

**BEREA MUNICIPAL PLANNING COMMISSION
JANUARY 15, 2009**

The Berea Municipal Planning Commission met on January 15, 2009, in the Berea Room of the Berea Municipal Building, and was called to order by Mr. Madzy. Present: Borowski, Draves, Fay, Madzy, Rump, Sawyer. Absent: None. Also Present: Tony Armagno, City Engineer and Gregory Sponseller, City Law Director.

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 Draves, seconded by Fay to approve the minutes from the December 11, 2008 meeting. Vote on motion was all ayes; no nays. The minutes were approved.

Mr. Madzy announced that witnesses are usually sworn in all together at the beginning of each meeting, however, this evening he will swear each individual in separately as they approach the Commission to speak.

REQUESTS FOR VARIANCES/APPEALS: None

NEW BUSINESS – GENERAL PLANNING MATTERS: None

OLD BUSINESS:

Application#08-09-01

Approval of Variances for Addition

United Methodist Church – 170 & 188 Seminary Street

Mr. Madzy read the Administrative Review and numbered each requested variance (1-9). Mr. Madzy reminded everyone that this application came before the Planning Commission previously on October 2, 2008 and on December 11, 2008. At the December 11th meeting, conversation occurred towards the end of the meeting regarding changes to the proposed plan which modified the necessary variances. At that time, there was a motion to table. The intent of the motion was to put on paper the changes that had verbally been expressed. Mr. Ziska has submitted a new plan which the Planning Commission has reviewed.

Mr. Madzy explained the structure and time limits for this evening's meeting. He will have Mr. Ziska explain the changes that have been made to the plan that were discussed at the December 11th meeting and incorporated, in writing, into the new plan. He will be allowed five minutes to discuss those changes. The floor will then be opened up to five minutes of public comment regarding those changes and then there will be five minutes of comment from the legal counsel for the neighborhood, Mr. Wargo. Then there will be five minutes from the legal counsel for the United Methodist Church, Mr. Groh-Wargo. At this point, the floor will be opened to the Planning Commission members to ask questions from both the applicant and anybody else that they are interested in getting answers from.

The Church's agent, Tom Ziska of Ziska Architecture, was present this evening and was sworn in by Mr. Madzy. Mr. Ziska stated that he was hoping he would have more than five minutes this evening because he wanted to discuss some issues that would take about 15 minutes but he said he would work with the 5 minute time limit. Mr. Ziska displayed the new plan and explained this is the drawing that they actually used at the office to make the changes and it is the most descriptive. He reported that they reduced the size of the building by pulling the northern line back about 4 feet. They pulled back the back of the building and eliminated a portion of the building towards the rear (the storage room was cut off) so there is a new rear line. They pulled the canopy back at the secondary entrance and completely changed the drop-off area at the front. Mr. Ziska said generally speaking, these were pretty much the items they had agreed to and the compromises that they agreed to make at the last meeting. He noted that this plan was representative of the compromises that they felt were reached and were approved at the last meeting.

Mr. Ziska discussed several issues that have been brought up over the past few months. He felt the greatest issue that has been discussed was lot coverage and he indicated that Mr. Rump had asked him at the last meeting if it was possible to squeeze the building down to 50% rather than the 59% that they were showing. Mr. Ziska reported that Mr. Martin had sent him a copy of a drawing last Friday at which time they really did not have time to discuss it with the committee. In reality what Mr. Martin's plan shows is trying to reduce the building down to 50% and he said this was really next to impossible. This plan is functionally obsolete because it would be like having, "This room with doors to a bedroom here, doors to a bathroom there and doors to another room off of the main room with no corridor connecting these spaces. And so even though you can get this down to in comparison, apples to apples, 54% of lot coverage compared to our 59%, I mean, we are only talking about roughly a 5% difference but the 5% makes this building function much better. If you study our plan in comparison to this you can see that it is clearly the case".

Mr. Ziska stated that there has been a lot of conversation about the use of the house and they had a meeting last week and the committee has agreed and put in writing, that the house will be considered for use as interfaith hospitality, as a missionary residence, as a custodial residence or as potential office and meeting use. The committee has agreed to the best of their ability, to try and find uses for the house that would be within this framework. They are not guaranteeing this but they have opened their minds to this and they have said they will seek to do this in compliance with the wishes of the neighbors. Mr. Ziska felt that it would be unwise for any Commission to demand that a building be used in a way that a commission wishes rather than what an owner requests. It would be an unfortunate precedent.

Mr. Ziska pointed out that one of the neighbors to the east of the church has concerns regarding noise from rooftop units. Mr. Ziska had an acoustic engineer do a noise study of these units and he had assured them that by the time the sound reached any residence, the noise/sounds created by the units would not be much different than a residential A/C unit adjacent to a neighbor's house. Mr. Ziska stated, "Although we are not discounting the fact that this is an issue, we appreciate the comment that she makes and we will pay attention to that". He explained that they will install the units within a well in the building so that any sound will be directed upward rather than outward. They know this acoustically works due to all of the sound barriers that occur along freeways. They have a vertical barrier which prevents the sound from reaching the houses.

Mr. Ziska discussed the talk about this project lowering property values. In the 1960's when the church built the three-story addition and at that time it was a much more concentrated use on a smaller parcel of property, this did not affect the neighborhood negatively and he said as a matter of fact, the number of neighbors here this evening proves that this neighborhood is a nice place to live and even with the addition, it continued to be a nice place to live. He believes that once they build this proposed building, it will fit nicely into the neighborhood and things will go on as they have in the past in terms of the church fitting into the neighborhood very nicely.

Mr. Ziska made one last comment and emphasized how important this addition is to the church. He reiterated that they firmly believe that if they are not able to build this addition, this will eventually lead to the demise or at least to the reduction in the quality of services that this church can provide. He urged the Commission to approve these requested variances because it is not hard to imagine what has happened down the road on Seminary Street with the Church of Christ. The United Methodist Church is trying to combat their church from falling into a very similar situation. He thanked the Planning Commission in advance for their positive votes on these variances.

Laura Saylor of 173 Beech Street was sworn in by Mr. Madzy. She stated, "I want to point out that the sound study that was done had inaccurate measurements on it and I have to assume that the data about the number of decibels are incorrect because the distance from the units was, I don't even know if they even bothered to measure, because they showed 200 feet on the map and it was in fact only 165 feet".

Mrs. Saylor distributed a map and said, "Also, this was given to H.A.R.B. These are homes that have been lost in our neighborhood due to church expansion". Attorney John Wargo asked how exhibits should be marked this evening. Mr. Madzy requested that the date be put on all exhibits to distinguish tonight's exhibits from previous meeting exhibits. Attorney John Wargo asked how the exhibits should be marked and he asked Mrs. Saylor to give both court reporters a copy of the exhibit. It was decided to start this evening's exhibits as "Residents' Exhibit A-A".

In response to Mr. Wargo, Mrs. Saylor explained that this map is color coordinated to show houses that have been lost to the United Methodist Church expansion and their parking lot, which houses have been lost to St. Thomas Church's parking lot and expansion, and which houses in their neighborhood have been lost to college expansion over the years. She stated that they are just trying to preserve what is left of their neighborhood and keep the residential quality of the neighborhood. She pointed out that this map also shows the proposed expansion of the church and she said, "It's big".

Ken Martin called point of order. He asked Mr. Madzy, "Were you going to go from the church's architect to Mr. Wargo, to the church leaders?". Mr. Madzy reiterated the structure of this evening's meeting, "The architect from the church will speak for 5 minutes, then public comment for 5 minutes and then Mr. Wargo will have the floor for 5 minutes and then Mr. Groh-Wargo will have 5 minutes". John Wargo stated, "I would want Mr. Martin also to present a plan and to speak to that plan". In response, Mr. Madzy stated, "We will cross that bridge when we get to it".

Robert Cromwell of 29 E. Grand Street was sworn in by Mr. Madzy. Mr. Cromwell said he wanted to express two concerns he has. Concern number one is the size of this project combined with the multiple variances. He is concerned that it sets a precedent that this Commission might not be able to deal with in the future as other's request variances within the community. He stated, "It just sets a terrible precedent". His second issue is, "Little concern has been expressed towards parking. The church, I understand, has access right now to the funeral home parking. Funeral homes are businesses. They come, they go, they're sold, they're bought, they merge. Of course, we have a funeral home in Lakewood that's in foreclosure and that funeral home is getting ready to be closed. Where are these people going to park if, at some point in time, that funeral home is gone? I don't believe the church has any

contractual arrangements with anybody for parking and that is a tremendous concern down the line”.

Erica Coble of 138 Seminary Street was sworn in by Mr. Madzy. She explained that she wanted to address the use of the house. “I think that since we decided to keep it as a house that it’s not too much of a stretch to consider to maintain it as a family residence and that if there is a possibility for people living there and using it as a house, then I don’t think it is too much of a stretch to maintain it as that use”.

Dominic Franklin of 181 Seminary Street was sworn in by Mr. Madzy. Mr. Franklin stated that he would like to comment and follow-up on what Erica was talking about as it relates to the house at 188 Seminary Street. “We are talking about a home in a Single-Family District. And, Mr. Ziska had mentioned an unfortunate precedent. I think that if this home is used for anything other than a single-family residence that it is setting this neighborhood up for total and absolute collapse because it will basically be throwing out the R-SF-A agreement that was brought about 33 years ago to protect this neighborhood and the residents and historic homes from just this type of situation. If this house is used as an office building or a warehouse or boarding house or transient housing or something of that nature, that just totally trashes the R-SF-A agreement. This home, as the neighbors look at it, there is only one or two acceptable uses for this home. Keeping it a residential structure - it can only be a parish home. I understand that the church has no need for a parish home. It can only be used as a rental home to an individual or family leased to them with a binding lease for a minimum of one year. It could be provided for an individual or family in need. We’ve heard many situations where the church, and we have experienced many situations where the church, does great fellowship work. I’m sure they can come up with some way to use this house to better the lives of someone associated with their fellowship whether it be domestically or someone from somewhere else. Unfortunate precedent - this precedent, if this home is used for anything other than a single-family home, is definitely setting up an unfortunate precedent and the only people losing are the residents of this neighborhood.

Mr. Madzy announced that this concludes the public comment portion of the meeting. He reiterated that he did say that he would allow Mr. Wargo to speak on behalf of his clients. He asked Mr. Wargo if his intent was to have Mr. Martin present a plan. Mr. Wargo replied, “Our intent is to have the plan that was sent out to all of the Planning Commission members marked as an exhibit tonight and Mr. Martin has prepared a multiple page document that shows that nine variances about which you are talking about the plan that he (Mr. Ziska) has presented, is totally inaccurate. There are actually 22 variances needed that they just don’t address all of them. Mr. Martin will address that and will provide each of you with a copy. I would ask that you have a chance to review it, take a five or ten minute break, have a chance to

review that before I speak and see if you have any questions or comments. One of the main issues is that, a very major issue, is our code specifically states that they must be owners or co-owners of the property or that they must have a recorded easement for parking privileges in order to include it for parking, off-street parking, not on-street parking. At the last meeting they were told that the only issue that came up was Baker's. Nothing came up with the Toth lot that they use and nothing came up with the Detmer lot that they use. The panel did not address that or ask anything about that yet". Mr. Fay inquired if this was part of Mr. Wargo's presentation and Mr. Wargo stated, "These are the issues that are going to come up".

Mr. Madzy asked Mr. Sponseller about this and pointed out that this is an unusual circumstance that essentially they have a different application. Under our zoning code only the property owner or agent of the property owner can request a variance. Mr. Sponseller explained that these are not requests for variances. "No, an applicant is just that, an applicant. With all due respect to Mr. Martin, his review of everything can and perhaps should be considered by the Commission under the question whether or not the modifications made by the applicant, the church, are the least required and consideration should be given to any evidence that comes forth from Mr. Martin, but also relating to, the neighborhood cannot submit an application on behalf of a property owner. Which in effect, from what Mr. Wargo is suggesting, it sounds as though they may be trying to do that. It is up to the applicant to submit and make any modifications that they've made. So, I think it can be considered but it certainly cannot be required of the applicant to adopt a design and drawing submitted by someone who they have not engaged".

Mr. Madzy questioned whether the Planning Commission should hear a full scale presentation of an alternate plan which has not been submitted by the applicant (Mr. Martin's plan). Mr. Sponseller stated that they should be given an opportunity to present whatever they have. Mr. Sponseller said, "and it is my understanding that Mr. Wargo was kind enough to get that to the Commission in advance and I think the members have already received it prior to this meeting tonight. Similar to the modifications that were made by the applicant, that presentation would only go to the question of whether or not the criteria that everyone is familiar with under the granting of variances were met or have been met or will be met based upon the applicant's modified plan".

Mr. Madzy asked Mr. Wargo if this is the intent of Mr. Martin's presentation and Mr. Wargo stated, "That's the intent. So the statement that was made in his (Mr. Ziska's) application is a letter that he put in here back in August of last year that the plan that he has presented on behalf of his client, presents the plan with the minimum number of variances required to accomplish, to get what they need. By virtue of the plan that we are going to submit tonight, we're not telling the church that's what they have to do, but what this panel will see is they can get everything that they have requested, the

volleyball court, everything they need, with less variances. It's that simple and you have to know that. If you don't know that, then you are taking his word as a gospel when in fact you have a plan in front of you that shows the gospel, in this case, isn't so true".

Mr. Sponseller responded, "If I may, with all due respect Mr. Wargo, I do not believe that Mr. Martin, nor the neighborhood themselves, can submit an amended application on behalf of a property owner". Mr. Wargo stated, "I'm not submitting an application. I'm submitting a plan that shows you". Mr. Sponseller said, "You want the Commission to reach the conclusion that this is not the minimum, that the modified application from the applicant is not the minimum. In response, Mr. Wargo indicated, "If this goes any further, that is exactly right". Mr. Sponseller stated, "That's fine. The applicant has indicated at this point, based on all of the modifications they have made, that it is.

Mr. Madzy asked Mr. Wargo, "To be clear, Mr. Martin is not going to, at the conclusion of his presentation, ask the Commission to vote on the variances that he is suggesting in his plan?". Mr. Wargo said, "Oh, no. We are showing you that there are a fewer number of variances to accomplish what they want to accomplish and your job, the Commission's job, is to grant the least number of variances to accomplish what they need. And another whole thing I have to go through with you getting to that point, you need to say that it can be done with less and you give them what they want. In response, Mr. Madzy asked Mr. Wargo if he would defer a portion of his five minutes to Mr. Martin. Mr. Wargo explained that he would like Mr. Martin to have five minutes and then he would like five minutes to speak. Mr. Wargo stated, "I don't want to take all night". Mr. Madzy reported that he wants to make sure he is fair to everybody and he said they would keep it at five minutes then. "We will keep it five minutes for your joint presentation and we will give Mr. Groh-Wargo five minutes for his joint presentation and then the Commission will have an opportunity to speak".

Mr. Wargo requested that Mr. Martin's plan be marked as Exhibit B-B, "Resident's 50% Plan - It's closer than 50% than anything". Ken Martin of 63 E. Grand Street was sworn in by Mr. Madzy. Mr. Martin explained, "This is the plan that you received in the mail. Basically, what it does, as it clearly states, reduces the requirements for the church down to 52.2% versus 59.7%, I believe. We have 3,000 square feet. It provides almost a complete setback from the alley. It provides landscaping at the alley. It takes four new cars off the alley and puts them over into the existing lot. It adds the landscaping that is supposed to be required along Seminary Street according to the code. It reduces again the minimum variances. We now have 59 feet from the side yard, the Molmen's side yard. 66 feet is the other dimension that the church has used. They can get up to and including 300 seats for their fellowship hall. Before, their previous plan is up to 344 which would then impact the parking and this plan before you also states that there are 27 cars now in their new lot

by virtue of putting six handicapped spaces around Spring Street and Seminary Street. It makes it safer. It creates stop signs. It creates limits of speed. It creates one-way, so protecting both the church members and the neighborhood, and those who are unfamiliar with the neighborhood.

Mr. Wargo distributed a document to the Planning Commission members. Mr. Martin stated, "What is being passed out right now is a document that says that in addition to your nine variances that are required for the specific plan as submitted by the church, that there is potentially 12 more items that need to be looked at in regards to required variances for the specific site and for the specific use and it's not simply being addressed, and they have to do. You'll just have to reason because we don't have time".

Mr. Martin said, "They also have to do with the idea that in 701.4 it talks about the extension of non-conformity and in 804.3 I believe, it talks about the idea of the granting of a conditional use application that may, indeed, may not be available to actually give. So, if you want to go through those specifically item by item, I would be happy to do that, but it seems like we're limited to 5 minutes that's kind of it. This plan is by far and away better than the existing plan that they have. This is the existing plan of the church right now and if one takes the lot coverage up to the land of 188 it is 46.2% existing. If they include the lot of 188 into the whole mix just with the church building exactly the way it is right now, it is 39.82%".

Attorney John Wargo presented, "I don't know if there is some misunderstandings or what, but in their plan they talk about the conditional use and parking spaces. There is no question that under 201.4 this is a permitted conditional use. The practice of religion at this property is a permitted conditional use. The problem is, that permitted conditional use is in a non-conforming structure. Under Berea's code, you cannot expand that non-conforming structure under 807.3(a). You are not permitted to grant that variance. Under 807.3(b) the only thing that you can grant to them that you find hardship, is a conditional use for three years and that's a joke because you are going to say come back every three years, resubmit your plan church, and we'll approve it every three years. You're going to make them tear down their 3 to 5 million dollar building. That's where that's at. What the residents are telling you, my clients, are saying look at all those blue, blue is their homes. That's where they live. This is what they look at and they are saying to you get it down to this and we will withdraw our objections. We won't go any further.

Mr. Wargo continued, "But to come here and receive a letter from the church saying that the variances requested are the minimum needed to allow reasonable use of the property and the building, is an untrue statement. The parking, they don't make a request for the parking variances that they need. In that packet that you have there is a complete explanation of the parking

requirements. That packet is valuable to you as members of this Commission. The code requires a written easement for those lots that they are using. They have not brought that up. They have not mentioned it. If they have those, I would ask the panel to address that issue. Somebody said to me for lack of a better word, that if you allow this home, if this panel allows this home to be anything other than to be used for single-family residential purposes, you might as well, and not to be rude, but you might as well call it a religious tool shed. Because they could do with it, anything they wanted to and that's what they are telling you. We might use it as an office. We might use it for a little bit of storage and when you look at the plan that Mrs. Sayler presented to you, look at the homes we've lost already. You might as well have let them raze this house if you don't maintain it single-family residential use. It's obvious, that it remains there and that's what we want to keep it as. Their comments in the past have been it would cost over \$100,000 to make that livable. In a 3 million dollar facility, or more, they can spend \$100,000 to make this livable. Keep this residential.

Mr. Wargo stated, "Remember when you look at that plan, that there was no zoning code in effect in Berea. They came in and they did what they wanted, tore homes down and kept expanding. Now there is a code. That was one of the major issues. R-SF-A, that's what we have and that's what we want to keep it. We'll stay where we are, we'll withdraw our objections if you can keep it down to this. This plan, but this plan you can see only takes three variances and the code 807.3 specifically says that you must do this, give them what they need and grant the fewest number of variances". Mr. Wargo requested that Mr. Martin's document be marked as Exhibit C-C, "The packet with all of the required variances that you need to approve the plan for which they applied - one document, number of pages".

Attorney Frank Groh-Wargo of Two Berea Commons reported that in response to Mr. Martin he would have Mr. Ziska speak for about three minutes and then he would speak for a minute or two. Mr. Ziska commented, "Quickly in response to the plan that they are talking about, to reduce the number of variances would make the building obsolete. Simply look at this room and eliminate the corridor around this room and this is essentially what they did. We know the programming and what our client needs and this would not fulfill those needs. I think this is indicative of exactly what we were talking about. We cannot go any less than the 59% lot coverage that we have because that's what we would end up with, an obsolete building. The other thing is that we are willing to accept the Commission's determination on the number of variances. Certainly, we could reduce the number of variances by simply drawing a line and saying that we need a variance of 15' for the entire back of the building. By undulating that number, it gives you better control as a commission that this is exactly what we are planning to do. If you gave us just a single variance it would allow us to move the building back and forth and take up the full variance that would mean we could add square footage. So by

doing what you are doing in terms of the number of variances I think, gives you better control, gives the City better control of the building than if we just eliminated a great number of variances. I think the number of variances doesn't make any difference and the code doesn't indicate that we're allowed one variance or ten variances or how many variances. You are studying the plan to see if that is going to work for the property and that is the important issue.

Mr. Ziska added, "The other thing that I wanted to say is that I mean we just simply, we just simply cannot reduce the building any further. We have said that over and over again and again I say that this plan just really just proves that point. Some of the things in regards to, some of the comments made about the noise and so forth, I have already addressed that. We appreciate the comments. We will take that into consideration and we will do everything that we can in specifying quieter equipment and providing the sound baffles and so forth. So we continue to try and work with the community and work with the neighbors and be concerned for their concern.

Mr. Ziska stated, "We again have said that we would try to use that house as a residential building. We will do everything that we can to make that work. But if it doesn't work, it would just cause impossible problems for the church. Again, we're trying to cooperate with the neighbors and try and do that. There was a comment some time ago in regards to utilities. I think in my statement, utilities are available and they are not overburdened by any means. There was some comment made that someone, I think the Molmen's said, they have backups, sewer backups, in their house. It's been determined that it's not because of an inaccurate sewer, it's just because there is a broken tile or something within the property, so that issue is a nonissue in terms of the City. And, we of course, will maintain our sewerage and water run-off on the property as the code allows and as the law provides.

Mr. Ziska said, "We think that, I've heard in the past people saying that the neighbors have given up a lot and we have given up nothing but that's absolutely not true and the biggest thing that we have given up is the ability to drop off our elderly and handicapped people. We have given that up and the church feels badly about having to do that but again to work with the neighbors, they have agreed to do that".

Attorney Frank Groh-Wargo reported that he represents the Church. Mr. Groh-Wargo stated, "We passed out along with the church's packet, a Federal Civil Rights' Statute called Religious Land Use and Institutionalized Persons Act and that statute imposes a burden on a municipality on the right of religious use of real estate that the government must not impose a burden on that religious institution unless it is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling interest. Now that's a bunch of legalese but essentially there must be a compelling

governmental interest for this Commission, in my estimation, to deny the application for the variances as submitted”.

Attorney Groh-Wargo stated, “I simply want to emphasize that we must recognize the plan that you now have before you. It is a compromised plan. If you recall at the last meeting, during the break, the neighbors and the church got together and they worked together to come up with this compromised settlement agreement. So, I believe that it is the least restrictive under that federal statute. The problem I see is that every time we do come in here, the neighbors present a new plan. And I’m going to go back to the official minutes of the H.A.R.B. meeting, the Heritage Architectural Review Board meeting on November 13, 2008 and in that meeting, in the official minutes of that meeting, Mr. Martin stated that he did not recall saying that the plan submitted by the Church was acceptable to the neighborhood. Now, he did not say that the plan was unacceptable to the neighborhood. He said he didn’t recall acknowledging that the plan was acceptable to the neighborhood. On Nov 13th he then said in the minutes, he commended Mr. Ziska and his son for having done such a good job with this project. That’s in November. We came back at the last meeting and they submitted a new plan. The parties sit together. They agree on a compromised plan. That compromised plan is submitted for your final approval tonight. I ask that you do accept this plan as submitted. And now we come again tonight saying geez, let’s do another plan. So on behalf of the United Methodist Church, I want to thank you for your time and ask that you vote unanimously in favor of this plan that was submitted”.

Mr. Madzy explained that it was outlined earlier that this portion of the meeting would be to allow the Planning Commission members to ask questions regarding the project, if they have any. Mr. Sawyer replied that he had a series of questions and began, “Ken, I’m going back to you again. I appreciate the work you are doing for these folks. But when we had the original essentially approved plan, I thought we were going down the appropriate lane and it would work out very well for us, only to have it disintegrate at the H.A.R.B. meeting. I am going to ask again, maybe not you specifically but with this plan, I am going to ask the folks behind you, how many of you people have not seen this plan?”. Mr. Martin asked Mr. Sawyer which plan he was referring to and Mr. Sawyer indicated, “The one that Ken just submitted about 10 minutes ago”. Mr. Madzy noted that it would be the plan marked as Exhibit C-C.

Mr. Sawyer explained, “The last time I got a number of questions after the meeting from people saying we never saw the plan. That’s why I am asking you again, does this plan essentially meet the criteria of the wishes of your constituency?”. Mr. Martin replied, “That’s correct”. Mr. Sawyer stated, “Ok, that’s 100% now”. Mr. Martin answered, “Correct, absolutely correct, and it has been all along”. Mr. Sawyer said, “I just want to make sure that’s clear this time. Thank you Ken, you did a nice job”. Mr. Martin reported, “The 52.2% plan before you, is the plan that the neighbors have agreed upon. It is

outlined, the conditions are outlined, on the plan itself. It has the most minimum variances and I believe the letter dated January 14, 2009 also alludes to that fact”.

In response to Mr. Sawyer, Mr. Wargo stated, “There are only three variances required under the plan submitted on behalf of my clients and drafted by Ken Martin who is also a client in this case”. Mr. Sawyer pointed out, “I see an issue already. If we can’t solve the plan’s problems, what do we do?”. Mr. Martin stated, “Excuse me, that calls the question because they’ve always presented the fact that they wanted a social hall for 300 people. You know they have since then raised that number to approximately 344 by increasing the size of the physical building. We have provided for you everything that they could possibly need in regards to what Mr. Rump has said, at the previous meetings. He said well can’t we move the storage around, can’t we make it work. Well, that was the clue at the beginning of that 52.2% plan because he gave me the idea and he was saying and Mr. Wargo was saying what are the most minimum requirements for variances. I’m sorry but this plan does indeed solve the church’s problems and it reduces the required variances to a minimum”.

Mr. Sawyer replied, “Ken, it doesn’t look like we have a real agreement on that”. Mr. Martin stated, “I’m terribly sorry but that’s what the plan does with 3,000 less square footage of space. It creates smaller lot coverage. It allows for more landscaping. It provides for a bigger distance from the Molmen’s property. There are an absolute number of pluses for that 52.2% plan, plus it is safer. All of the plans that have been brought to date, have created safety problems both for the neighbors and as far as I’m concerned, for the church members themselves”.

Mr. Madzy asked Mr. Ziska, “Mr. Sawyer asked whether the new plan meets the church’s needs. Mr. Martin answered that his plan at 52% does meet the church’s needs. You are the architect representing the church. Does the 52.2% plan meet the needs of the church?”. Mr. Ziska stated, “No it does not. He simply took out corridors and it makes it functionally obsolete. We’ve studied the plan. I admire all of the work that he has put in on this but I mean it’s simple to take out corridors but how do you get from one space to the next without having to travel through this room. As I was trying to explain, if we simply eliminated the corridor around this room and everyone that wanted to get to that end would have to simply cross this room. That’s functionally obsolete. And we wouldn’t present this plan to our client because we don’t think it works”.

Mr. Madzy inquired, “Earlier you had called the plan a 54% plan. Is that another plan?”. In response, Mr. Ziska stated, “If you compare apples to apples this plan is not a 52% plan. It’s 54 point something percent, and because he didn’t add in the house. All of our percentages added in the house so you

really are comparing 54% to 59%. It's a 5% difference that is at issue here and for us to give away the functionality of this building for 5%, it doesn't make any sense. Mr. Madzy asked, "When you say 54% you aren't referring to another plan?". Mr. Ziska said, "It's that very plan. He just did not add the square footage of the house in his numbers". Mr. Martin explained, "If the residence, if 188 Seminary Street is used as a residence, there are no specific requirements in the zoning code that state that that needs to be included within lot coverage. There is none". Mr. Madzy said, "And according to the plan that you had submitted, the 52% plan, if the house was included and it was used as a religious purpose, what would that bring the 52% plan up to? Would it bring it up to 54%?". Mr. Martin replied, "No, it might bring it up a percent". Mr. Wargo added, "When you asked earlier if that was the plan that all my clients agreed to, that's the plan and it's with that residence, 188, maintained as a single family residence. That is so important, major".

Mr. Fay asked how critical the parking at the rear of the building is. Chuck Dixon of 20377 Village Green Drive, Strongsville was sworn in by Mr. Madzy. Mr. Dixon answered Mr. Fay's question, "We frequently have people working in the kitchen, working in the fellowship hall space and we feel that parking there just supports that function. We also today have parking along the alley. The staff will sometimes park there as well. So it just brings the parking in tight on the building for the people that are there the most often and for the greatest periods of time". Mr. Fay said, "But again, is it critical?". Mr. Dixon replied, "I would say yes".

Mr. Madzy reported that at the last meeting, Mr. Sponseller had read the criteria for reviewing variances to the Commission. He asked Mr. Sponseller to read the criteria again. Mr. Sponseller explained that this is the criteria to consider when granting or denying a request for a variance. He read the following into the record: 1) That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other land or structures in the same Zoning District; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to non-conforming and inharmonious uses, structures or condition; 2) That literal interpretation or application of the Code would deprive the owner of rights commonly enjoyed by owners of other properties in the same Zoning District, and would deprive the owner of the reasonable use of this property; 3) That the special conditions and circumstances do not result from the actions of the owner; 4) That granting the variance requested will not confer on the owner any special privilege that is denied by this Code to other lands or structures in the same Zoning District; 5) That the variance requested is the minimum variance reasonably necessary to make possible the reasonable use of the land or structure; and 6) That the granting of the variance will not be inconsistent with the general purpose and intent of this Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Mr. Wargo asked Mr. Sponseller, "I would ask that you point out to the Board the restrictions that they have by 807.4 and that deals specifically with the inability of this Board to grant". Mr. Sponseller replied, "Mr. Wargo, where you are going there, is a legal argument and frankly, I disagree with you". Mr. Wargo stated, "You may disagree but if you would just point that out". Mr. Sponseller said, "I will not sir. I will point out to them what the requirements that we and the administrative review and I, as the law director, believe apply to these particular variances that are requested and that those are exactly the ones that I've stated and exactly the ones that we have applied in this Commission for years". Mr. Wargo stated, "May I inquire that your opinion then is that they can expand the non-conforming structure?". Mr. Sponseller replied, "I have indicated that these are the criteria under which they are to consider in order to grant or deny the request for the variances. I'm not going to sit here and be cross-examined by you". Mr. Wargo said, "I don't want to cross-examine you". Mr. Sponseller replied, "If you have a legal argument to make you can go ahead and make it. Those are the criteria, members".

Mr. Sawyer asked Mr. Madzy what they should do with the plan that was presented by the neighborhood. Mr. Madzy stated, "Well, I think it was a proposal that was given by Mr. Martin facilitated with Mr. Wargo to explain the potential use of that property. Mr. Ziska if I'm not characterizing your statements earlier, correct me or please stop me, but my understanding of what you said was that this plan was not functionally workable". Mr. Ziska replied, "Functionally obsolete". Mr. Madzy said, "So, you are here as the applicant or an agent representing the applicant advancing the plan that Mr. Martin has submitted. At this point you would stand on the application that you had submitted". Mr. Ziska stated, "Yes". Mr. Madzy replied, "Ok, as I had stated earlier, as far as voting goes, we have to vote and we have to address the issues that have been submitted to us by the applicant who is the property owner or an agent working for the property owner".

Mr. Wargo questioned the easements for the parking. Mr. Madzy reported that, "The easements for the parking are a separate issue. I think Mr. Martin had brought up in the past his thought that additional parking spaces are required because there is going to be a new fellowship hall. Our code states that on the parking for the conditional uses, churches and religious facilities are judged by the principal place of assembly. The principal place for assembly in this matter hasn't been changed. That's still the sanctuary. So that's not going to be any change. This is a secondary area that they are going to be using. Essentially what our code requires is for parking space requirements they have to be satisfied either on the lot or as you stated, in an easement or agreement on surrounding lots. But the parking space requirement is based upon the sanctuary that was built, Mr. Dixon when was the sanctuary built?". Mr. Dixon replied, "The sanctuary was built in 1952". Mr. Madzy continued, "It was built in 1952. So, if the code in 1952 was what

that stated, so that's grandfathered in, the number of parking spaces they have".

In response to Mr. Madzy, Mr. Wargo stated, "The code says that anything after the code when you are going to give any of these variances that you must consider the parking". Mr. Martin added, "Section 100.2 general applicability". Mr. Madzy explained, "But does that section of the code state that you have to have, I am familiar with the section of the code you are talking about regarding parking requirements for structures, and that states you can achieve those parking space requirements either on-site or through a lease agreement or doing an easement with adjoining properties". Mr. Wargo stated, "Through a lease agreement, through easement, a recorded easement, within 300 feet". Mr. Madzy said, "And that is for parking space requirements when the parking space requirements under this section are judged by the sanctuary.

Mr. Madzy continued, "Mr. Martin is drawing under a separate section that states that the Commission should consider parking but when you consider parking it doesn't necessarily mean we have to consider the parking requirements as stated in the code. We considered those, and we considered those with the sanctuary which was built in 1952". Mr. Martin replied, "You have a code that was indeed placed in effect in 1974. In Section 100.2 Item C, says no part of the yard or other open space or off-street parking or loading space which may be required in this code in connection with any of the land or structure shall be included as part of the yard, open space, off-street parking or loading space similarly required for any of the land or structure. You are indeed building a brand new structure and some requirement must be met. It's either the code requirement of one car for every four seats of the main sanctuary or you can look at it as the addition of the fellowship hall which is also a primary assembly space". Mr. Madzy pointed out that, "We have considered consistently that the sanctuary is the judge, is the primary assembly area for the religious facility". Mr. Martin stated, "You have 27 cars for 45,000, no excuse me, 50,000 square feet of building. That is not appropriate, period".

Mr. Sawyer reported that, "Sometime back, six or seven or 24 meetings back, you gave all of us a reasonable summary of where you could park around this place, other off-site places, maybe some as far over as..". Mr. Dixon replied, "I don't have the exact numbers but we park across the street in the funeral home parking lot, the Toth parking lot, our own parking spaces. We park along Seminary between Grand and Spring and between Spring and Liberty. We park along Beech between Liberty and Spring and park along Beech between Spring and Grand. We park behind the Toth building so that is covered by the Toth agreement. There are some members, not many, who park on Front Street". Mr. Madzy said, "And Mr. Dixon at the last meeting you did speak about the issue that you are not changing the primary assembly area.

You are creating a new area where people will assemble and use the fellowship hall. And you stated at that time, the question was asked of you, would you consider going to any other parking lots in the area and seeking out additional parking". In response, Mr. Dixon said, "Yes, and we have feelers out on that. We have no new written agreements at this time but we are pursuing that". Mr. Wargo asked, "Are there any old written agreements?". Mr. Dixon replied, "We have a written agreement with Toth". Mr. Wargo asked, "Do we have a copy of that for Planning Commission?". Mr. Dixon indicated, "No, we will copy that".

Mr. Madzy asked Mr. Dixon, "If you were to go to different sources within the area to get a parking agreement, 75 spaces, would that be, could you seek an agreement for an additional 75 spaces?". Mr. Dixon answered, "We could try to seek an agreement for an additional 75 spaces. The two places, the two most likely possibilities of success are the BW lot, selected hours certainly, and then the University Hospital building on the other side of Front Street on the other side of Spring. There is a good-sized lot there. Mr. Madzy clarified, "So, you will seek out additional parking availability and agreements with those property owners?". Mr. Dixon stated, "Right".

Mr. Wargo stated, "In our plan that we submitted it shows you....". Mr. Madzy interjected, "I understand Mr. Wargo, you talk about the parking space requirement section which we contended consistently hasn't changed because they haven't changed the primary assembly area. We're disagreeing on that point and we are continuing to disagree as we go on, and that's fine".

Moved by Draves, seconded by Fay to approve Variance #1 which requests a 5-foot setback variance to build a 4' section of the addition 30' from the alley that runs between Spring Street and Liberty Street, as submitted. Vote on motion was ayes: Borowski, Draves, Fay, Madzy, Rump, Sawyer. Nays: None. The motion carried.

Moved by Draves, seconded by Fay to approve Variance #2 which requests a 10-foot setback variance to build a 49', 4" section of the addition, 25' from the alley, as submitted. Vote on motion was ayes: Draves, Fay, Madzy, Rump, Sawyer, Borowski. Nays: None. The motion carried.

Moved by Draves, seconded by Fay to approve Variance #3 which requests a 24' variance to build a 50' section of the addition 11' from the alley, as submitted. Vote on motion was ayes: Fay, Madzy, Rump, Sawyer, Borowski, Draves. Nays: None. The motion carried.

Moved by Draves, seconded by Sawyer to approve Variance #4 which requests a 21' setback variance to build an extension of the roof that will act as a canopy and will be supported by stone columns, 14' from Seminary Street, as submitted. Vote on motion was ayes: Rump, Sawyer, Borowski, Draves, Fay, Madzy. Nays: None. The motion carried.

Moved by Draves, seconded by Fay to approve Variance #5 which requests a 24.4% lot coverage variance due to the proposed addition occupying 59.4% of the lot, as submitted. Vote on motion was ayes: Sawyer, Borowski, Draves, Fay, Madzy, Rump. Nays: None. The motion carried.

Moved by Draves, seconded by Fay to approve Variance #6, as submitted, which requests a 21' setback variance in order to utilize the home at 188 Seminary for religious purposes, therefore the home must meet the setbacks established for structures containing religious facilities or obtain a variance. Applicant seeks variances instead of altering the home. Vote on motion was ayes: Borowski, Draves, Fay, Madzy, Rump, Sawyer. Nays: None. The motion carried.

Moved by Draves, seconded by Fay to approve Variance #7, as submitted, which requests a 12' setback variance due to the home at 188 Seminary being 15' from the side property line. Zoning Code Section 501.1 requires that religious facilities (with a height of 27') to be setback at least 27' from a side property line. Vote on motion was ayes: Draves, Fay, Madzy, Rump, Sawyer, Borowski. Nays: None. The motion carried.

Moved by Draves, seconded by Fay to approve Variance #8, as submitted, which requests a 20' setback variance to construct four parking spaces directly abutting the alley. Zoning Code Section 202.5(b) requires parking spaces to be setback at least 20' from any street and that such setback area be landscaped. Vote on motion was ayes: Madzy, Rump, Sawyer, Borowski. Nays: Fay, Draves. The motion carried.

Moved by Draves, seconded by Fay to approve Variance #9, as submitted, which requests a 100% landscaping variance to construct four parking spaces directly abutting the alley. Zoning Code Section 202.5(b) requires parking spaces to be setback at least 20' from any street and that such setback area be landscaped. Vote on motion was ayes: Rump, Sawyer, Borowski, Madzy. Nays: Draves, Fay. The motion carried.

Discussion ensued regarding the conditional use. Mr. Sponseller clarified that, "It is my understanding that the aspect of the conditional use is, this was a pre-existing use prior to the zoning code and a permitted conditional use under the zoning code and when the last expansion was done that there was actually a formal record of the approval of the conditional use so part of this includes the recognition and for the record, verification, of the

authorization for a conditional use for religious purposes within the R-SF-A District.

Moved by Draves, seconded by Fay to approve an extension of a pre-existing conditional use, as submitted. Vote on motion was ayes: Sawyer, Borowski, Draves, Fay, Madzy, Rump. Nays: None. The motion carried.

Moved by Draves, seconded by Fay to approve the site plan, as submitted. Vote on motion was ayes: Borowski, Draves, Madzy, Rump, Sawyer. Nays: Fay. The motion carried.

Moved by Draves, seconded by Fay to approve the building permits, as submitted. Vote on motion was ayes: Draves, Fay, Madzy, Rump, Sawyer, Borowski. Nays: None. The motion carried.

OTHER BUSINESS: None.

ADJOURNMENT:

There being no further business to come before the Planning Commission, moved by Fay, seconded by Draves to adjourn. Vote on motion was all ayes; no nays. The meeting was adjourned at 8:43 p.m.

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

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 15th day of January, 2009 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)

Carol A. Hubler, Secretary