

**BEREA MUNICIPAL PLANNING COMMISSION  
JANUARY 7, 2010**

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The Berea Municipal Planning Commission met on January 7, 2010 and was called to order by Mr. Madzy. Present: Borowski, Draves, Fay, Madzy, Rump, Sawyer. Absent: None. Also Present: Tony Armagno, City Engineer.

This meeting was held in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code and Chapter 109 of the Codified Ordinances of the City of Berea.

Moved by Rump, seconded by Fay to approve the minutes from the October 15, 2009 meeting, as submitted. Vote on motion was all ayes; no nays. The minutes were approved.

Moved by Rump, seconded by Fay to approve the minutes from the December 3, 2009 meeting, as submitted. Vote on motion was all ayes; no nays. The minutes were approved.

Witnesses were sworn in by Mr. Madzy.

**REQUESTS FOR VARIANCE/APPEALS:**

**Application #10-01-01**

**Approval of Variances for New Enclosed Area & Canopy**

**Sunoco Gas/Convenience Store – 871 N. Rocky River Drive #361-24-043**

Mr. Madzy read the Administrative Review. Due notification was made on this application pursuant to Section 807.2 of the City of Berea Zoning Code.

The owner, Tony A. Allan and the agent, Kevin Morand, were present this evening. In response to Mr. Morand, Mr. Madzy suggested they start with the front setback variance (retaining wall). Mr. Morand explained that the new building is at the 20-foot setback line from the Sheldon Road right-of-way. They are putting in a driveway to a basement entrance off of Sheldon Road. There are retaining walls for the driveway because the grade slopes down from Sheldon to the basement level. It goes from approximately a 6-to-7 foot drop. From Sheldon Road to the property line it is fairly level but once it gets past the property line, it gets steeper.

Mr. Morand said they have concerns that in the wintertime it will be difficult to remove snow from the steeper slope (property line to the building). Also, with the retaining wall they feel snow will accumulate in this area more than it does on the street. It will be difficult for a snow plow to get down there

and then back out again. Mr. Morand stated that they are requesting to build a roof over the retaining wall and install a garage door on the end to enclose the ramp.

Mr. Morand pointed out that the existing right-of-way is 80 feet wide but the street itself is located on the north side of this area. It is probably 25 to 30 feet from the street to the property line at the edge of the right-of-way. If the City would ever want to widen the street, this would be a plus. Mr. Morand distributed photographs of the existing basement doors that have been installed and the snow that has accumulated down in that area. Mr. Allan said if they put a new roof over the top of this area, it would be protected from the snow accumulating at the bottom of the basement doors.

Mr. Morand displayed photographs of the property looking to the west down Sheldon Road. He pointed out that there is a roof structure over the sidewalk on the adjacent property and showed the relation to the retaining wall. He stated that their proposed new enclosed area would be in line and similar to the neighboring property's roof structure. Mr. Allen reported that it would look uniform.

Mr. Morand stated that they are also proposing to install a trench drain near the basement door which will tie into the storm drain that is going around behind the building. The water will be collected there and then they are proposing to put in another trench drain at the top of the retaining wall and this will also tie into the storm drain so there will not be any accumulating water problems. He referred them to the drawings and said this will give them a good idea of the pitches/slopes from the street to the property line and from the property line down to the basement doors.

Mr. Madzy asked if the basement doors would be used for deliveries and Mr. Allan replied not for deliveries of goods and stuff. Deliveries would be coming from upstairs but the equipment will go downstairs and if they have extra stuff they will store it down there. He said deliveries would be coming from the front of the store most of the time but anytime they are going to use that door in and out, it will be very hard to clean up the snow in the winter time.

In response to Mr. Allan, Mr. Madzy inquired if their main goal is to have less snow in this area and Mr. Allan said yes. If they enclose the top of this area he felt hardly any snow would accumulate there. The sloped area from the street to the beginning of the wall will be easy to snow plow. Mr. Madzy said looking at this they have to have at least a 20' front yard setback and what they are proposing will be setback roughly 9 inches off the property line. He felt this was a really big variance considering it is for snow removal.

Mr. Morand stated yes but said he wanted to repeat the uniqueness of this location with the position of the street and the right-of-way. The right-of-way is 80 feet wide but the street is to the north side of the right-of-way and is roughly 25 to 30 feet from the edge of the street to the right-of-way/property line. So this is unique compared to other street right-of-way conditions where usually the street pavement is in the middle of the right-of-way. In response to Mrs. Draves, Mr. Morand agreed that any time there is snow in this area, it will be dead space.

Mr. Sawyer did not think this would be a 100% solution to their problem because there would still be a slope in that direction. Mr. Morand replied that the steeper slope would be under the roof and there is a catch basin in there to catch anything that is draining. There is not much of a slope from the street to the building and they are proposing to put another trench drain outside the building in this area.

Mrs. Draves asked if there would be a garage door installed at the top of the enclosed area and Mr. Allan said yes. Mr. Morand added that also with the proposed trench drain outside the garage door, it will slope down slightly from the garage door and then to the trench drain and come back up so this will prevent water from getting inside to the steeper slope. Mrs. Draves felt that it could be a hazard if something is not done with the slope because if there is a build-up of snow in this area, someone walking past could slip down the steep slope.

Mr. Rump asked if pick-up trucks or cargo vans would be backing down into this area at all or would people be walking down there. Mr. Allan explained that it will be a concrete driveway and sometimes they will use this ramp as a storage area because their showroom is upstairs. Mr. Morand pointed out that the garage door will only be 8 feet high so vehicles will not be able to driver underneath of it. Mr. Allan added that vehicles would not be backing down the ramp, not even in the summertime.

Mr. Madzy asked if a vehicle were to deliver something to the basement doors, would they raise the 8-foot garage door and have the vehicle stay parked in the driveway. In response, Mr. Morand stated maybe a service vehicle. Mr. Allan noted a vehicle would park there five to ten minutes at the most if they had a big load but most of the time it would be more like five minutes in and out.

Mrs. Draves inquired what they currently use the basement doors for and Mr. Allan said these doors lead to where they keep the large units and equipment for the HVAC, walk-in cooler, etc. All of this equipment is usually put outside but they will be keeping it inside the basement area. Mr. Allan indicated that sometimes they have extra cases of stuff and they will put it in this area keeping the walkway accessible.

In response to Mr. Rump, Mr. Allan clarified how close to the sidewalk this enclosed area would be. It will start at the retaining wall. Mr. Rump inquired if there were any plans for the City to put in sidewalks along Sheldon Road to North Rocky River Drive. City Engineer, Tony Armagno, replied no, there are no current plans for this. There are currently sidewalks along the frontage of the gas station along Sheldon Road.

Discussion ensued regarding the elevations of the building and the retaining wall. Mr. Madzy pointed out that the plans show the existing retaining wall 4'4" above grade and Mr. Morand noted that this is where the retaining wall extends beyond the back of the building. Mr. Morand referred to the elevation drawing. The west side of the building is probably about 6 feet above grade and on the east side of the enclosure the grade comes down in the front and it is probably about 4 feet on that side. Mr. Sawyer asked if a person would be able to walk on the roof and Mr. Morand said it would be close.

Mr. Madzy raised concerns regarding the large side yard setback variance that was previously granted. At that time, Planning Commission thought the back of the building would be roughly 70 feet and now they are proposing to extend the building another 20 feet. He said he understood there is an existing retaining wall there, however, this retaining wall does not stick up above the ground very much. If a roof is installed over this enclosure, it would then go higher than 4 feet. So it will extend the back wall out another 20 feet. In response, Mr. Morand stated that it was also approved with the condition that they plant the arborvitae across the entire back of the building and they could certainly extend the arborvitae out to the end of the extension.

Mr. Madzy indicated that the Commission previously granted them a significant variance and now they are requesting to increase this variance by extending a wall but by doing this, they are seeking a front-yard variance too. He felt this was a combination of two very big variances there. Mr. Morand replied this is correct and the purpose of their request is to eliminate the problem with clearing snow from behind the retaining wall on a steep slope driveway. He said he was aware that requesting an almost zero setback variance is unusual and probably frowned upon, however, when they saw the adjacent property with the roof coming all the way out to the property line over the sidewalk they felt this had set a kind of precedent. Also due to the large gap between the street and the right-of-way, they thought with these conditions taken into consideration, their request could be approved.

In response to Mr. Morand, Mr. Madzy pointed out that the adjacent property has just a roof held up by posts. It is not a solid structure like the one they are here proposing tonight. Additionally, the neighbor's roof does not abut the main road and there were no other variances granted for that. Mr. Madzy said he understood where he was coming from but he felt that the neighboring property is distinct from their property.

Mr. Madzy explained that all setbacks are important but a front setback, especially in this area, the gateway to the City, is paramount. Mr. Morand noted that they could provide more landscaping in the grass area to screen the new enclosed area. Mr. Madzy asked if they could do this regardless of the enclosed area being there and both Mr. Morand and Mr. Allan said yes.

Mr. Sawyer felt they may be solving one problem with the enclosed area but he thinks they are creating another problem. He raised concerns regarding the height of the west elevation and kids being able to get up on the roof and horse around. He told them they will need to keep people off of the roof. Mr. Morand said this was a good point. Discussion ensued on what they could do to keep people off of the roof.

Mr. Sawyer referred to Sheet A4.21 that shows the west elevation. He asked if this was the actual elevation. Mr. Morand explained that the bigger dimension from the roof to the grade on the west elevation is the back of the building. Mr. Sawyer stated he felt this was an issue. In response, Mr. Allan said at the same time, keeping it open like that by putting on a roof, he thought would solve the safety issue. Mr. Madzy said the problem they run into though is no matter how you pitch the roof, if the roof is that low, that problem is always going to be there. It will be a danger in July and will be a danger in January. If you have an issue with the snow, that is only going to be a seasonal issue, not to mention the issue can be solved by cleaning out the snow. It might not be easy, but the snow problem would be fixed. Once the roof is built, that problem will be there all year and it really cannot be fixed.

Mr. Allan raised concerns regarding leaving a big hole/opening where anyone could fall inside and break their neck. Mr. Sawyer replied that this area would have to be railed off also. Some type of railing/prevention system would have to be installed there. Mr. Allan said he thought the roof would solve both the safety problem and the snow problem. Mr. Madzy agreed with Mr. Sawyer and said the roof would probably create more problems than it is going to solve.

Mr. Madzy explained when granting variances, the Planning Commission is supposed to look at 1) is there practical use of the property without granting the variance. Yes, they will still be able to use those doors. It may not be as convenient due to the snow, but in reality the number of days there is snow in Ohio, maybe there is snow five months out of the year. Mr. Allan disagreed and said after it snows they will be unable to use this area.

Mr. Morand referred back to the issue of the low profile of the roof and people being able to get onto it. He said they made it a sloped roof to try and keep the masking down so it is not imposing on the building. He said they could always make it a flat roof and get the edge up higher and maybe take the grade down a little bit more so maybe they could get 6 feet on the west side from the grade to the roof. Making it a flat roof they could get the edge of the roof up higher and redo the grade so it is a little bit lower so there would be more height to it and people would not be able to climb up on it. Mr. Rump agreed and said it seems like the roof does need to be a bit higher. To solve the problem it seemed to him that the walls would have to be higher so the roof is up higher and kids could not get up on the roof.

Mr. Borowski reported that he works at a warehouse that also has a sloped driveway/loading dock and the plows go down the slope and back drag the snow out. He asked if they would be able to do this here. Mr. Allan stated that his slope has a deep part and is a very hard slope and this would be difficult to do.

Mr. Morand indicated that in addition to raising the roof and making it flat, they could also put a fence maybe 4 feet from the building and then do the landscaping in front of it with evergreens/something dense. The landscaping would inhibit people from getting to the fence and the fence would inhibit people from getting onto the roof. They could add these precautions to their plan. Mr. Allan added that they could plant the trees like a fence to keep people from climbing onto the roof.

Mr. Fay stated that he would be concerned if they do not put a roof over this area. Without a roof there he thought this would be a major problem. Mrs. Draves agreed and felt that enclosing this area would look nicer as you enter the City from the north. If they take the corner where the garage is and the main building, that corner opens up the way for some really nice landscaping. However, if they start placing signs, etc. in this area then it would look ugly. But putting a nice garage door there with matching brick would look more aesthetically pleasing then seeing a hole going down to metal doors.

Mr. Fay asked if a fence would help with the concerns Mr. Sawyer raised earlier. Mr. Sawyer replied if they install the fence maybe they could carry the landscaping all the way up to the sidewalk. This would really start screening the enclosed area off and hide the whole thing. They could do this on both sides creating a little alley there with greenery and maybe this would help. Mr. Allan suggested they plant arborvitae along the wall to hide it. Discussion occurred.

Attorney Don Powers introduced himself and said he represents Laurence Gertsma who owns residential property that adjoins the Sunoco property on the west side and on the south side. These are the only sides where there is property and Mr. Gertsma owns all of it except for the streets. He said Mr. Gertsma was expected to be at the meeting this evening but has not arrived. Mr. Powers said he would speak on Mr. Gertsma's behalf about the law and the accepted facts.

Mr. Powers explained the difference between a right-of-way and a street. A paved street is only part of the right-of-way. From the paved street to the end of the right-of-way you have the tree lawn and you have sidewalks and you have utilities that are put in by the utility companies with approvals from the City. The City's ordinance talks about a setback from the right-of-way. It does not talk about a setback from the paved street. He felt that the applicant was trying to confuse the issue of a paved street with a right-of-way.

Mr. Powers continued that in this particular application, a structure will go to the right-of-way. The City's ordinance requires that there be a minimum of 20 feet between the structure and the right-of-way, not between the paved street. He asked the Commission to bear this in mind. He said the magnitude and extent of this variance is extremely unusual. It would be like building your house up against the right-of-way but in this instance, it is a commercial structure up against the right-of-way which is against everything that is wholly in trying to apply City ordinances.

Mr. Powers discussed how this arose in the beginning of 2008 where the City granted a variance for construction of this particular building within 5 feet of Mr. Gertsma's property to the west. That happened to be a 20-foot variance because the side yard requirement was 25 feet. Mr. Powers stated that they call the side of their building the front of their building but everyone knows when you look at their building the front faces North Rocky River Drive, not Sheldon Road. However, for this purpose, they are saying the front of the building is on Sheldon Road.

Mr. Powers reviewed the previous variances that the Planning Commission has granted to this applicant. A 5-foot setback variance was granted, the entire outside fascia (all four walls) was supposed to be brick, however, the applicant later came back to Planning Commission (September 4, 2009) and requested that they be allowed to use cement block instead of brick fascia because of the cost. The Planning Commission approved this change so the applicant could save \$30,000. Mr. Powers explained that cost is not a factor when it comes to granting variances.

Mr. Powers stated that Mr. Gertsma was opposed to this change in material, however, he had missed the first meeting when all of the variances were granted and a permit had been granted and the construction was already started at this point. Mr. Powers said he advised his client that it would be very difficult to stop what has already commenced, however, they could negotiate and get the best thing they could from the owner. They were able to negotiate the arborvitae and various parking issues.

Mr. Powers explained that at this point in their negotiations, he and his client went out to look at the construction and they noticed the building was not being built exactly the way the plans showed. Originally they were going to put the sump pump inside the building but they had decided to move it outside and this created several problems. Mr. Powers informed them that there would be a problem with this particular driveway and this entrance with the basement door down below with a steep decline.

Mr. Powers pointed out that he brings this up because at the time of telling them that they had a real problem and it would get worse, they had not gotten much more than the foundation in at this point. They could have still made changes to their plans to avoid the problems that they are now complaining of. He said they crept along, they got the building built with all of these mammoth variances from the code within 5 feet of Mr. Gertsma's property and now they come here because indeed they have the very problem that he and his client told them about. They could have fixed that problem and avoided the expense had they just made an attempt at that time. Instead they burrowed ahead and now they have the building part way up and now they have a problem with snow down there. They could have avoided this problem. The problem they are now having is self-imposed.

Mr. Powers explained that they will need two variances. One to continue the rear wall of the building an additional 20 feet out to the right-of-way and one because it will be within 5 feet of Mr. Gertsma's property. He said these are very mammoth variances to consider and this particular structure will cause additional drainage from the roof onto Mr. Gertsma's property.

Mr. Powers discussed the violations of the City codes. To build this structure so close to Mr. Gertsma's property, he said it violates Sections 602.1(d)(xv), 602.2(b), 602.2(v)(c) and 303.5. It will not be aesthetically compatible or harmonious with Mr. Gertsma's adjoining residential property which is in violation of Section 602.1(d)(xv)(ix)(xvii). These would be the variances that need to be granted if they allow this structure to be built.

Mr. Powers continued that allowing this structure would not leave sufficient space around the entire building (all four sides of the building) for City firefighting equipment to conveniently reach the rear parts of this building without trespassing on Mr. Gertsma's adjoining westerly or northerly property line. He referred everyone to a drawing he made and said if there would be a fire on the west side of this building, the building is up against the west property line of Mr. Gertsma's property. There is no way the fire department could get to the west wall of that building or the south west wall section without trespassing on Mr. Gertsma's property and now they want to make it worse by building the structure right out to the right-of-way line. The only way they could get there would be by going across Mr. Gertsma's property and that would be trespassing and that is a violation of Section 602.1(d)(xiii).

Mr. Powers indicated that the building will be located within 9 inches of the Sheldon Road right-of-way instead of the required 20 feet. This is in violation of Section 305.3 and he felt this should really be 25 feet, not 20 feet, because it really is a side of the building. The building will be within 5 feet of Mr. Gertsma's easterly boundary line. That structure should be within 25 feet of the easterly boundary line which is in violation of Sections 303.4(c) and 305.3 of the zoning code.

Mr. Powers discussed the code that governs variances (Chapter 807). He said there is not a single provision in this chapter that allows this to be done. As long as a property can be used in some economically feasible way, a variance cannot be granted. This property could have been used in an economically feasible way by tearing the whole structure down and they could have built the building further to the south. They could have done a number of things. It could have been built closer to North Rocky River Drive instead of putting it 5 feet against Mr. Gertsma's property. He stated that Mr. Gertsma believes that this is detrimental to the value of his property. It is not in harmonious appearance to his property and he is very much opposed to it.

Mr. Powers explained that one of the provisions in Section 807.3(a)(iii) which is the variance provision, states that no variance shall be granted which results from the actions of the applicant. The request they are making is based upon their own action which they arbitrarily proceeded with when they knew or should have known because they were told this would be a problem. Mr. Powers stated that there is no basis either in law or under the code to allow this variance and said it should be denied.

Mr. Sawyer referred to A442, Section 2 of the drawing. It shows the drain at the building and the proposed drain at the property line. He asked if these elevations are accurate. Mr. Morand replied yes. Mr. Sawyer then asked if the slope is accurate and Mr. Morand again replied yes. Mr. Sawyer did not feel that a vehicle would have difficulty going down the slope with the shown elevations. Mr. Morand felt that a snow removal vehicle would have problems going downhill on a snowy slope. Mr. Sawyer reiterated that he did not see this as a problem if the elevations shown are accurate.

City Engineer, Tony Armagno, noted that the elevations do not appear to be accurate. Based upon the photographs they appear to be steeper. Mr. Sawyer agreed with Mr. Armagno. In response, Mr. Morand reported that the photographs do not have the driveway in them either. The driveway has not been poured yet in the photographs. Mr. Madzy said so what they are looking at in the photographs, will not be as steep once the driveway is installed. Mr. Morand explained that they are looking at the sub grade. The pavement is not in yet. Mr. Armagno added that the pavement is also not in at the driveway or at the base. Mr. Morand said right.

Mr. Sawyer asked again are these elevations accurate and Mr. Morand replied these are finished elevations. Mr. Sawyer referred him to Section 2 again and said if the distance between the existing wall and the new door is approximately 19 feet and that slope is accurate, he did not see this as being a problem for snow removal or anything else. Mr. Armagno figured this would be a 1 to 10 slope which would be 10%. A typical residential driveway is approximately 6-1/2 slope. Mr. Sawyer did not think this was bad and Mr. Morand pointed out that a residential driveway does not slope down towards the building. It is usually sloping away from the building and this particular driveway is sloping down towards the building.

Mr. Morand explained that there are two reasons they are asking for this. The main reason is for snow removal in the wintertime. The second reason is when they saw the benefit the adjacent property owner had with an approved covered sidewalk going all the way out to the right-of-way, they thought their situation would be considered also. He explained the definition of a building per the Ohio Building Code. A structure/building is the area under a roof. It does not include exterior walls. So for these two reasons basically, 1) snow removal with the slope going down towards the building and, 2) they are not requesting something that has not been done already.

Mr. Morand discussed what the owner agreed to do in prior meetings. They agreed to plant wall-to-wall arborvitaes along the back of the building so the building will not be seen. This could be extended out to the retaining wall as well and also added to the east side facing the front of the building to help buffer the visual effect of the structure. Mr. Morand stated that he did not feel they were creating confusion earlier and apologized if they did.

Mr. Madzy pointed out that fundamentally looking at this, a previous variance has been granted for this addition which was significant. Mr. Morand said yes. Mr. Madzy raised concerns regarding this additional variance being continued onto the original variance. Additionally, this request for a variance is large and one thing the Planning Commission is supposed to consider is how substantial a variance is and he felt that this is probably substantial because it will be almost a 100% variance. Mr. Morand replied yes.

Mr. Madzy continued that Planning Commission is also supposed to look at whether there is other use of the property and it probably could be used for everything they want to use it for, however, with the snow issue it will not be easy to deal with. He said he was concerned about this because the snow issue is only going to be present certain times of the year. It will not be an issue all of the time. It will not be a predicament which will be pervasive.

Mr. Madzy explained that another thing the Planning Commission is supposed to consider is whether or not this will have a detrimental effect on the rest of the community. He felt they were looking at a situation where because they have a slope that goes back to the building, this may be a detrimental effect no matter what they do. They will either have kids climbing on the roof or they will have somebody slip down the slope. They are supposed to look at this and try to find ways in which they can alleviate this predicament.

Mr. Madzy said he thought there were ways that they could alleviate their predicament. He suggested that they could install heating coils under the concrete similar to what the downtown townhomes have done with their sloped driveway. This would alleviate the snow and this may be appropriate for them because they will already have drainage at the bottom of the slope. Mr. Allan replied that he did speak with a heating coil guy in the past but he had a problem with some of the things he did. This would not be 100% reliable and most of the time it would freeze up. Mr. Madzy noted that there have never been any problems with the system that the townhomes installed.

Mr. Madzy noted that they also could be diligent in getting outside as the snow is falling, the pre-use of salt and have snow blowers inside the building so they could snow blow their way out. He indicated that there were other ways around clearing the snow out of there instead of granting an almost 100% variance. He said there are other solutions out there.

Mr. Rump asked about their heating equipment, etc. that they plan on putting in the basement. Mr. Allan reported that they will put all equipment in the basement. There will be nothing installed outside or up on the roof. Mr. Rump inquired if there is an entrance to the basement inside the building itself. Mr. Allan replied there is a stairway leading to the basement inside the store. Mr. Rump suggested that they install a chute which would be kept up against the wall and folded down over the steps where they could slide stock down into the basement from inside the store. This way they would not have to use the outside basement doors very often.

In response to Mr. Rump, Mr. Allan raised concerns regarding having to carry 50 pound boxes up and down the stairs. Mr. Rump suggested he could install a dumb waiter and Mr. Allan said it would be easier to move boxes from the outside door area, store them there and it is done. Mr. Madzy indicated that 95% of the time they would be able to utilize the outside doors in the area that gets the snow. Mr. Allan said not really and the time they will need it, 50 to 60% of the time, the walk-in cooler, the storage inside the coolers, everything in the showroom, so hardly at all unless they can put it down there.

Mr. Madzy asked Mr. Allan if he would need to use the rear doors 50% of the time and Mr. Allan said something like that. Mr. Madzy explained that 50% spread out over the year and not even half of the year there is snow. Mr. Allan raised concerns regarding keeping the windshield washer fluid outside and also how heavy it is to unload salt which weighs between 50 and 75 pounds. In response to Mr. Rump, Mr. Allan explained that in order to move the salt, he puts the bags in the back of his pick-up truck and drives around to the front of the store. He said this is much easier or they also can use a two-wheeler.

Mr. Sawyer reiterated that the elevation shows a 2 foot drop and if that is accurate, he does not see this as a problem. Mr. Morand replied that he did not know how to dispute what Mr. Sawyer is saying other than to say if you are going down an icy, snowy slope and you have to get back up in reverse and you are stuck, the wheels will start spinning and there is nowhere to go but down. In response to Mr. Morand, Mr. Borowski stated that his warehouse deals with this everyday at their dock and the snowplow back drags the snow out. Mr. Allan reported that most snowplow drivers do not like to do this because it will break their plow.

Mr. Madzy swore in Don Skliros. Mr. Skliros explained that they are not worried about the falling snow. It is the blowing snow collecting on the lower level and sometimes you cannot even see the door. He has not seen this yet at the Sunoco but has at other places and even his own garage door when the wind blows from the north, half of his door disappears and if he is inside he can get out but when he is outside, he cannot get in. He discussed the problems they will have with the blowing snow.

Mr. Skliros said if the Planning Commission allows them to have this variance, they will landscape the area nicely and install a fence to cover this area. He said they will make it look good and do it the way the Commission would like them too. They can also make changes to the pitch of the roof if the Commission would like. He explained that Mr. Allan is putting his life savings into this new building and he is not trying to get an additional room to use. He pointed out that the guy down the street has a canopy over the sidewalk and he understands just because this is a violation it does not mean that they are allowed to do one. He stated that they want to do this right and he could come back at a later date to present a better landscaping plan to show how the landscaping would go around the additional base.

Mr. Fay stated that currently the proposed drive is perpendicular to the building. He suggested that the drive be turned so it is parallel to the building. He pointed out that if they do this they would not require the 20 foot variance. Mr. Madzy clarified that the 20 foot setback variance on Sheldon would not be needed. The width between the retaining walls is 12 feet measured from the inside and 14 feet from the outside.

Moved by Rump, seconded by Sawyer to approve the 19'3" front yard setback variance, as submitted. Vote on motion was ayes: Draves, Fay. Nays: Borowski, Madzy, Rump, Sawyer. The motion did not carry and the variance was not approved.

Mr. Madzy announced that there are two additional issues to discuss with regard to the height of the canopy and the signage on the canopy. Mr. Morand reported that they would like to replace the existing canopy which is currently over three gas pumps with a rectangular canopy and also add a fourth gas pump. The site plan shows the position of this.

Mr. Morand referred everyone to the canopy engineer's drawings that show the details of the canopy and the color elevations which show the size it will be. There is 15 feet clearance to the bottom of the canopy and 18 feet clearance to the top. He explained that larger vehicles such as semi-trucks require a minimum of 14 feet height clearance so this is why they are requesting the 3 foot height variance.

Mr. Sawyer asked if their business dictates to higher vehicles and Mr. Morand pointed out that they will be getting deliveries at the front door and some delivery trucks will be this tall. Also, the light fixtures will be service mounted and hang down approximately 10 to 12 inches. This height variance is necessary for their business.

Moved by Rump, seconded by Fay to approve the 3 foot height variance for the canopy over the gas pumps, as submitted. Vote on motion was ayes: Draves, Fay, Madzy, Rump, Sawyer, Borowski. Nays: None. The motion carried.

Moved by Rump, seconded by Draves to approve the signage along the top of the canopy, as submitted. Vote on motion was ayes: Fay, Madzy, Rump, Sawyer, Borowski, Draves. Nays: None. The motion carried.

Mr. Madzy advised the applicant that there is a 20-day waiting period for the height variance on the canopy. They will be able to obtain the building permit to install the canopy after this 20-day waiting period. Mr. Allan and Mr. Morand acknowledged this and thanked the Commission for their time this evening.

### **NEW BUSINESS – GENERAL PLANNING MATTERS:**

#### **Application #10-01-02**

#### **Approval of Business Identification Sign**

#### **Burger King – 1321 W. Bagley Road, P.P. #361-33-045**

Mr. Madzy read the Administrative Review. The agent, Richard McQueen from McQueen Advertising, was present this evening. Mr. Madzy referred the Commission to the last page of Mr. McQueen's submittal and pointed out the dimensions of the existing sign which are 5' x 5'. The new proposed sign will be 5'3" x 4' which is essentially one foot smaller than the existing sign. There will also be four lines of changeable copy on the new sign. Mrs. Draves asked if they could plant some low plantings around the sign and Mr. McQueen advised her that they will be reusing the existing footer and steel structure and plan to keep the existing landscaping that is there. In response to Mr. Sawyer, Mr. McQueen stated that the existing sign has a brick base which they plan to reuse.

Moved by Fay, seconded by Draves to approve the business identification sign, as submitted. Vote on motion was ayes: Rump, Sawyer, Borowski, Draves, Fay, Madzy. Nays: None. The motion carried. Mr. Madzy advised Mr. McQueen that there is no waiting period to obtain the building permit to install the new sign. They could come in to the Building Department as early as tomorrow and since his company is installing the sign, they will need to be registered as a contractor with the City. Mr. McQueen acknowledged this.

Mr. Madzy indicated that next they will discuss a series of applications for Baldwin-Wallace College. The Administrative Review is essentially the same for all five applications which he will read one time.

**Applications #10-01-03; #10-01-04; #10-01-05; #10-01-06 & #10-01-07  
Approval of Landmark Designations  
Baldwin-Wallace College**

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Mr. Madzy reported that the agent for all applications is Heather Rudge from Sandvick Architects, Inc. The sites will vary as follows:

- **Application #10-01-03** is for **96 Front Street** which is *Kulas Hall*.
- **Application #10-01-04** is for **49 Seminary Street** which is *Merner-Pfeiffer Hall*
- **Application #10-01-05** is for **33 Seminary Street** which is the *First Congregational Church*.
- **Application #10-01-06** is for **33 Seminary Street** which is the *Conservatory Annex*.
- **Application #10-01-07** is for **19 Church Street**. *Per Ms. Rudge, originally she submitted the address as 17-19 Church Street but it should be 19 Church Street.*

Mr. Madzy read the Administrative Review for all of the applications. He reported that all of these applications came before the Heritage Architectural Review Board (H.A.R.B.) on December 10, 2009. The H.A.R.B. did recommend that the Planning Commission approve each of these sites as landmarks.

Mr. Madzy explained the context in which a landmark is designated. The significance of being designated a landmark per the Zoning Code, is essentially if you are designated a landmark any change in the exterior would have to be reviewed by the H.A.R.B. Incidentally, these properties are already located within a Historic District so with respect to the City, this designation will not change whether these properties would need to come before the H.A.R.B. because they already do.

Mr. Madzy introduced the agent, Heather Rudge. Mr. Sawyer stated that Ms. Rudge had given an unbelievably professional history on these buildings to the H.A.R.B. in December. Mrs. Draves commented that as she was reading Ms. Rudge's information, she made copies of it to share with her family members. She said she really enjoyed reading it and suggested that the News Sun or Plain Dealer do some type of focus on these buildings because of their interesting history. Mr. Sawyer asked Ms. Rudge to give a brief presentation on these buildings.

Ms. Rudge reported that Kulas Hall was completed in 1913 a couple of months prior to Baldwin University and German Wallace College merging. It

was initiated by German Wallace College as a conservatory. After the two colleges merged it became the Conservatory of Music. It was funded in part by William Nast who was on the Board of German Wallace College. He was a leader in the German Methodist Movement in the United States. His daughter married into the Gamble family of Proctor and Gamble and she paid for some of the building expenses as well.

Merner-Pfeiffer is actually in the Historic District that currently exists, known as the Lyceum Village Square and German Wallace Historic District. Merner-Pfeiffer is in this District but at the time that the nomination was written it was not old enough to be included as a contributing building, however, it is old enough now. Merner-Pfeiffer was completed in 1940 and it actually was paid for in large part by a woman named Annie Merner-Pfeiffer. Her husband made his fortune as a chemist to start and then he had a cosmetic industry and he invented the sugar-coated pill. This was first built as a men's dorm and finished in 1940. During World War II it was converted to a women's dorm and then after the war it went back to a men's dorm. The Conservatory of Music rehabilitated the building in 1975, moved in then and have been in this building ever since.

Ms. Rudge next discussed The First Congregational Church of Berea and stated that in 1930 an addition was put on the back of the building and a one-story addition on the side. The addition was put on the back of the building because they converted the Church to an Akron Plan. An Akron Plan essentially put the pews on a diagonal and a space was added. There are large doors that still exist in the Church and when they wanted the children to participate from Sunday School, they would open these doors and then when they wanted the children to go back to Sunday School they would close these doors and the service would continue to the congregation. A small bump out was made on the north wall of the church and this is where the altar and the pulpit were. In 1955, they rotated everything around and added the chancel. The congregation faced east at that point. There have been quite a few changes in the Church but the Gothic Revival Church is still there in some form although it has been modified several times. The steeple was added in 1954/1955 to mark the 100 year anniversary of the church.

Ms. Rudge next discussed the addition known as Malcolm Hall. When Malcolm Hall was built it was built about 6 to 8 inches away from a carpenter's shop and there was always a space between the two buildings. No maintenance could be done to either wall because they were so close together. At some point in the more recent past, the brick was in-filled between the buildings and there was a small shed roof that was put over the space between the two buildings. Malcolm Hall is a three-story building and the other building was a two-story building so they just abutted the wall up on the third floor. Then there is the education wing and Ms. Rudge pointed out that they are looking at this as a whole entity. The education wing was added in 1968

for classrooms, Sunday School and that sort of thing. The intent is to rehabilitate this whole complex of buildings for Baldwin-Wallace College's use.

Mr. Madzy explained that procedurally should these be approved, they will need to be filed with the County Recorder. Essentially it will state that these properties have been designated as landmarks by the City of Berea and will become part of the permanent record that goes with each property.

Moved by Draves, seconded by Fay that **96 Front Street (Kulas Hall), permanent parcel number 364-11-010** be approved as a designated landmark. Vote on motion was ayes: Sawyer, Borowski, Draves, Fay, Madzy, Rump. Nays: None. The motion carried.

Moved by Draves, seconded by Fay that **49 Seminary Street (Merner-Pfeiffer Hall), permanent parcel number 364-11-043** be approved as a designated landmark. Vote on motion was ayes: Borowski, Draves, Fay, Madzy, Rump, Sawyer. Nays: None. The motion carried.

Moved by Draves, seconded by Fay that **33 Seminary Street (First Congregational Church), permanent parcel number 364-11-027** be approved as a designated landmark. Vote on motion was ayes: Draves, Fay, Madzy, Rump, Sawyer, Borowski. Nays: None. The motion carried.

Moved by Draves, seconded by Fay that **33 Seminary Street (Conservatory Annex), permanent parcel number 364-11-029** be approved as a designated landmark. Vote on motion was ayes: Fay, Madzy, Rump, Sawyer, Borowski, Draves. Nays: None. The motion carried.

Moved by Draves, seconded by Fay that **19 Church Street, permanent parcel number 364-11-028** be approved as a designated landmark. Vote on motion was ayes: Rump, Sawyer, Borowski, Draves, Fay, Madzy. Nays: None. The motion carried.

Mr. Madzy told Ms. Rudge that he would e-mail her what the form needs to look like that needs to be filed with the Recorder's office. Ms. Rudge thanked Mr. Madzy and also announced that they are also doing a National Register nomination for a larger area so there is a lot more history than what she gave this evening. In response to Mrs. Draves, Ms. Rudge said that when the National Register nomination is complete, she could copy the information on a CD and give a copy to the City or to the Historical Society. Mrs. Draves replied that would be great.

**OLD BUSINESS:** None.

**OTHER BUSINESS:** None.

**ADJOURNMENT:**

There being no further business to come before the Planning Commission, moved by Draves, seconded by Fay to adjourn. Vote on motion was all ayes; no nays. The meeting was adjourned at 9:16 p.m.

(signed copy on file in the office of Secretary to Planning Commission)

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Matthew Madzy, Chairman

(signed copy on file in the office of Secretary to Planning Commission)

Attest: \_\_\_\_\_  
Carol A. Hubler, Secretary

**CERTIFICATE OF COMPLIANCE**

The meeting of the Municipal Planning Commission held this 7<sup>th</sup> day of January, 2010 has been conducted in compliance with all legal requirements, including C.O. Chapter 109 and Section 121.22 of the Ohio Revised Code.

(signed copy on file in the office of Secretary to Planning Commission)

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Carol A. Hubler, Secretary