

Minutes of a Public Hearing and Meeting
of the
City of Bay Village Planning Commission
Held December 5, 2012

Present: Bruckman, Dzienny, Fleming, Maddux, Majewski, Miller, Persanyi

Also Present: Nolan Grade, Project Manager for Construction, Yum Brands, Inc.,
Stephen Wall, Pizza Hut

Audience: Susan Fink, Bruce Geiselman, Sun Newspapers

Public Hearing
Pizza Hut
380 Dover Center Road
Commercial Establishment

Mr. Dzienny opened the Public Hearing at 7:30 p.m. on the matter of the application of Pizza Hut for a commercial establishment at 380 Dover Center Road.

Mr. Nolan Grade, Project Manager for Construction, Yum, Brands, Inc. and Stephen Wall, Pizza Hut, presented their plans for the establishment of a carry-out Pizza Hut at 380 Dover Center Road. They have incorporated the suggestions of the Planning Commission at their meeting held November 7, 2012. Mr. Grade brought two renderings of the proposed building modifications. The first rendering is the modifications that Pizza Hut has requested. On the outside of the building, the cornice on the top of the building has been wrapped around both sides of the building. The band board across the front of the building has been extended beneath the sign. The original design of the sign remains the same as the first presentation on November 7. The switchback for the handicap ramp will remain due to the height of the stairs and the handicap requirements. An additional awning has been added to the side of the building. The drawing indicates the number of windows to be removed on the existing building. A handicap ramp has been added to the back of the building for deliveries. Mr. Grade displayed a sample of the painted brick that is proposed for the exterior of the building. The brick is primed and painted with Benjamin Moore paint.

The ingress and egress of the parking lot on the side of the building is indicated on the drawings (C1.0). The parking at the bowling alley site next door is also shown on the drawing. The proposed entrance on the side of the Pizza Hut building is one lane, indicated by signage in the parking lot. The exit is also marked by signage in the lot.

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The monument sign has been eliminated since there is not enough room for installation of the sign.

The proposed landscaping in the front of the building is shown on the drawings.

When the windows are removed from the building, they will hand fill the windows and use the faux brick on the front and paint the entire surface.

The area behind the sign will be faux brick. Mr. Miller asked if the additional weight affects how the corner will be addressed. In previous renderings there were two versions of the corner. Mr. Grade stated that on the inside where the corner comes together, there will be a steel support and a lintel that goes across, with an additional lintel. Both lintels will rest on a steel beam that is behind the brick on the inside.

Mr. Grade then displayed the version of the building that the Planning Commission requested. The building is exactly the same in both renderings, with the following differences. The cornice that goes around on both sides is painted white. The background of the signage was changed to match the adjoining businesses in the neighborhood. The band board that goes around the outside has been painted white to reflect the colonial architecture of the shopping center next door.

Mr. Miller asked what will be seen when looking through the glass on the front of the building. Mr. Grade explained that when you look through the front you will see a lobby front. There will be three or four chairs and a television on one of the walls. A piece of wall art will be displayed on one of the walls. A sales counter will extend across the front. A small portion of the kitchen will be seen. Most of the facility, percentage-wise, is kitchen and storage.

Mr. Persanyi asked if they have been able to determine the public right-of-way with respect to the sidewalk. Mr. Grade stated that the public right-of-way is directly on the outside of the sidewalk.

Mrs. Fink stated that at one point she worked for an insurance company that insured small businesses. She asked what the Fire Department says about egress in the front and rear and all the rest of the windows bricked, noting that this is a facility where there will be cooking. Mr. Dzienny stated that it is a small building, with a maximum of six employees and he is sure the requirements are met. Commercial Projects Coordinator Doug Milburn added that the building code requires 50 feet maximum travel distance. This building is only 44 feet square. With the two exits they well fall within the 50 foot parameters. With the masonry construction, the code may even be a 75 feet requirement for maximum travel distance.

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Mrs. Fink asked if the same parameters apply if it is an insurance agent or facility that is going to be used for cooking. Mr. Milburn responded affirmatively.

Mr. Miller asked if the equipment being used has automatic fire suppression systems. Mr. Grade stated that they have two basic cooking systems. They have a fryer with a built in fire suppression system. They have an oven for cooking pizzas and it also has fire suppression.

Mr. Milburn stated that construction plans will be sent to the plans examiner for review for compliance with the Ohio Building Code and all those issues will be covered.

Mr. Miller asked if the exhaust from cooking will be done through the sidewall or the roof. Mr. Grade stated they will be exhausting through the roof. The device on the roof will be a round, mushroom shaped fan. It is a centrifugal force fan and if there is any grease it forces to the side of the fan and then it drips down into a collection pan. The collection pans are cleaned monthly. The fan is approximately 30 inches in diameter, and the same height off the roof.

Mr. Miller suggested that there might be screening for the fan since the building is very close to the street. Mr. Grade stated that there will be two pieces of equipment on the roof. One will be the HVAC unit and the other piece of equipment is the exhaust fan. The equipment will be behind the parapet area for shielding.

Mr. Persanyi asked if additional equipment will be on the roof for the refrigeration in the building. Mr. Grade stated that there are two condensing units and they will sit on pads on the outside of the building. On the gas station side, or north side of the building, there is a row of shrubbery that will conceal the condensing units.

There being no further questions, the public hearing was closed at 7:50 p.m.

REGULAR MEETING

Chairman Dzienny called the meeting to order at 7:50 p.m. in the Council Chambers of Bay Village City Hall. Following the roll call, Mr. Dzienny called for approval of the minutes of the meeting held November 7, 2012.

Motion by Persanyi, second by Maddux, to approve the minutes of the meeting held November 7, 2012. Motion passed 7-0.

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Mr. Miller asked Mr. Grade about the structure shown on the drawings that was not shown on the original drawing and is located near the dumpster. Mr. Grade stated that Pizza Hut recycles all of their used shortening out of their chicken fryers. The shortening is changed every ten days, filtering it many times during the day. It is put in the recycling container and it is picked up by a truck for dumping. The top of the container has a lid on it which opens when they pick it up to dump it. It is lockable if there is an issue. Mr. Miller suggested that if it is sitting on the surface and is accessible it would be beneficial for it to be locked.

Mr. Grade asked that the Planning Commission inform him of which rendering they prefer. Mr. Dzienny related that the next step will be in front of the Architectural Board of Review (ABR). The ABR should be shown both renderings to choose which they prefer.

Mr. Bruckman asked about screening of the equipment that may be visible from the street. Mr. Dzienny suggested screening of the condenser units on the north side of the building with fencing. Mr. Dzienny noted that the area where the dumpster is located is in disrepair. Mr. Wall stated that the area will be corrected.

Mr. Maddux addressed the new brick parapet. It is indicated in the notes that some of the brick pulled out when creating the new opening will be reused to fill in the old window sites. Mr. Grade stated that they will tooth in the masonry. They will not have enough brick to fill in all 23 holes, but they will find brick of the same texture. Mr. Maddux stated that faux brick would not be ideal for in-fill. The idea would be to use the brick that is pulled out and then match existing texture with new brick.

The equipment on the roof will be very visible from the north side when driving down Dover Center Road. There might be an opportunity to do some roof top screening to close in the north side of an equipment screen.

Mr. Persanyi asked about the possibility of mounding with plantings along the handicap ramp facing Dover Center Road. Mr. Grade expressed that the plantings in front of the building will grow quickly and will hide the concrete. The handrails will be a powder coat paint to match the black on the top of the building.

The storefront will be silver aluminum.

Mr. Majewski advised that the requirement for parking is 18 parking spots. The proposal includes 9 parking spots. Mr. Milburn indicates in his letter of November 1, 2012 that the number could be reduced upon verification by the applicant as to the areas of the building devoted to storage and the dimensions of those areas. Mr. Majewski asked Mr. Milburn if he is satisfied with the nine spaces. Mr. Milburn stated that they have not been given any dimensions yet. He does not know what the total square footage of the storage areas are going to be.

Mr. Majewski stated that he counts seven parking spaces on the drawings, four in the back and three on the south side of the building. Mr. Grade stated that the rest of the parking is through the joint agreement with the landlord for the adjoining 28 parking spots. A letter of intent has been signed by the landlord addressing that parking, and the lease is being drafted. The landlord

for the building also owns the bowling alley and shopping center. Mr. Milburn verified that Bay Village, LLC, owns all of the property.

Ms. Lesny Fleming expressed favor with the lighter version of the proposed renderings presented this evening. Ms. Lesny Fleming stated that a Pizza Hut in Rocky River has the lighter version. Mr. Maddux stated that he could go either way on the signage but likes the cornice being the traditional white.

When the application returns to the Planning Commission, after the hearing before the Architectural Board of Review, the Planning Commission would like to see how the rooftop equipment will be screened, and the screening and placement of the two condensers on the site. The landlord will reroof the whole building in black EPDM.

Mr. Majewski stated that he drove through at night. The parking lot is lighted from the lights of the bowling alley. He asked if there will be additional outdoor lights in the plans, in the back and/or in the front of the building.

Mr. Grade stated that the side parking will be illuminated by the lights to illuminate the siding. There are no plans for additional lighting on the site at this point.

Mr. Miller asked if the accessible pathway has to have a certain amount of lumens. Mr. Maddux responded affirmatively. Mr. Dzienny explained that there has to be a certain amount of battery back-up lighting for the handicap ramp. Mr. Miller noted that an integrated handrail lighting system is available that uses LED lighting.

Mrs. Fink stated that there is no lighting on the door at the west elevation. Mr. Milburn stated that all of the exits are required to be illuminated and with emergency back-up. When the review of the construction drawings begins this will be addressed.

Mr. Maddux expressed appreciation to Mr. Grade of the way they addressed the concerns of the Planning Commission.

The next Architectural Board of Review meeting is January 9, 2013, with application deadline of December 28, 2012. Mr. Milburn stated that he is in receipt of an application but the drawings have now changed, requiring revised drawings for ABR. Mr. Grade said that a full set of drawings will be ready by December 29.

Mr. Miller asked if the Planning Commission would consider meeting on January 16, 2013, rather than January 2 to accommodate this application after the ABR meeting of January 9, 2013. It was agreed to meet on January 16, 2013. Mr. Miller will address the extension of the application of Pizza Hut with the President of Council.

Motion by Majewski, second by Bruckman that the application for Pizza Hut at 380 Dover Center Road be submitted to the Architectural Board of Review.

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Roll Call Vote: Yeas – Bruckman, Dzienny, Lesny Fleming, Majewski, Maddux, Miller, Persanyi.

Nays – None.

Motion passed 7-0.

Mr. Miller asked Mr. Grade to include the roof top units and the air conditioners on the side in the drawings that will be submitted to the Architectural Board of Review.

Planning Commission Work Session

Mr. Dzienny stated that this session has been requested by Mr. Majewski and is a debriefing or recapping of what took place at the time the Planning Commission was reviewing the application of Bradley Bay Nursing Home for an expansion of their facility.

Mr. Majewski stated that he had hoped the Planning Commission could have a casual conversation of what took place and the way the procedure was handled.

Mr. Majewski stated that a couple of years ago the city put an issue on the election ballot to add attached residences to the commercial district. In a letter to the editor, Mr. Dzienny stated, “The action that was taken by putting that on the ballot was for a particular developer. That’s not what our ordinances are for.”

Mr. Majewski stated that he is taking that as we are making our ordinances fit projects, rather than make projects fit our ordinances. That is what happened with Bradley Bay. We made our ordinances fit that project. The charter is the important part; we took the charter out of the picture. The most important thing we have is the charter. And it was ignored. We have to get back to making projects fit our ordinances. For example, recently the Board of Zoning Appeals heard a request for a variance for a house on Lake Road. The lot was vacant, it was a brand new structure, and they came for a setback variance. If you have a new building going on a vacant lot, there is no reason you should design something that doesn’t fit into the setbacks. The variances were granted for the setback.

Mr. Dzienny stated that you do have a Board of Zoning Appeals to allow for those instances where there is not a black and white application of our ordinances. There are always unique circumstances. There is going to be a unique property. There is going to be a unique extension of something. Maybe in that case, a blank lot, that’s a little different. I’m not sure. But, that’s the mechanism that the charter has put in place to allow the Board of Zoning Appeals to make those decisions. Not to say, our ordinance fits every situation. There is already a mechanism built into it. Maybe you are saying that mechanism that allows that goes too far at times. That’s an opinion. Over time the Board has changed, the Commission has changed, and what is lenient on one Board might be more conservative on another. That goes with the people that are involved with that. But there is a mechanism, and it is already built in there to allow for that change without just being black and white. Our Law Director repeatedly wrote memos indicating what we did followed the charter, followed what was legal. You and Bela had a

different opinion, but he is the lawyer. He is our Law Director, and he indicated what we were doing could stand up in a court of law. The Zoning Board can be challenged, but it wasn't our job to challenge them. It was our job to do the Planning Commission's job. That's why I felt comfortable moving forward with what we did. I asked, Day One, when it came before us we really can't even look at this, we need an opinion from our Law Director. Then it had to go to zoning, immediately, before it could even start because it was starting off needing a variance. We pushed it away to the right people and it came back in a form we could actually work with. The Law Director gave us his opinion and he was very confident it would stand a court challenge.

Mr. Miller stated that to take a different view on that particular project, they crafted the project to meet the ordinance. What we were given for reference for a few years ago, I think it was 2006 or 2007, when the Court of Appeals upheld their application for a change in use. At that time, the property to the south of there was an undeveloped part of their property that they had applied for expansion on, they had gotten approval through the Court of Appeals. What they had done in this case was crafted their application to address what that historic precedent had given. They could come to us for the initial application, but ultimately they were going to the Board of Zoning Appeals with that in mind. They took that crafted project based on that historical precedent to continue to be able to use that property. They appealed to the Zoning Board about having a hardship, and having a certain amount of setback variance. They actually took the right avenue and applied for the things they knew they could achieve. If they had come back and not cited those hardships and asked for a different change in use based on different criteria, then I think we would have had the grounds to object immediately. I think the Law Director probably would have told them you don't have grounds because after the Council had changed the ordinance in 2007, they wouldn't have grounds to appeal for that change of use for the use of that property.

Mr. Majewski stated that he disagrees with part of what Mr. Miller is saying. In the suit that happened previously, the question was whether or not there was an accessory use. The court ruled that what they planned there was an accessory to a nursing home. That type of living space was accessory. The change of use didn't exist because the contiguous property clause was still in effect. They were permitted to expand on that property and it was an accessory use. That's what the court said. In the application we are talking about, the contiguous property didn't exist anymore, it was taken out. The use of a nursing home was never established on that vacant lot at any time. We went from the question whether it was an accessory use to, in my opinion, a change of use. That's where we differ in opinions. To me, when you start talking a change of use, that's in the charter.

Mr. Miller stated that he can definitely see that argument being raised. The gentleman that represented those residents, if he had strongly felt the same way, which he seemed to have wanted to verbalize, never took a legal form of action until it was too late. If they had presented that argument early on it is very possible that it would have stopped and the Board of Zoning Appeals would have been overruled by that action, if they had strongly felt that way.

Mr. Majewski stated there was another point. Bela and I attended a Council meeting when the lawyers had a discussion back and forth about the legislative action versus an administrative

action. It really brought home the idea, and I hope someone can tell me where my logic went wrong because I tried to ask the questions during the meetings, whether or not the Board of Zoning Appeals had that power to grant a use variance. As they derive their power from our legislative branch, which is City Council. Mr. Ebert told us that Council is the legislative authority for the Board of Zoning Appeals. He told us that City Council did not have the power to allow a use on a piece of property without going to the people. They don't have that power. My question to him, and in my opinion it was never answered, was how can that power have been delegated to the Board of Zoning Appeals by City Council if they never had it.

Mr. Bruckman stated that there were a couple of specific court cases cited by Mr. Ebert where there is a certain amount of administrative power that bodies such as the Planning Commission or Board of Zoning Appeals can be given by a legislative body. That decision is an exercise of their administrative powers. The Board of Zoning Appeals has a certain amount of authority and that authority has been supported by court decisions that give them the authority to do that kind of administrative decision. It was interesting how long it took to work through those various briefs in Mr. Ebert's memo and the briefs on both sides, and I thought it was good for all of us to actually take the time to read all of them.

Mr. Maddux stated that one of his questions is how bound are we to the Law Director's opinion. I know for myself that I don't have enough of a legal mind to think that what I know is more than what Gary Ebert knows about our positions.

Mr. Dzienny stated that what was before the Planning Commission had nothing to do about the legality of it. That's the problem I had with you and Bela trying to vote no. Because you were not voting no on what was presented to the Planning Commission. You were voting no on what the Zoning Board was supposed to vote no on, maybe. Or, what you think the citizens had a right to vote on. You are using your power on the Planning Commission to block something, even though that's not something you are supposed to be voting on. What I am saying, is, I am not a lawyer, that's why I kept on asking our Law Director. Is what we are doing legal? Are we going down the right path? He kept on giving us case memos that said, yes, we are. What was presented to us was what the Planning Commission had to act on, not the legal portion. That's the point I kept on being frustrated about, and trying to get us back on track of what we were supposed to doing. If it was an issue and we passed it, when it gets to City Council they still have the obligation to present it to the public in the form of being vote on. It is not our job to do that. Our job was to help the architect and owner craft the best project for the piece of property, and that's what I kept on trying to steer us back to.

Mr. Majewski stated that obviously he felt the charter was slighted. I obviously felt the people had a right to vote, and I still feel that way. But there are other reasons I voted no on this project. I believe our job is to enforce the codes, is to look at the Master Plan. In no way, shape or form, this complies with the Master Plan. It doesn't comply with the Charter. One of the issues in the city, too, has been attached residence. It's always been a point of contention in the city. That's the only piece of vacant land zoned for attached residence in the city and we're not going to put attached residences on it. Those were some of the reasons other than the fact of the charter. I had other reasons to vote no. To me, another reason is that to me the law has to be logical.

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When I read Mr. Ebert's memos, and I read the case he based his memos on, Ottawa, Ohio, I didn't see the logic as it compared to what our conditions are in Bay Village.

Mr. Dzienny stated that they are slightly different, I agree with you. Their Planning Commission had a little more power.

Mr. Majewski stated that their Village Council has all the zoning power and delegates it to their Planning Commission. I didn't follow how that case which he based his memos on applied here.

Ms. Lesny Fleming stated that she is a relatively new Planning Commission member. Do you believe we have the right as Commission members to object to certain projects because we believe there would be a better use for the property? That's what I am hearing you say: that attached residence would have been a better use.

Mr. Dzienny stated that yes, to an extent. We don't own the property. Bradley Bay owns the property. You have to respect the rights of people who own their own property, what they can build on it, to some degree, if it falls within the zoning and it allows that. Obviously they used all their variances. Going back to the whole reason why contiguous land was eliminated. That was intended to prevent destroying neighborhoods. There was a church that was tearing down houses to create more and more parking lot. The Bradley Bay land was scrub brush, empty land and that doesn't necessarily fall under that. It falls under it because it was contiguous property but I don't think that was the intent. The intent was to keep from destroying houses.

Mr. Majewski stated that there was a house on that property, not too far past. I believe they bought it with the house on it. I may be wrong, but I believe that's what it was.

Mr. Miller stated that there is no legislative action that says the Master Plan is a governing doctrine and we have to abide by it.

Mr. Majewski stated that a lot of thought and a lot of study went into that Master Plan. If you read it, it does specifically address that piece of property.

Mr. Miller stated that it also addresses many other properties, many of which currently are first residence that they are saying let's take the first 500 to 600 feet of Knickerbocker that's east of Dover and turn that into a massive attached residence area. The study from Kent State, as much as they want a vision to the future of what we need in the city, people still want to buy those single family homes that are on the street. They aren't buying them up individually now and then tearing them down because the Master Plan says I should do this. They are still respecting the zoning. If we are really talking about the zoned districts, should we be having a conversation with the Board of Zoning Appeals saying maybe you should be promoting the restructuring of the rezoning. Maybe we should have different zoned areas to accommodate a more fluid commercial area. Instead of having businesses and residences mixed in there, maybe you should just have one or the other.

Mr. Bruckman stated that it does make sense for members of the Planning Commission and members of the Board of Zoning Appeals to have an opportunity to have a free form exchange

where they can talk about various circumstances where there seems to be inherent conflict growing now as times change. We realize there are certain aspects of our zoning code that may need to provide more flexibility, or, in some cases, provide greater restriction, based on what the character of the community is leaning towards. The Bradley Bay project caught me unawares because I wasn't aware of the history. That particular project has been there for a long time and as that project has evolved so has our charter. We became the line of scrimmage when that was reviewed in public, and that was at times uncomfortable because it wasn't clear, until after reading the various legal opinions, what direction to take. It may be a good idea in certain areas of the city where this sort of scenario might play out again, that we proactively look at those areas and say in the future this particular part of the city is going to probably facing a different set of challenges. Do we have the right tools in place to address those challenges? All genius is in hindsight. It is really hard to say what the future will bring but in those two areas we can make some guesses as to the sorts of challenges we are going to be looking at. Maybe that is part of our conversation is to have a time when we talk to the Board of Zoning Appeals and just discuss parts of the city where we think there might be a need to explore options, or explore challenges. That way, we can maybe find a way to prevent really problematic issues from coming to the fore, or perhaps create opportunities too. I think we have to think about that. We're here to hopefully not just deter certain projects if they are fraught with too many bad consequences, but to try to create situations where new ideas can be implemented in different parts of the city. We can do both.

Mr. Persanyi stated that the Master Plan tried to address this. There are sections of Knickerbocker Road that are short pieces of street which confuses the postal service (UPS) and everyone else. Those areas were considered, for example, for attached residences, or townhouses, so these are possibilities that the Master Plan considered. Redeveloping the shopping center at Clague Road, maybe going to a different type of zoning, they looked at those. They did look at Bradley Bay. Back then they sent out a questionnaire to a huge number of people in Bay Village as to what they like in this town, what do they want to see developed, and one of the things that came out is people wanted to make better use of the lake. One of the things they wanted was more attached residences because people were moving out of Bay Village, not because they didn't like the city, but they wanted to move into condominiums. It wasn't a matter of money because they were selling houses that were going for \$300,000 to \$400,000 and moving to Rocky River, because Rocky River had condominiums. These were set out there as the type of housing people were looking for and we have ignored the Master Plan.

Andy Dzienny commented that he would love to be Avon Lake, Westlake, or Avon, and have massive land still yet to be developed. We really don't have a lot. We have a lot of land that is already owned by people or by businesses. I don't know how much ability we have to forge into what we want it to be. Unless someone buys up all the houses on Knickerbocker, one owner or one group of people, and say once we get them all together we can come before the Planning Commission with a proposal for attached housing. You can't do that in this area with one or two pieces.

Mr. Persanyi stated that there is a lot of vacant land in Westlake, but if you look at their requirements for attached residences, or you look at Rocky River which is pretty much built up, their requirements for attached residence districts is much smaller, right from the beginning,

from the minimum development area. Bay Village's requirements are five acres. How are we going to accumulate five acres of land today in Bay Village that doesn't have houses on it already? That makes it totally impossible financially and economically to tear the houses down and build condominiums. Former Building Director Milburn, Jack Norton, Chairman of the Board of Zoning Appeals, myself and a couple of other people spent years looking at this, and nothing has come of it.

Mr. Dzienny asked if the two-acre minimum was applied to the former Shell gasoline station property. Mr. Persanyi stated that just came forth recently with legislation that permitted attached residence in commercial zoning. If you could amend that part of the attached residence district chapter to reduce the minimum size, there would be possibilities. I've had two neighbors move out of Bay Village. One went to Avon, the other went to Rocky River. They loved Bay Village, but there was nothing available except thirty units at Bay Commons and the financial mess at Cashelmara. They chose Rocky River and Avon. It wasn't a financial issue. It was just a matter of availability.

Mr. Dzienny asked if the ordinance is being looked at again.

Mr. Miller stated that he will be that Chair.

Audience member Susan Fink stated that in Ward 3 there is a section of property that is about five acres. The family has put it on the market. That is an opportunity for the Planning Commission. What is going to happen to that piece of property?

Mr. Persanyi stated that this is the Elliot property and it is zoned First Class Residential District. All you can do is put a house on the property. I agree, it would be a great place.

Mrs. Fink stated that this may be something that a developer might want to do something with, or if you want to encourage something it might be an opportunity to look at it knowing it may come up to that if somebody eventually purchases it.

Mr. Dzienny asked if something like that could be subject to a variance, with that much of a change.

Mr. Persanyi stated that it would have to be rezoned. It would have to go the voters. It would have to be approved city-wide, and in Ward 3, for attached residence district zoning.

Mrs. Fink stated that the Master Plan did not rezone anything. It just addressed areas. As a Master Plan follow through, this is a big piece of property.

Mr. Dzienny stated that this relates to what he said earlier, and it has just been confirmed. If someone bought that property, it would have to be a private developer and they would bring it before the Planning Commission. We would say that it has to go on the ballot or go to City Council for placement on the ballot. A private developer would have to go through the whole process to get that piece of property rezoned. I don't think anyone would say we are going to rezone that area and we are going to put it on the ballot just so we could encourage development.

Mr. Miller stated the gentleman who owns the yellow home (next to Charter One Bank) on Dover Center Road, zoned Commercial, still has property rights as a residence. If his home is torn down, he still has the right to build a new home because that is the ownership right of his property. You cannot stop that. You cannot give that up. There are property rights. If you change something from one zone to another, if we decided we liked the Heinen's property more as a residential zone and decided to change the zoning over, they still have the right to operate the facility until they decide to sell it. The next person would take on the residential district property.

Mr. Dzienny asked, if anyone really were serious about the Master Plan, and wanted to rezone some of the city to allow for those changes, who would that be, the Planning Commission?

Mr. Miller stated that it would be the Council members. The Chair of the Planning and Zoning Committee would present a draft of an ordinance for consideration for adoption that would alter the zoning in certain areas. Or, maybe craft an overlay district, that is respectful of certain conditions but you also can apply it to certain locations of property that have been identified based on age and certain criteria. When Council was looking at the property known as Cahoon Ledges for high density housing, they said that is a great spot for attached residences and senior homes. There is a mixed age group, 55 plus, in that area now, not just seniors.

Ms. Lesny Fleming stated that she is very interested in all of this discussion. It is important discussion to have. I really respect the views of Mr. Majewski, and the passion he has for this issue. As far as the Planning Commission goes, it seems like they have a specific charge to do. We don't have a lot of leeway on things. I am a lawyer and maybe I look at things more black and white. If there are areas, perhaps, to go beyond it and move the Planning Commission in another direction that we are allowed to do, we should explore those things. I know, for example, my mother is also on the Planning Commission in Middleburg Heights. They are a lot more active, they have a lot more commercial properties there. They, for instance, all went to a continuing education course that was held downtown. They had a very interesting, day-long program. Maybe there are opportunities for all of us to learn more about our role and ways to improve our role.

Mr. Miller stated that the American Planning Association (APA) usually has a regional conference that is often held in Westlake and a few of us have attended the program in the past.

Mr. Bruckman stated that sometimes those one day workshops have specific workshop topics that could be of interest to Bay Village. They don't necessarily repeat the same topics from year-to-year. You don't always know in advance what programs you are going to have an opportunity to attend. It does make sense for us to explore some opportunities for education as a group. The way the Elliot property on Osborn, for example, is currently zoned, a developer is shoehorned into putting houses in a certain configuration. It really doesn't respect the inherent, natural qualities that particular parcel of land has and it is sort of a shame. There are exquisite projects where developers have done very, very sensitive things that respect the land. They essentially

put a lot of structures, relatively speaking, in a very small area and retained a lot of the natural beauty of the parcel. You can't necessarily do that with our current zoning on a piece of property like the Elliot property, unless you do something that requires a variance or a change in zoning. There are probably other examples of parcels like that throughout the city where there might be a future opportunity that can't really happen unless we find a way to be more flexible, but do so in a transparent way that lets the people in the community have a say. That is going to be a real challenge. Right now, much of that land is pristine. But current zoning and land use standards limit the ability of both the property owner and the city to revisit other uses of the green space portions of that property in the future. A parcel like this is an example of where a different approach could be beneficial for the property owner, the city, and the surrounding community.

Mr. Persanyi stated that the City Council has to take some of the load and work with it. Some of you were here when Dino Lustrini came with a set of plans for attached residences or townhouses on Cahoon road. He put a lot of time effort and money into a beautiful set of plans and presented it as what he could do. He couldn't do anything with it because of the limitations that are in place in the attached residence district chapter. It would have been a great asset to the city.

Mr. Dzienny stated that it still may. He did all the right steps to prepare for that and he may be waiting for the changes.

Mr. Miller stated that he also has the right to take a petition to the ward. He can go to 1500 homes for support for his design.

Mr. Persanyi stated that this is not the problem. Under the current chapter, he can't do anything with the property without getting the three acre variance, even if he had the rezoning. He can't go to the voters to ask for a variance. A variance can only be given by the Board of Zoning Appeals, or the Planning Commission in the case of parking. Without changing the minimum requirement for what is the starting point, he can't take it to the voters because he still couldn't do anything even if the Zoning Board changed it to attached residence.

Mr. Miller stated that he thinks the petition would go a long way to support the zoning change.

Mr. Dzienny stated that the zoning could be changed. He would have to then get a variance.

Mr. Persanyi stated that Council would have to change the part of the building code chapter where we are talking about the minimum development area. Council has that power. A change in zoning has to go to the voters. We are talking about a variance of three acres, plus. It would be a variance of 3.1 acres to reduce it from the five acre minimum to 1.9 acres.

Mr. Maddux asked why the minimum acreage is set at 5 acres. Mr. Majewski stated that the city was developed on the premise that it would be single family homes. To protect that premise, to save the neighborhoods they made the acreage huge so it would convince people that it would be

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first residence district and single family homes. That is the whole idea behind the city when they wrote the zoning code. If you go through, there is protection after protection to help that concept of single family homes.

Mr. Maddux related that his neighbors were upset when the man on Lake Road building a home near Huntmere and Lake Road bought three pieces of land. There was so much discussion about him tearing three houses down, and the possibility of building condominiums or an apartment building. Mr. Maddux stated that he told them it can't happen because it is not attached to the commercial district, but that's what the fear is.

Mr. Persanyi stated that another problem in that chapter deals with the density and the number of units per acre. We have a rule in the chapter that says no more than six units per acre. Many people don't know that Cashelmara has a separate chapter in our zoning code. The density in Cashelmara is about ten units per acre. We put something in there which sounds good, and it is almost impossible to come out with an economically feasible project. Instead of concentrating on open space, or areas that aren't covered by buildings or driveways, we come up with arbitrary numbers like six units per acre and then we have minimum sizes. We looked at the minimum requirements for condominiums in Rocky River and Westlake. They have much lower minimums, and here we are, with an aging population with fewer and fewer people in each housing unit, yet we are forcing them if they want a condo, you have to have a minimum of two bedrooms and a minimum of 900 square feet. Again, we have made it so it is impossible for anyone, a developer, to come in here and build something which the public wants and is economically feasible for the developer.

Mr. Bruckman interjected that one perception he has had is the process whereby we have the public portion of our sections, and then the Planning Commission sections, maybe if we developed some sort of a handout or card we could distribute that helped explain that process and why the process is in place. That might help the perception that sometimes occurred whereby members of an audience might feel if they are being restricted from speaking altogether. They are not; it is just that they don't necessarily know the process.

Mr. Dzienny stated that some of the meetings have been free-for-alls. It is a little better when you have more control when the public hearing is instead of people just standing up and voicing their opinion. That being said, I don't want to restrict it to the point where we don't get the community's input.

Mr. Bruckman reiterated that if we had some sort of handout to explain that process it might help some audience members understand that there are opportunities for public input, and there is an opportunity for the public to watch the Planning Commission deliberate. They both have their place. They both serve their role.

Mr. Dzienny noted that this evening's audience of one or two people is more than the normal audience. When there is an issue like Bradley Bay, that is one of the biggest audiences we have ever had in here. The skate park was another high interest issue.

Mr. Majewski stated that doing some research he came across something related to the point about being proactive, "A use variance authorizes the use of a property that would otherwise be prohibited within the property's zoned district. The effect of granting a use variance is often similar to change in the property's zoned district classification. It should be noted that many states prohibit use variances, or authorized localities prohibit them in their zoning codes. This is recognition of the fact that 1) allowing changes of use through variances can dramatically undermine the stability of neighborhoods, and 2) changes of use are much better considered by the legislative body through the zoning amendment process, not property by property through individual variance requests. Planning Commissioners should carefully review their state law and local ordinances to determine if the granting of use variances is lawful in their jurisdiction."

Mr. Majewski stated that, in relation to the proactive part, he would hope at some point the Planning Commission could have a discussion about whether a use variance is a good thing in this city. To me, I see it as a problem. That in a city like Bay Village, that is 97% residential, you can see changed uses without the charter, would be a problem. I would like us to be proactive in that, and that's the thought I would like to leave with you.

Mr. Dzienny stated that the part where we were proactive is we immediately sought out our legal authority. We asked that question and got his opinion over and over whether this was allowed. We didn't just move ahead with the process; we stopped and said we can't even go any further with this until the Zoning Board says something, or legal says something. We got both of those opinions, and we got the variance and we also got legal opinions. You're right, the use could drastically change everything, but actually it pretty much is the same as it already was there. Bradley Bay is there. Bradley Bay is a little bigger but it is still Bradley Bay that is there. Did we really change the characteristics of that neighborhood? I think actually when it is all said and done, that is going to fit in really nice in that neighborhood and that piece of scrub property is going to be all landscaped and fit in, and actually make Bradley Bay probably look better also.

Mr. Majewski stated that he would leave one thought. Before one brick was laid for the original Bradley Bay, it was removed from first residence district. The definition of hospital was removed. All the way back in 1960, the Planning Commission and the powers that be didn't want any part of that nursing home in a first residence district. It was just a way the code had to be written to account for Bayview Hospital. That's why hospitals were allowed in first residence district. Because Bayview Hospital existed, so when it was zoned they made it a permitted use. But when Bradley Bay first came to put a hospital on that property, when the O'Neil's came to the city, the city immediately withdrew that from the code as a permitted use, the hospital, going back to 1960. Would I say the neighborhood has drastically changed? Absolutely, the neighborhood has drastically changed with Bradley Bay. That was a first residence district.

Mr. Dzienny stated that forty or fifty years ago that was drastically changed. But at what point does something new become the history. I had the same argument about what they did to the community house where they tore down the existing tower and put up that cupola. The whole building was changed to be a colonial looking building and they tried to make it look like a barn again. They were saying they were restoring history. My opinion was, what history is the correct history. Bradley Bay has been there for fifty years. What is the correct history? Fifty-one years ago, or the one that currently is there now and they are expanding on that?

Mr. Dzienny stated that the Master Plan says we need attached residences for the older people in our community. We are getting attached residences as part of Bradley Bay to take care of people who do have dementia and Alzheimer's disease. They get to stay in the community. Their families can visit in their community. It is just an extension of that. We are honoring the Master Plan by doing something like that.

Mr. Persanyi stated that Mr. Dzienny is mentioning that it is history, that it is there now, but the fact of the matter is it is not fifty or sixty year old history. Since I have been on the Planning Commission they have come to us four times for an extension. So it isn't old history. Some of those wings are probably 15 years old. It is a change of use that was never intended by the charter.

Mr. Bruckman expressed that he wonders what would happen if the Planning Commission were confronted with a mixed code scenario where people are looking at development and it's all about whether the volume of the building, and the design of the building, fits the context around and they kind of leave the use highly flexible. That probably is a very alien concept here in Bay Village. That may ultimately end up what we are doing in parts of the city as well. Where we just make sure that the buildings, whatever they may be, preserve the character of the community but create options for uses so that different things can happen here.

Mr. Majewski thanked Mr. Dzienny as Chairman of the Planning Commission for the opportunity to have this conversation. He suggested it be done more often.

Mr. Dzienny suggested that maybe every three months the Planning Commission could recap what has gone over the last three months.

It was decided to repeat the Planning Commission Workshop format in March of 2013.

Council Update

Mr. Miller stated that the Council has recently passed the solar energy ordinance. They have moved on to the topic of standby generators. A rough draft has been presented for an ordinance governing standby generators. Independence, Ohio, and Moreland Hills, Ohio, both have a code that is respectful and looks good for Bay Village. More work will be done on the draft before it gets to first reading in front of Council. There is a clear definition between what someone might interpret as a permanent generator supplying temporary power than a portable generator providing temporary power. Since a large number of people do have portable generators, that will probably be dealt with separately. The ordinance being drafted is talking about permanently affixed, permanently plumbed, permanently wired generators to temporarily provide power.

Mr. Majewski asked if the generator issue now being before Council committee stops anyone from making application to the Board of Zoning Appeals for a special permit for a generator. If an ordinance is under consideration by Council can you still apply for a special permit? Mr. Milburn explained that Council did not do a moratorium for generators. Mr. Majewski stated that he knew the 13 applications before the Board of Zoning Appeals were applied for before the

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generator issue was assigned to Council, and those are fine, but would any further be allowed? Mr. Miller stated that they would be allowed. The proposed legislation would not override any current applications. If we had seen Bradley Bay coming, and Council was of the disposition that they wanted to block it, they could have passed an ordinance during that application process and stopped them cold by legislative action.

Mr. Majewski asked if there is a thought about putting a moratorium on generators until the legislation is passed. Mr. Miller stated that there is no thought about a moratorium. The Board of Zoning Appeals has done a good job with issuing special permits for variances. They have the capability of researching the expectations using national standards for generators and applying other things such as setback conditions to review those special permits. What the Planning and Zoning Committee is to bring all that to one spot, to present a streamlined process. If the criteria are met and the Building Director agrees, then they will approve the application. If an adjustment is needed for one reason or another, then the appeal would go to the Board of Zoning Appeals.

Mr. Miller related further that Chapter 1158 is one of the things that is pending under the Planning and Zoning Committee of Council. It has been on the council committee for seven to fourteen years. Mr. Miller is the Chair of that committee to make sure it moves forward and there will be further discussion when the generation ordinance is completed.

There is a vacancy on Council with the resignation, effective December 31, 2012, of Councilman-at-large Scott Pohlkamp. Interested parties are encouraged to apply by approaching Mr. Paul Koomar, President of Council.

Meeting adjourned at 9:30 p.m.

Andy Dzienny, Chairman

Joan Kemper, Secretary