I would use is if somebody buys the property next to the old church that was recently a children's clothing store and decides to put a restaurant in that seats 80 people and they have 5 parking spots will that result in us as a City having a parking problem because those patrons have to park somewhere as well. So historically what Dave Betz and the City were going to do was they were going to develop an inventory/capacity and then make sure that the Planning Commission doesn't approve anything that exceeds that capacity.

Commissioner Hartranft: Bill, I don't think that we are, I think we are sticking with the original 13 spaces and he now has 15.

Commissioner Cooper: I would agree.

Commissioner Boysko: I thought our ability to have the parking requirements was predicated on use of public parking whether that is right in front of the business, which Dustin has identified or other remote public parking. My interpretation was that we are able to have those parking requirements of 25 down to 12 or 13 is because we were allocating those additional spaces to public parking.

Vice Chair Little: That is correct.

Commissioner Bailik: Again, how do you enforce that and when you put that in his requirement and he was previously approved for 13 and he now has 15 and we are not counting the patio I would agree with him that the parking that he is required to have is 15, so we shouldn't move that number. In addition, I don't think it's a good idea to allocate spots from the City if they aren't available then that is putting the City in the position of being in violation of what they were going to give the owner. I don't think that is the best way to manage parking.

Vice Chair Little: Ok, the 13 parking spots plus public spots at the initial approval of Huli Huli was done with 44 patrons. So now I believe and I would agree with Dustin doing so he's identified that he plans to have 68, so that is 24 more customers.

Ms. Husak: Ultimately the number of patrons between the 44 and the 68 doesn't change the parking requirement because it is the 25, right?

Ms. Schellin: The minimum is 25 no matter what and you don't reach that minimum until you reach about 68 occupants. The difference between the 44 and 68 doesn't make a difference in the parking code because the minimum is still 25 and then cut in half would be the 13.

Commissioner Simpson: Maybe that is a problem going forward but we can't move the goal post on this individual applicant in my opinion.

Commissioner Boysko: I don't think we are moving the goal post, I think we're just debating on how we allocate these spaces.

Commissioner Hartranft: I'm not sure if this is the right place to do that when we have an applicant in front of us. We've already decided on his spaces and he's just here to get his approval done. We have a bigger discussion when we talk about the parking and future allocations, but it shouldn't be in his requirements for this patio.

Commissioner Boysko: Again, correct me if I'm wrong, but my interpretation of this requirement is to cut the required parking in half was predicated on allocating other parking spaces. If there were no other public parking spaces available then the requirement is 25. We can talk about if that is enforceable or not or appropriate or not but the code says 25 parking spaces are required for this type of establishment and we as a board could determine whether it is appropriate to cut that in half or not. We determined previously that it was appropriate and I still agree it is appropriate to cut that in half predicated on allocating spaces elsewhere.

Vice Chair Little: Which is exactly what we have done.

Commissioner Hartranft: How is the City going to enforce that?

Ms. Husak: If we focus on the word allocating, that is maybe where we are going a little bit awry here. We have public parking that we are assuming would be usable for Huli Huli's patrons but we are not setting aside as part of this action tonight a specific area of 13 spaces.

Commissioner Simpson: In theory he has already been allocated those spaces, this addition is not changing that number.

Mr. Sun: I think Dr. Waddell is trying to join, he has something he would like to say.

Ms. Schellin: Are we allowing public comment?

Mr. Sun: He is actually part of this because of the agreement. He just said if they have an issue, he can add another 6 spots or whatever we need to make sure this gets approved.

Vice Chair Little: I think there is a misinterpretation of what the issue is. The issue is precedent, the issue is having an audit trail. The issue is when a large developer wants to come in and build an 80 seat restaurant right next to the church and says I only have to have 6 parking spots because nobody else has any parking spots, everybody will just park in that lot across the street. At some point we will reach capacity and pre-Covid we were getting close.

Mr. Sun: I understand about the future, but I am an existing business that was already approved. If this is something for the future, because there are a lot of businesses that came before me, that were given the same benefit. So how are you going to do that with the other business prior to me getting approved for the amount divided by 2, like myself? That's kind of what I'm concerned about because I actually added parking and I'm renovating which will help Powell. I have been in business for over 2 years and I have not broken my parking lease or anything like that so I don't know what else I need to do to show that I am following the guidelines based on the approvals even back in July with conditions to say all we need to do is follow XYZ, which we have done, meeting with HDAC, making sure all the seating is maintained where we are at. It sounds like this is an issue outside of my business and is something the City may need to address but for me as an existing business owner that has been here for over 2 years with approval already I just don't know why it's an issue with me going forward?

Mr. Tyler: If I can make a recommendation. We know that there is and has been a parking issue that is more global than this discussion and also know that we are working on this diligently to try to get some answers for the community. That issue will not be resolved this evening. What I would like to recommend is that you put a motion on the floor and go ahead and vote on that motion either way. I don't think we are going to resolve the entire parking issue for future parking with this particular application.

Vice Chair Little: To query the Commission then to you believe the motion needs to state that he has a parking agreement for the 6 spots with another property owner.

Commissioner Bailik: I don't because how do you enforce that and are you going to tell him to go out of business if the person renting him the spots says I am going to charge you triple because you have an agreement with the City that you have to have these spots.

Commissioner Cooper: I would agree. We're not here to rehash the parking, which we have already been through, we're here to approve patio improvements. I think we need to leave the parking out of it because it has already been determined for this particular use.

Ms. Schellin: I know public comment is over, but Dr. Waddell sent me an email and said that he will add as many parking spaces as necessary for the community.

Mr. Tyler: I will be talking with Dr. Waddell. Thank you.

Commissioner Boysko: I agree with Bill that the information does need to be in this motion. I think the offsite parking is no different from the previous applicant that we had last month that had a lease agreement for X amount of parking spaces this is no different. I also agree with Beth that maybe we should table or take off of this motion the offsite public parking because you are right public parking is another animal that is a challenge the City has to manage. So let's take that off the applicant, but I do believe the offsite parking of 6 spaces from Dr. Waddell is necessary to maintain those 13 spaces. In my view that is critical to this motion.

Commissioner Simpson: I agree with that Shawn because just like the one we heard last month. Because they don't have those extra spaces that's what is causing the problem there. If Dustin moves on and sells to a person that wants to put in seating for an extra 20 people we want to make sure we have the ability to regulate based on parking spaces.

Commissioner Hartranft: I'm fine if we are going to restate what's already been stated on his previous approval but not adding things to it is not what we should be doing.

Vice Chair Little: I don't think we've added anything actually but what we will do is strike the number 4 condition regarding allocated or available comment, but that is not actually a whole lot different than what we did before.

MOTION: Commissioner Little moved for an approval of a Certificate of Appropriateness for the property located at 26 W. Olentangy Street as represented by Dustin Sun and known as Huli Huli, subject to the following conditions:

1. The owner shall maintain a shared parking agreement for 6 parking spots with the owner of the properties at 49 & 55 Scioto Street; in the event that agreement is terminated the property owner shall work with City staff to determine if sufficient parking is available at the time to offset those 6 spots.
2. The owner shall maintain 6 other onsite parking spots, including one handicap only spot.
3. The tenant shall provide clear signage at the entrance showing that patron parking is limited to either onsite, in the designated alleyway sites or in other City owned locations.

Commissioner Hartranft seconded the motion. By unanimous consent of all members present the motion passed.

VOTE: Y – 6 N – 0

CERTIFICATE OF APPROPRIATENESS (Case 2021-06CA)

Applicant: Nocterra Brewing Co. c/o Shyft Collective
Location: 41 Depot Street
Zoning: (DB) – Downtown Business District
Request: Review and approval of an accessory structure adjacent to the southeast corner of the existing building.

Vice Chair Little: Do we have someone from the applicant that would like to share your proposal.

Sadie Webb, Shyft Collective - 15 E. Gay Street, Columbus: I am speaking on behalf of our client Nocterra Brewing Co. We were the designers of the renovation at Nocterra in 2018. We are proposing a Certificate of Appropriateness review for the outdoor pour station. The intent here is to create a better experience for the current beer garden customers, as well as benefiting the DORA customers. Over the summer, especially with Covid, Nocterra had used a temporary tent structure out in the beer garden and this is to replace that with a permanent structure that will be along the edge of the site. I am sure you already know the boundaries for DORA but this is a site plan of the DORA boundary, which is in green. The blue is Nocterra's property sightline and orange is the proposed pouring station location. Here are photos of the existing beer garden. On the left are the current existing fire pits, those are permanent because they have gas lines running to them below. On the proposed site plan you can see that the pour station is on the eastside of the site facing Depot Street and is meant to sit along the fence line to better serve the DORA customers and also serve the beer garden customers. This is really to elevate any traffic and congestion that would happen inside Nocterra. As you can see it is nestled right below the fire pits. There is still enough space that you could have seating around them. The front face would be the point of sale for the beer garden customers. It's an L shaped bar with 2 points of service; one for the beer garden and one for DORA. The canopy and the bar would be permanent and then the coolers for the beer taps would be temporary so they would come and go as necessary. For the materials we are kind of going for the same look and feel to be consistent with Nocterra. You will see the same board and batten and metal roof that mimics the same detailing as the front porch. There's a concrete bar that would be reminiscent of what is going on inside of Nocterra. On the backside is a barrel staves screen where the beer taps would be and that is recycled beer staves from the barrels of their aging beer process.

Vice Chair Little: Claudia do you have the staff presentation?

Ms. Husak: You have the staff report in your packet and it is a requirement for a new structure in the historic downtown to be reviewed as a Certificate of Appropriateness by the Commission. In the staff comments we have identified that this structure will strengthen the economy of the City by adding an additional amenity, especially a walkable amenity. It is an attraction, especially as part of the DORA, which is intended to be ongoing will help the businesses and the residence of the City. We appreciate the design details and the esthetic in making the station fit with the current building and materials used. As it is walkable, there is no additional parking that we have anticipated and our staff recommendation is the approval of the Certificate of Appropriateness with one condition we have identified that we would like the Commission to include, which deals with the signs that are shown on the station. We would like the applicant to work with us in the future to figure out those details and get appropriate permits. We did have a public comment that Elise forwarded to the Commission from an adjacent resident. Also, Elise had someone call her today about this proposal.

Ms. Schellin: I did and he was not able to access the meeting via Zoom today. He did not have any specific comments, he just wanted to look at the proposal.

Vice Chair Little: Other than the email we received from the one resident are there any other people in attendance in the public that would like to comment. Hearing none we will move to the comments from the Commission members.

Commissioner Simpson: My only question would be for the encroachment into the setback. I assume that is not a code issue at all?

Commissioner Boysko: It there a setback?

Commissioner Simpson: On one of the items there was a setback shown.

Ms. Webb: We had this setback from when we used it for the initial Nocterra drawings when we did the renovation. I had talked with staff about this specifically and we were looking for an amendment to the Development Plan so that it could set along the property line. Otherwise if it is an accessory building Depot Street would technically be considered the front so according to the code any accessory building according to the code for the downtown business would be that it would need to sit back 30 or so feet.

Vice Chair Little: Staff's comment on that would be?

Ms. Husak: Elise remind me what we talked about.

Ms. Schellin: I think Sadie is correct this would technically be the front of the building and the front setback is at 30 feet in the downtown code. We discussed this and thought it might be a little bit of a sticking point so they had two different options. This was the ideal option and then Plan B being to push the pavilion back to the setback line.

Commissioner Simpson: Personally, I am of the opinion that is a better location for the building for where we have it. I just wanted to make sure we did whatever we needed to cover ourselves on that setback. There is already a tent there most of the year anyway so to have something more esthetically pleasing is a plus in my mind.

Commissioner Hartranft: I do want to address the email we received from the resident that lives across the street. She did say that during the summer with the tent being there I guess there were lines going into the street and people on her property. What's going to be the plan to keep that from happening if this is going to be a permanent structure?

Mr. Tyler: I can speak to that as I believe this is the individual that has been in contact with the Andy White our City Manager. We have had discussions with her and want to continue to have that dialog. We do understand that there is an issue here. The future plans are to do something more esthetically pleasing along Depot Street that would delineate the separation between the street and the residents, so either some type of fence or greenery that would help to rectify this situation. Again, it's not something we will have done in time for this to be built but we will stay in dialog with this owner and the owners that are along that location.

Commissioner Hartranft: Forgive me I haven't been there in a while but it looks like it's pretty much a gravel road between the street to where the entrance is to the beer garden. Is that a parking area?

Vice Chair Little: It's used as parking as well.

Commissioner Hartranft: So we are going to put a line in front of where people are pulling in and out for parking? Is there a safety concern there?

Bryan Duncan, Nocterra 41 Depot Street: Currently, that space in front is grave and the entire summer in was closed to parking and that is where we formed a line to get into the beer garden.

Bruce Vivian, Nocterra 41 Depot Street: What Brian is saying is that during the summer we rope that off so there is no parking. The use of this station would be during those warmer months. We have taken the barriers down since our crowd is much lower than it was in the warmer months. Usually we use it for the other food truck, so it's not customer parking. We would definitely maintain safety if this is open and not have any parking near where we have people gathering.

Commissioner Cooper: I don't see any problem with this addition as long as we do address that setback line in an amendment. I would also like to see the Nocterra employees get involved in some crowd control if in fact this line is spilling out into the street blocking traffic, going onto neighbors properties because that is not acceptable.

Mr. Vivian: The line we were seeing during the summer time was obviously because we were only aloud to have people sitting, though we have lots of tables and chairs the bulk of the time they were occupied by a couple. So maybe an 8 person table so we were way below capacity, so we tried to make the best experience possible for our customers. We tried to keep people tight along the fence as they waited to get in, but this is a Covid based problem not a fully open problem. The people that did end up in Mrs. Cantrell's yard where just trying to escape blatant sunshine and hit the little shade on the side of her house, but we always try to remind people not to stand in her yard. I have personally talked to Mrs. Cantrell a bunch of times and have had experiences with Officer Wilt and other Powell Police Officers and I think we have been able to manage the situation as best we can. I think once we are open and people can be in our space rather than waiting to get into our space it will be a lot simpler a process. Then having this more efficient building will prevent the line because we were pouring off of a lousy way to pour beer last summer, which kind of made things slow, which added to the speed that we could serve customers to get them back to the downtown and the park to hang out and enjoy their DORA beer.

Commissioner Cooper: I have not been down and seen the lines or the street blocked, I'm just going from the comments that we received from the neighbor.

Commissioner Bailik: I think it looks like a great amenity to your business. I like the architecture of it and how you have placed it and I think you have put a lot of thought into it. I do also agree with Trent and Ed that it is extremely important for you to keep that open dialog with Mrs. Cantrell or any other nearby neighbors. She did express in her email that she has no issue with you being there but I think it is really important to always be open to conversations and see what you can do to protect her property as well. I agree a lot of it is probably due to Covid but I don't want to see her concerns ignored. I appreciate the City making efforts and you keeping the open dialog and other than that I think it looks beautiful.

Commissioner Boysko: I would reiterate the comments that have been made. I think it's a beautiful well designed structure. Shyft does a great job to keep the character and the esthetics of this addition in keeping with the rest of the building. We need to put this in context and from what I understand this is in response to the DORA and not in response to Covid restrictions. My concern is the placement of this structure. The idea of the DORA is to bring people into your business and I think this is doing just the opposite. It's bringing people up to the business. I would put this structure at the back property line and force people in and through your building and keep them there.

When you back out and look at the rest of the context, Depot Street is very, very challenging. The width of that right-of-way is 40 feet. The width of the road is 20 feet. You've got all your parking in front of your building that is in the right-of-way. If this was a new building we would never allow parking in the right-of-way it is now. We allowed it when this was built because that was the existing condition. I think the location of this is going to create a real safety issue and it is only going to get worse when Covid restrictions are eased and the occupancy increases dramatically and I don't think it is fair to burden the police to manage this. Even pushing it back to the setback is not enough, I think it needs to be further back into the site to draw people in. I love the structure, I think it's a great amenity, but the location I have a real issue with and when there is no DORA that's all parking and creates a real safety issue just driving down Depot Street. I would love to say let's stripe this area so there's never any parking there, but we all know parking is very necessary. I feel very strongly that this structure just needs to be in a different location to bring people in.

Mr. Vivian: The struggle with DORA is for us is that we operate on an A1C License, so we're only allowed to serve and sell the beer that we create. Once you put liquid into the official DORA plastic cup we know longer know what that liquid is, so if someone comes onto our property with a cup that they purchased at Prohibition and has whiskey in it and doesn't look all that different from beer but now they are consuming that whiskey inside our space.

The reason we want to serve to the DORA zone is to get our beer in the cup and keep it in the zone because those cups aren't actually allowed in our space so we can't serve them inside our space. We would have to serve them in a glass and then as they exist our property pour it into a DORA cup and then it would just become kind of convoluted and difficult.

Commissioner Boysko: That sounds like more of an issue with the DORA than this operation.

Ms. Schellin: I can add from the City perspective that our idea with the DORA, especially with COVID was to get people to spread out so they are not all congregated into Nocterra and other bars. Our municipal park is part of the DORA so it just makes it easier for people to enjoy some time with their family in the park but also enjoy a beverage at the same time. It also allows for people to get a beer from Nocterra and then browse the retail stores downtown. They can go up to this pour station, grab a beer and then go into the Peachtree Street store next door. It's designed to help all businesses not just the bars and restaurants.

Commissioner Boysko: I appreciate the approach but I still think the idea is to bring people into your establishment and serving them at the property line is going to set a bad precedent for other business that want to do the same. We've got others that want to extend their patios up to the edge of the right-of-way. I think that is creating a problem and is a safety issue here on Depot Street. I have driven down there before when Nocterra is busy and it is a challenge to maneuver.

Vice Chair Little: I thank you for coming forward with the proposal. Like Shawn, I tend to visit there a lot to mainly just to understand how traffic and patrons flow in there. It is an improvement over the tent. I have witnessed how things tend to operate. As Shawn said, I know they want to bring people into their location, but I have also been at restaurants where you have people participating in DORA and they try to walk into another restaurant with that cup that the restaurant owner doesn't know what's in it. To try to build upon Elise's comments, some people just want to get their beer and then go walk in the Village Park.

Nocterra tends to be a little bit of DORA central from my experience. I think they can fill up their inside and at the same time sell refreshments to people that want to take in the rest of the downtown. I think the folks there do a really good job of keeping things organized, all that being said, I encourage you to keep working with your neighbors. Particularly now that you have a permanent station there and you've got someone manning it and something is going on that doesn't look right, be a good neighbor. I know there was a little bit of a trash concern. I don't know if that is Nocterra's responsibility along Depot Street or whether the City puts a couple of trash cans out there, but anything we can do to work with the neighbors.

Mr. Vivian: After Julie complained about the trash, we would walk the corridor on Monday morning and pick up everything we could on both sides of the street. A lot of it was random stuff that we weren't even selling but still trying to better the neighborhood. We definitely took care of that and I don't think she had any more complaints about trash after the first few DORA weekends.

Vice Chair Little: Like I said, just continue to be a good neighbor. I know you try to do a really good job. Shawn's concern about parking and the narrow street, it is what it is, I think when we look to improve Depot Street and perhaps connect it to the north, that's a really good time to try to fix things. All that being said, I am good with the proposal. I agree we need to get a resolution formally on the setback.

MOTION: Commissioner Little moved to approve a Certificate of Appropriateness for the property located at 41 Depot Street as represented by Shyft Collective and known as Nocterra Brewing Co. for the purpose of erecting an accessory building subject to the following conditions:

1. The applicant shall be required to work with staff on signage for the new structure and must gain staff approval prior to the applicant applying for City permits.
2. The applicant shall work with staff to resolve and setback issues and will take the necessary appropriate action.

Note: *There was a discussion before the motion was seconded.*

Commissioner Boysko: Before the second, can we clarify that last item on setbacks? Are we leaving it up to staff?

Ms. Husak: One of the things you could do is accept the location as a part of the motion.

Vice Chair Little: I heard at least two Commissioners express concern about that issue. I believe the way I have written the motion is we have an issue that needs resolution, which may include coming back to Planning & Zoning for an amendment, but leaving it up to staff to determine the appropriate action.

Commissioner Boysko: For me that is a little too open-ended and I would like to see it clarified where this thing is going to be located. Is it at the property line or is it setback?

Commissioner Cooper: Are we not amending the Final Development Plan to allow this to be outside the setback line? Can we combine these two into one or do we have to do this separately?

Vice Chair Little: Correct me if I am wrong, but I don't know that a Certificate of Appropriateness will address a setback issue?

Commissioner Cooper: I don't believe so because we are amending the Final Development Plan.

Ms. Husak: If that is the case, in my experience, that would have to happen under a separate application.

Vice Chair Little: So technically, can we approve a Certificate of Appropriateness without that resolution being taken care of?

Ms. Husak: You can, it is appropriate to be there with your second condition, but staff would have to work through that issue.

Vice Chair Little: Yes, that is why I put it in there. Shawn Boysko, I think your issue is a little bit different because you believe it should be more inbound, whereas I believe the rest of the Commissioners are believing where they want to put it is appropriate other than the issue with the particular setback.

Commissioner Boysko: Correct. As it stands now we are asking to wave that setback requirement.

Mr. Vivian: We are open to helping you figure it out, it's 3 feet, if your issue Shawn is safety I don't know where fence line or 3 feet is going really change that for you but I would like to think that for the esthetics and the real use of it, along the fence line is best.

Vice Chair Little: Again, in today's meeting, if the structure goes where the drawing on the proposal says it's going to go we can't address that in a Certificate of Appropriateness but what we can do is approve it and then the City has to deem do they move it or if they want to keep it where it is do they have to come forward requesting an amendment to the Final Development Plan.

Ms. Husak: I think that is what staff is understanding as well.

Vice Chair Little: Do we have a second on the motion?

Commissioner Simpson seconded the motion. Motion passed.

VOTE: Y – 5 N – 1 (Commissioner Boysko)

Vice Chair Little: The Certificate of Appropriateness has been approved but we have a lingering issue that we will let staff tell us what they propose we should do going forward.

OTHER BUSINESS

Online Meeting Etiquette Guide

Ms. Husak: In your packet we included an online meeting etiquette guide that was provided to the Boards and Commissions as we are under the assumption we will be continuing to hold virtual meetings awhile longer.

Commission Rules

Ms. Husak: I have taken a look at Commission rules and noticed they are very meeting orientated and not how the Commission runs. I looked at a couple of examples in other communities and found items that are typically included in meeting rules and bylaws. I thought we could draft something for you to look at and work together to see if that is something the Commission would be interested in formalizing. Typically that includes the powers and duties of the Commission, the membership make up, when your meetings are held as well as how staff creates agenda and when you receive packet materials and what the staff report contains.

Meeting procedures would also be included and together with our legal staff we would probably want to have some ex parte discussion and conflict of interest discussions that are typically in the rules and regulations as well. If you are interested in taking that on as your first training item we would get that started.

Commissioner Bailik: It's always good to take another look, get educated and get reminders.

Vice Chair Little: I agree, sounds good to me.

Ms. Husak: Thank you to Beth and Shawn for giving us some other training topics so as we go forward with some lighter agendas we will pick some of those or if anyone else has anything that comes to mind we are happy to do that as well continuously.

Mr. Tyler: We have two people that are on the call this evening that are actually going to be helping the Community Development Department moving forward and possibly be a service to not only the rest of the City but potentially Boards and Commissions as well. Tracey Owens is somebody that I have known for several years, who has helped me in the past with process improvement types of issues. We have done this over several issues and several departments. We started with the Building Department process improvement and frankly that is where we are going to start with here with the City of Powell. We are going to start with the permitting process and run that as a pilot. We want to make sure that those that are responsible for that particular process are engaged and part of that process. We then want to report back to Development Committee and to City Council. I would like to report back to this Commission as well to let you know how it is going. I hope in the future to expand that program to other portions of Community Development and possibly to other portions of the City as well. The reason they are on this call is to observe and see how we run meetings. I was serious when I told Council I want to hit the ground running and we are going to start this hopefully in April and hopefully have date shortly after. Tracey Owens is the business owner and Rachel Ray will be assisting us in that process. Rachel does work for the City of Dublin in their Economic Development department. She used to be Claudia's intern at one time, so she is very familiar with us and how we operate and she will be assisting in the process as well.

Commissioner Boysko: I was going to suggest based on today's discussion with this reoccurring theme about onsite/offsite parking that we identify some workshops that we can discuss this internally so we are not having this open discussion in front of the applicant that should maybe take place off line.

Vice Chair Little: I think Jeff is trying to get his hands around the overall subject matter and maybe putting a proposal together.

Mr. Tyler: I would agree with that but I think Shawn is onto something here. I think you as a Commission you have your own particular issues that you are dealing with surrounding parking and starting that discussion sooner rather than later I think is a great idea. Scheduling some workshops under the direction of Claudia and Elise.

Commissioner Boysko: I have for Claudia and Jeff to shoulder the burden of figuring this all out and I would like to participate in that discussion.

Mr. Tyler: We will have some internal discussion about it and get back with the Commission.

Vice Chair Little: I think we want to do that fairly quickly because in the pre-Covid days we were starting to push up against some stuff and I am guessing everybody will want to get out once the majority of the population has been vaccinated.

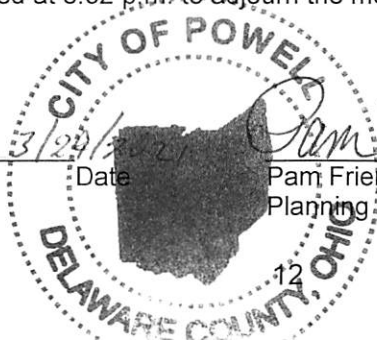
Vice Chair Little: The next scheduled meeting is March 24, 2021 and/or April 14, 2021.

ADJOURNMENT

MOTION: Co-Chairman Little moved at 8:32 p.m. to adjourn the meeting. By unanimous consent, the meeting adjourned.

DATE MINUTES APPROVED:

Donald Emerick
Donald Emerick
Chairman



Pam Friend
Date
Pam Friend
Planning & Zoning Clerk

3/29/21
Date



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:

Jim Hrivnak
Chairman

Date

Pam Friend
Planning & Zoning Clerk

Date