



OXFORD BOARD OF ZONING APPEALS

Meeting Minutes

Tuesday, June 28, 2022

[Link for website video here](#)

Full Transcript available online

Meeting procedure: The Board of Zoning Appeals is a quasi-judicial Board. Our primary function is to hear testimony and issue decisions. Unlike other City boards and commissions, we only hear relevant, sworn testimony from the Applicant, his/her duly appointed agent or attorney, and any other person with standing to testify in a particular matter. The Applicant has the right to cross-examine any testimony given. Our hearings are open to public attendance, but public comment, opinion and discussion are not considered testimony and will not be heard.

Please wait until you are recognized by the Chair, state your name and address so that your comments may be properly recorded. Applicants are to limit their testimony to fifteen (15) minutes, including any information presented by his/her duly appointed agent or attorney. This time limit may be extended if the Board requests or approves further testimony. Other persons with standing are encouraged to testify and ask questions about the nature of the appeal, but must be acknowledged by the Chair prior to speaking.

Roll Call

Mike Schnipper, Chair

Roger Ames, Vice Chair

Kate Rousmaniere

Calvin Conrad

Chris Allison

[Time: 0:45](#)

A regular meeting of the Oxford Board of Zoning Appeals was called to order by Chair Mike Schnipper on Tuesday, June 28, 2022 at 6:30 p.m.

Members in attendance were Mike Schnipper, Kate Rousmaniere, Calvin Conrad, and Chris Allison.

Members excused: Roger Ames

Staff Members in Attendance

Mr. Zachary Moore, City Planner/GIS Coordinator, Mr. Christopher Conard, Law Director, Ms. Eunike Miller, Administrative Assistant.

Staff Members Excused

Mr. Sam Perry, Director, Community Development

Approval of April 26, 2022 Minutes of the Regular Meeting

[Time: 1:24](#)

Motion – To approve minutes as written, and transcription with amendment

(Voice Vote) 1st Mr. Conrad

2nd Mr. Allison

AYE: (3)

NAY: (0)

ABS: (1)

New Business

BZA-2022-02

[Time: 2:17](#)

Page 4 of the Agenda Packet

1. BZA-2022-02, 314 University Avenue, VARIANCE, minimum lot width for three-family dwelling, Scott Webb, Applicant/Agent

Motion – To Enter into Adjudication Hearing

(Voice Vote) 1st Mr. Allison

2nd Mr. Conrad

AYE: (4)

NAY: (0)

ABS: (0)

Comments from the Public

Mr. Tony Miller – Mr. Miller is the owner of one of the adjoining properties. Mr. Miller noted the variance is requested by the applicant so more people can be housed on the property. Mr. Miller thought if the variance is granted that means he could add another unit to his existing rental. Mr. Miller identified his property (317 N Campus Ave) in relation to the property requesting the variance. Mr. Miller informed the Board that he consolidated his property when the City asked him to do so. Mr. Miller owns a two-family rental on this property.

Motion – To Close Adjudication Hearing

(Voice Vote) 1st Mr. Allison

2nd Mr. Conrad

AYE: (4)

NAY: (0)

ABS: (0)

Motion – To Deny the variance request based on Criterion A, E, G, and H

(Roll Call Vote) 1st Ms. Rousmaniere

2nd Mr. Conrad

AYE: Mr. Conrad, Ms. Rousmaniere, Mr. Allison (3)

NAY: Mr. Schnipper (1)

ABS: None (0)

Motion to Adjourn Meeting at 8:36 p.m.

Time: 2:07

(Voice Vote) 1st Mr. Allison

2nd Mr. Conrad

AYE: (4)

NAY: (0)

ABS: (0)

0:00:00.6 Michael Schnipper: Good evening, I'd like to call immediate order. Welcome to the June 28, 2022 meeting of the Oxford, Ohio Board of Zoning Appeals. Mr. Moore, would you do a roll call of the board members?

0:00:09.1 Zachary Moore: Yes, I will. I'll start with Mr. Conrad?

0:00:14.2 Calvin Conrad: Yes.

0:00:14.6 Zachary Moore: Ms. Rousmaniere?

0:00:16.0 Kate Rousmaniere: Yep. I'm here.

0:00:17.4 Zachary Moore: Mr. Allison?

0:00:18.2 Chris Allison: Here.

0:00:19.1 Michael Schnipper: And Mr. Schnipper?

0:00:20.2 Michael Schnipper: Here. Let the record show that all members except Mr. Ames are present. Mr. Ames was previously excused. Quick question for you, Mr. Moore, before we begin, was the applicant aware that we may not have a full board prior to the meeting?

0:00:34.9 Zachary Moore: Yes, they were made aware.

0:00:37.7 Michael Schnipper: Thank you, sir. First order of the business is approval of the April 26th, 2022 minutes. Kate, you're gonna have to abstain from this week since you were not present. Cal, Chris any additions, deletions or corrections?

0:00:50.9 Chris Allison: No.

0:00:52.5 Michael Schnipper: I've got one correction in the transcript. It is on page five, first full paragraph on there, 00:14:35.3. That's attributed to me and actually it was Sam Perry that was speaking at that time, so, if you could make that change. Any other changes, Chris, Cal?

0:01:17.2 Calvin Conrad: No.

0:01:17.2 Michael Schnipper: Is there a motion to adopt the minutes as amended?

0:01:19.3 Calvin Conrad: So moved.

0:01:19.8 Michael Schnipper: Thank you, sir.

0:01:21.1 Chris Allison: Second.

0:01:22.8 Michael Schnipper: Thank you. All in favor, say aye.

0:01:23.1 Board Members: Aye.

0:01:24.0 Michael Schnipper: All opposed? Without opposition, the minutes are approved. We have one case to hear tonight, BZA-2022-02 for 314 University Avenue, seeking a variance of a minimum lot width for a three-family dwelling. I need a motion to enter into adjudication.

0:01:42.3 Chris Allison: So moved.

0:01:44.0 Michael Schnipper: Thank you, sir.

0:01:46.3 Calvin Conrad: Second.

0:01:47.6 Michael Schnipper: Thank you, sir. All in favor, say aye.

0:01:48.3 Board Members: Aye.

0:01:49.2 Michael Schnipper: Without opposition, we are in adjudication. Mr. Moore, would you please identify yourself and state your job title for the record?

0:01:58.4 Zachary Moore: Yes. Zachary Moore, City Planner for the City of Oxford, Ohio.

0:02:01.8 Michael Schnipper: And will you raise your right hand for me? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth in matters before the board?

0:02:09.3 Zachary Moore: I do.

0:02:09.9 Michael Schnipper: Thank you, sir. Please proceed.

0:02:11.3 Zachary Moore: All right. Thank you, Mr. Chairman. Good evening, members of the board. So our first and only case of the night, this is BZA-2022-02. This is at 314 University Avenue and a variance is sought to the minimum lot width in this case. Okay. The applicant for this request is Scott Webb, Architect, who's with us tonight. The property owner is Calista Enterprises, LLC. The zoning classification for the property is R3MS, Single, Two and Three-Family Mile-Square Residential District. The current use of the property is a single-family dwelling. The proposed use would be a three-family dwelling and the proposal is a request for a variance to Section 1143.07(c), minimum lot width to allow for three-family.

0:03:10.6 Zachary Moore: Here is a look at the location. You can see the aerial imagery and the subject property is highlighted with a black outline here. Here's University Avenue running north and south. East Sycamore Street is to the north. East Vine Street is to the south and North Campus Avenue is to the west. Bishop Street is off the map, but it would be over this direction. And here's a look at that same extent, but showing the zoning classifications in the area, so you can see that the vast majority of the surrounding vicinity is zoned the same way, zoned R3MS. This is a three-family district.

0:03:58.4 Christopher Conard: I'm hearing feedback.

0:04:00.7 Tracy Allen: This is on I think. This might be... I don't know how to turn it off.

0:04:05.2 Christopher Conard: Maybe you could put it on the ground...

0:04:08.9 Tracy Allen: Hold on a second. Alright. This is push.

0:04:15.3 Christopher Conard: It won't stay off, you have to hold it down.

0:04:16.0 Tracy Allen: Well, I can't, I don't think I can... I mean, you have to hold it down physically.

0:04:26.8 Christopher Conard: Hold the button down.

0:04:33.7 Tracy Allen: I'm trying to move it out of the way.

0:04:34.3 Christopher Conard: Still got it.

0:05:04.2 Michael Schnipper: Did you get it? Try it now.

0:05:11.7 Michael Schnipper: I think we're good.

0:05:22.8 Michael Schnipper: Thank you, sir. We have a technician in the back of the room that corrected it.

0:05:30.5 Zachary Moore: All right. I'll advance to the next slide. So this is a map showing some up-zonings that occurred in the neighborhood. This is from 2017. The subject property is noted as a white star. You can see that this area was rezoned from R1MS, which is a single-family district up to a three-family district. This is a 17-acre area here. And here are some site photos from June 17th. This shows the existing single-family dwelling that sits on the lot. You can see that there's an existing driveway here, there's a carport. So the curb cut is off of University Avenue. There was some existing fencing at the time. It was a combination of a chain-link and a privacy style fence that has since been changed. I'll show you a picture here in a moment. A vast majority of that has been removed at this point, and that is related to a concern that our fire chief had expressed when reviewing the application.

0:06:39.0 Zachary Moore: These bottom pictures here are viewed from the alley that is behind the lot. So this surface right here, this is parking on the adjoining property to the north and this grassy area here, this is the rear yard of the property. So here is a bird's eye view showing the single-family home that's existing, it's outlined in yellow here, and then the same view. This slide shows a number of recent projects in the area, some of which would have predated the rezoning from R1MS to R3MS. Those are shown right here. So in 2014 and 2016, there were new single-family homes built on those particular lots. And then the blue shows new or converted two-family projects, and these would have occurred after the rezoning. And the reason that they were possible was because of the rezoning from R1MS to R3MS.

0:07:51.9 Zachary Moore: So the relevant zoning provision here, so this is extracted out of the zoning code, this is 1143.07(c), provides the following minimum lot widths. For a single-family dwelling, it's a minimum of 40 feet. For two-family, it's a minimum of 50 feet, and for three-family, it's a minimum of 60 feet. So the provision in question here, with the variance request, is for the 60-foot minimum for three-family, and the width of the lot in question is 56 feet. So the variance is for

four feet.

0:08:32.5 Zachary Moore: I will note also that in 2017, there were also some text amendments to the code, in addition to the map amendment. So previously, in the R3MS district, the minimum lot width for single-family was 50 feet, the minimum for two-family was 75, and the minimum for three-family was 90. So in addition to the map change, there was also a text change that allowed for greater intensity of use on smaller width lots.

0:09:10.3 Zachary Moore: So going through the history here, this was a 2018 variance attempt. At the time, I believe there were a number of variances requested, one of which was the lot width, but there were a number of others as well. And this request was withdrawn prior to reaching the BZA, so there wasn't an actual decision rendered at that time on any of the requested variances, but this was the site plan that was shared at the time as part of the application. So when I flip to the next slide, this is a new site plan that was submitted in 2021. At that time, there were two variances requested, one was, of course, to the lot width, the other was for parking setbacks to reduce from a three-foot minimum setback to a one-foot setback, to allow for six parking spaces to basically be paved in a row, off of the alley.

0:10:13.8 Zachary Moore: The Staff Report was released with the rest of the packet for, I believe it was the November 2021 meeting, and the staff recommendation at the time, staff had concluded that there was insubstantial evidence to support the request. So following the release of that report, we were notified that the application was being voluntarily withdrawn, so it did not reach this board in November of 2021 either. So the variance that is being considered here tonight, this is the site plan that goes with that. So as you can see, flipping back and forth between the November 2021 site plan and the current site plan, there are not many differences.

0:11:02.5 Zachary Moore: The main difference would be the fact that they are no longer requesting a parking setback for the row of parking spaces off the alley. So they are providing for sufficient distance to meet the minimum three-foot setback, and what they have done is stacked one of the parking spaces, which you are allowed to do by code, you're allowed to have one stacked space and there would be a sidewalk or walkway leading from the parking to the entrances to the building and eventually up to the public sidewalk along University Avenue, so that is also an element that is unchanged between the submissions.

0:11:48.4 Zachary Moore: So to describe the units that are proposed, so it is proposed as a three-unit building. There would be a two-story dwelling unit in the back and the entrance would be facing outward toward the street, so it's certainly visible from the street. And we believe that this will meet the code's principal entrance provision, requiring a principal entrance to be upon the street. And in the front, up closest to University Avenue, there would be two stacked units and the front doors to each of these units would be separate and distinct from one another.

0:12:27.4 Zachary Moore: We don't have a floor plan at this time, but it's presumed that one of those two entrances would lead to a stair that would lead you to the second floor into that particular unit. Of course, since the parking is being provided in the back, which is actually preferable per code, to have parking off an alley when an alley is present, the existing curb cut would be removed and the driveway also would be removed to make way for this new structure. So the existing single-family home that was built in the 1960s that would go away and be replaced with this new three-unit building. And there's a slide that's highlighting the newly stacked space and here is a slide

showing you the degree of variation between the lot width for the existing lot, so that's 56 feet.

0:13:21.1 Chris Allison: Would that be a 12-car or a 6-car driveway?

0:13:26.7 Zachary Moore: 60 feet is the minimum lot width for a three-family, so you can see the degree of gap here that's basically not there and would have to be there in order to allow for a three-family by right, without requesting a variance. So this slide predated the removal of the fence. So at the time, it was noted that there were chain-link and privacy fences in proximity to the structure, the minimum side yard setback in the R3MS district is five feet. So the applicant is showing an intent to meet that, so you can see this dash line here that is noting a five-foot setback. And when the fire chief had reviewed this proposal, he was concerned with the ability to put a ladder up against the side of the building in the event there were an emergency or a fire, that this fence would be an obstruction to that.

0:14:29.0 Zachary Moore: So staff's view of that is there really wasn't a nexus between that particular issue and the issue at hand, when it comes to the lot width, but nevertheless, since it was known at that point that that was a potential health and safety concern that was shared with the applicant. And since then, staff is aware that most of the fence has been taken down, and I'll show you here in a minute what that looks like.

0:14:56.1 Zachary Moore: Yep, here it is, so this is a photo from the 27th of June, so you can see that the fence is largely removed at this point. There are a few posts that remain, but otherwise, it looks like most of the obstruction has been, at least possible obstruction has been eliminated at this point. Lastly, I will show you the renderings that had been submitted for past applications, as well as the current application. So this was the 2018 variance attempt, and this is the rendering that was submitted at that time, so kind of a staggered approach to building the units; all the doors, of course, being visible from the street with this one. And then in 2021, this was an updated rendering and it looks like this building could pretty well meet all of the mile-square design standards, certainly includes front porches, which is an element that we encourage for mile-square development, and the rendering for the current request is the exact same as 2021. So this is the rendering that you should consider at this time, and it is for a two-story structure.

0:16:17.2 Zachary Moore: So if the variance were granted by the board, then we would hold the applicant to building a structure that is following this rendering. Bless you. Okay, and I will go through the decision criteria now, but first, I will say that in accordance with Section 1139.02(c)(1), "The burden of proof is upon the applicant to present reliable and substantial evidence that supports their request for variance. Furthermore, per Section 1139.02(c)(2), The BZA must find that practical difficulties exist that would render strict application of the code unreasonable. In determining whether such difficulties exist, which are sufficient to warrant the variance, the board should use these decision criteria."

0:17:16.7 Zachary Moore: So just to note on this slide, so a red X is noting something that staff believes does not lend support toward granting the variance. A yellowish-orange question mark here is noting something where it's somewhat indecisive, in terms of whether it's lending support or not, so we rate it as mixed evidence. We are also offered by the Code, Criterion H, which is any other relevant factor, and we don't feel that there's any additional factors that are worth commenting on with this application, the applicant can present additional evidence toward Criterion H if they so choose.

0:18:01.5 Zachary Moore: So I will start with Criterion A, this is whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance. It is evident there is already beneficial use of the property since it is developed with a single-family dwelling. The owner could also choose to redevelop the lot with either a brand new single-family dwelling or a brand new two-family dwelling, and meet all standards of the zoning code without necessitating approval of variances.

0:18:35.5 Zachary Moore: Criterion B is whether the variance is substantial, so the applicant, in this case is asking for a 6.7% reduction in lot width, this is to go from 60 feet to 56 feet, and staff believes the proposed lot width reduction is substantial, and this is consistent with the very first Staff Report that was composed for the 2018 variance request.

0:19:02.1 Zachary Moore: Criterion C, we rate this as mixed evidence, this is whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. So this particular block of University Avenue between East Sycamore and East Vine, as I had showed you in a previous slide, has experienced significant redevelopment in recent years. New single-family dwellings at 316 University and 317 University were constructed in the mid-2010s, and two duplexes at 313 University and 318 and 320 University were constructed recently.

0:19:43.4 Zachary Moore: It is clear from the abundance of projects taking place on this block that viable redevelopment opportunities exist for one and two-family residential uses without the need for requesting greater intensity of use as a three-family. It can be noted this property is located within an area of the mile-square that was up-zoned from R1MS to R3MS. I think the Staff Report notes it incorrectly, the prior slide with the map had shown R1, I think the Staff Report says R2, should be R1MS to R3MS. This was done in 2017 and it was for the purpose of increasing allowable density in an area that's close to campus. However, there are numerous properties in the area which do meet the required lot width for a three-family.

0:20:36.9 Zachary Moore: Turning to the proposed dwelling itself, the applicant's rendering does show a two-story dwelling, which is fairly consistent with the structures along the block and thus, would appear much more complementary to these other structures despite the difference in the number of units that there may be, and I believe that the rendering that's been submitted in 2021 and the one that's currently under consideration is a much better design comparatively to the 2018 rendering.

0:21:15.8 Zachary Moore: Criterion D, I believe that there is an update to this one in light of the change to the fence. So I would actually note this now as supporting the variance. The engineering department and the police department did not return comment on this. As I said, the fire chief had expressed some concerns with the proximity of the fence. I believe that issue has largely been satisfied so I don't have any reason to believe that this criterion does not lend support toward granting the variance at this time. So you can consider D not a question mark, but a check mark now, which is what I normally put on the slide for those criteria that support the variance.

0:22:03.8 Zachary Moore: Criterion E is whether the property owner purchased the property with knowledge of the zoning restriction. We find this does not support granting the variance. So the same variance for lot width was previously pursued in 2018 and in 2021, but withdrawn both times

prior to reaching the BZA. According to the prior Staff Report, the property was purchased in 2000 by Ned Hoelzer. And at that time was zoned R2, which was a small lot single-family zoning district. So therefore the investment backed expectation for the property was for a single-family when purchased. The property was rezoned to R1MS. Looks like it says it correctly here. It was rezoned R1MS as part of the 2003 code rewrite, and then was later up-zoned to 2017, or excuse me, up-zoned to R3MS in 2017.

0:22:58.6 Zachary Moore: Criterion F is whether the property owner's predicament feasibly can be obviated through some method other than a variance. The original plat for this area has more or less predetermined the lot widths for the area, many of which do not provide sufficient distance to allow for the highest possible use per the presently zoned R3MS district. Still there is already beneficial use of the property with the single-family dwelling. And it is also possible, by right, to densify this lot by raising the existing building and constructing a new two-family. So for these reasons, we do not believe a true predicament is posed by the current request, it is simply the desire for highest intensity of use.

0:23:46.4 Zachary Moore: Criterion G, whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. We find that the general purpose of minimum lot width regulations is to ensure regularity of dimensions in form for specific land uses or districts, resulting a predictable ratio of building size to lot size. The purpose of regulating density also factors into the subject of minimum lot widths. So when it comes to one, two and three-family uses, the prescribed lot width regulations in the R3MS district, these are actually the smallest widths of all residential districts in Oxford and thus result in the greatest degree of density that's possible for such uses, along any particular stretch of block.

0:24:39.1 Zachary Moore: For example, R1MS prescribes a 60 feet minimum lot width for single-family uses. In R2, the district prescribes a minimum of 50 feet for single-family, 75 feet for two-family. The R3MS standards are 40, 50 and 60 feet for single, two and three-family uses respectively. The text amendment was processed and adopted around the same time as the up zoning of the area from R1MS to R3MS. Thus, it is clear the intent was not to allow three-family on every property just for the sake of increasing density, so the two were considered around the same time.

0:25:24.4 Zachary Moore: So decreases in minimum lot widths and rezoning of property, I actually just said that, they were considered at the same time, they were considered together as one package of amendments. Entertaining variation in the standards adopted in 2017 would thus mean entertaining a denser residential environment than what had been envisioned at that time in 2017, and thus we find it probably doesn't observe the spirit of the code.

0:25:57.4 Zachary Moore: And as I said previously, Criterion H, any other relevant factor, we, as staff, do not have any other factors we wish to mention, but the BZA may rely upon factors or evidence that is contributed by the applicant or other evidence that's heard during this hearing tonight. And that concludes my presentation. I am happy to take any questions from the board.

0:26:22.2 Michael Schnipper: Thank you, sir. Well done as always. Board members, do you have any questions for Zach?

0:26:25.4 Kate Rousmaniere: I have a question about the fire chief. So essentially, because the

fence is gone, the fire chief's concern is now gone.

0:26:37.5 Zachary Moore: I believe his concern has been largely satisfied now that the fence...

0:26:40.1 Kate Rousmaniere: 'Cause he really only talked about that.

0:26:41.4 Zachary Moore: Has been removed. That was his primary concern. I did ask him about the location of the entrance to the two-story dwelling unit, in terms of the depth from University Avenue and he said that that was not a problem.

0:27:00.8 Jack Grove: Objection...

0:27:04.1 Tracy Allen: I'm sorry, who said it?

0:27:05.6 Jack Grove: I objected to this hearsay.

0:27:06.7 Tracy Allen: Thank you. I just didn't see you did that.

0:27:11.8 Christopher Conard: Go ahead, you can finish what you were gonna say.

0:27:14.9 Zachary Moore: I believe I've answered the question, so I have nothing else to say at this time.

0:27:19.5 Kate Rousmaniere: That's good, thanks.

0:27:19.6 Calvin Conrad: Zach, are they going to remove... I drove by the property earlier, and there are still poles out there that... Well, exactly... That would hinder an approach by a fire chief or firemen. Are they... Are those going to be removed?

0:28:00.3 Zachary Moore: So I'm not able to answer that question, in terms of whether those posts are to be removed. I think the question of possibly requiring that as a condition of variance approval, again, I think there is a valid health and safety concern, in terms of obstructions to... In the event that there is an emergency for fire personnel to attack that emergency. I don't believe it is related directly to the request at hand, but you may pose that as a question to the applicant, in terms of whether they would be willing voluntarily to remove those posts.

0:28:43.2 Calvin Conrad: I will.

0:28:44.3 Michael Schnipper: Quick question, Zach, relative to the post and the fence. As I recall, there was some question about who actually owned that or whose property it was on, is that correct?

0:28:57.8 Zachary Moore: Correct. I asked that question of the applicant in an email. I did not get an answer to that, but as you will see, the fence has been removed, so you would be welcome to ask that question of the applicant.

0:29:12.0 Michael Schnipper: Will do. Thank you, sir. Anybody else? No further questions. Thank you, sir.

0:29:18.1 Zachary Moore: Thank you.

0:29:20.0 Michael Schnipper: And who's gonna present for the applicant?

0:29:28.8 Michael Schnipper: Please state your name and job title for the record, please.

0:29:30.8 Scott Webb: I'm Scott Webb. I'm an architect at 103 West Walnut Street, and I'm here representing the applicant.

0:29:36.1 Michel Schnipper: Thank you, sir. Raise your right hand for me. Do you swear to tell the truth, the whole truth and nothing but the truth, in matters before this board?

0:29:41.3 Scott Webb: I do.

0:29:41.9 Michael Schnipper: Please proceed.

0:29:42.8 Scott Webb: Thank you. Good evening, Mr. Chair. I understand this is your last meeting, so I hope we make this a fun one for you. I'm here representing Calista Enterprises, regarding the redevelopment of the 314 site... Am I pushing the right thing? No? Got it. Got it. Okay, just a little reminder here that Calista Enterprises, the progeny, so to speak, of the Hoelzer Family, has just since 2018, invested about \$5 million into the community in redeveloping properties in the uptown, as well as creating new student rentals, safer, better, and they're asking to invest some more money in the community.

0:30:35.6 Michael Schnipper: Sir, while I appreciate that, would you please keep your comments to the property at hand?

0:30:40.0 Scott Webb: I will.

0:30:40.4 Michael Schnipper: Thank you.

0:30:41.3 Scott Webb: Okay, so as Zach pointed out, this is the R3MS zoning district. The little inset at the top shows you the proximity to the university. This is literally two blocks away by walk directly to North Quad there. And as Zach pointed out, this was part of the 2017 rezoning, rezoning it from R1MS up to R2MS. The intention of Planning Commission was specifically that in areas that are adjacent to the university, maybe we should encourage some development in that area, and so that's why my clients are here this evening to redevelop this property. What we found though is that even though they rezoned the entire area to the R3, you can see from the map every single lot in the neighborhood pretty much is 56 feet, like our lot is this evening. So even though they rezoned a huge swath of this section R3, there truly aren't very many, if any, lot widths that do actually comply.

0:31:47.1 Scott Webb: That being said, we're asking for what we think is a very minimal variance. And I think it's important to point out that there are really two standards for lot size in 1137.0(C), it is both lot width, which we're asking for variance for, and lot area. And on my previous slide here, I kinda pointed out that while almost none of these properties meet the lot width requirement, they almost all meet the lot area requirement, and that is, in my opinion, the perfect opportunity for a variance.

0:32:20.2 Scott Webb: In fact, when we look at the purpose statement of our variance code, it says, "A variance permits a variation from the strict interpretation of this code, so that no specific provision prevents the development of a specific site." We're asking for a variance for one specific provision here, but it's, in my opinion, only half of the standard that is required for the three-family lot. We, in fact, have a 127% of the required lot area. Yes, we only have 93% of the lot width, but that's what a variance is for. If you have excess in one opportunity and less than required in another, that makes it a good variance case, in my opinion, and it's why we're here this evening.

0:33:05.5 Scott Webb: Since the 2017 rezoning, we have been granted some variances for lot width in this district. At 2009 or 209 North Campus, this was actually a project of mine, I brought before this board, we had 80% of the required lot width, and that was determined as being not substantial. Tonight, we have 93. At 112 South Poplar, also in 2018, we had 86% of the lot width that was considered not substantial, both by staff and by the Board of Zoning Appeals, and we were able to proceed with that one. Again, tonight, we're asking for 93%. And while every case has to be judged on its own merit, I understand how Board of Zoning Appeals work, we don't feel that the word substantial should be used in such an arbitrary fashion. So you have to judge this case on its merits, but the word substantial shouldn't be changing its definition from case to case.

0:34:05.8 Scott Webb: I think it's important to point out here that as Zach mentioned, that this, the R3MS zoning district has lot width variances to control density, to create some kind of a rhythm of the street, and to make sure that we're not really trying to put too big of a building on this particular lot. In this case, I always like to remind the Board of Zoning Appeals that we have a 35-foot height requirement so we could certainly go taller here if we wanted to, but we have found a way to meet all of the other zoning requirements for this lot and keeping it as a two-story structure, which we think is most compatible with the neighborhood. So, as I pointed out, we have 93% of the width. We have 127% of the area, the side and rear setbacks are either met or exceeded.

0:34:54.3 Scott Webb: So the rhythm of the street, the proximity of this house to its neighbors is exactly what is prescribed by the R3MS district. We're not asking for any width variances, we're able to provide all the parking, all the sidewalks that you see from the front to the back of the lot, two sidewalks to the street, three private entrances, and still meet the lot coverage requirement. So we feel that this building is not too big for the lot. If we can meet every other zoning restriction, side yard setbacks, excess rear yard, provide all the parking, provide all the sidewalks. So it shows that the... This project will in fact, fit on the lot.

0:35:31.8 Scott Webb: And we're looking at what's honestly, a four-foot variance here, so the width of this lectern, and I would challenge anyone to walk up and down the streets of Mile Square and tell me which lot is 56 and which lot is 60. I think the four feet is honestly imperceptible, especially when you're exceeding the side yard setbacks. It's also important to note that one of the goals of Planning Commission is to try to improve the parking there. This building obviously is a single-family house, had its own curb cut.

0:36:02.8 Scott Webb: Now, the Planning Commission and presumably, Board of Zoning Appeals, approves parking off the alleys, instead of on the street. So by eliminating a curb cut there, taking all the traffic and burying it back off the alley that is a benefit to the neighborhood. We believe also then we can remove the curb cut in the driveway that's currently in the front yard, which would open up maybe another parallel parking space on the street for visitors, since all of our residents

would be accounted for.

0:36:38.5 Scott Webb: As Zach pointed out, we believe that the house is in line with the Mile Square design guidelines. And based on The Field Guide to American Houses, this house was designed as a version of what we call a Midwestern gable and front wing. And from the National Style was very popular from 1850 to 1890. As you all know, with the university in 1809, this is a lot, this is the era in which a lot of the Mile Square was actually built, so that's sort of why we chose this particular design style. And also as Zach pointed out, we are providing three distinct entrances to the three separate apartments, all facing the street, as the zoning code requires.

0:37:19.2 Scott Webb: The fire chief expressed concern over the location of the fence, in response, my clients hurried out there and took down the fence. To address Mr. Conrad's concern, taking the fence down was quite a bit easier than taking the posts that were set in concrete to do in a couple of days, but we clearly have no intention of leaving a row of posts as a side yard decoration here. So if you'd like to make that a condition that we finish removing the fence, we're certainly happy to do that.

0:37:50.6 Scott Webb: One thing I want... I'm gonna go back to the building just for a second. One of the things that we've done here, a lot of the houses in the Mile Square, as you know, have very tall ceilings, we build eight-foot ceilings a lot now. This is built with extended ceilings on both floors. It allows for the windows to be set higher, to have bigger windows. It allows for transoms over the doors, which is again, kind of a Mile Square sort of historic reference to include the transoms in larger windows and a better proportion for the windows, we believe.

0:38:29.5 Scott Webb: The decision standards do ask for any other factor. We believe that the comprehensive plan is a factor. It's our guiding document. We're currently in the process of creating a new comprehensive plan, but this is the one that we have in place at the moment. And there's a lot of chapters that we feel support this particular variance request. In the land use chapter, obviously, we prioritize infill development and redevelopment of underutilized sites as a priority. We feel that this very tired, single-family house that you see up on the right is a perfect candidate for redevelopment.

0:39:06.4 Scott Webb: It goes on to say, "To encourage the redevelopment and revitalization of existing underutilized student and non-student housing developments within the city over the construction of new rental housing." That's exactly what Planning Commission was talking about when they up-zoned this area. I recall one of the members saying, "We've learned that you can't just keep stepping on the balloon and think it's not gonna pop up somewhere else."

0:39:28.7 Scott Webb: So Planning got proactive and decided, let's figure out where we do want the students to live and let's change the zoning to encourage them to live there. And so that's kind of where we are now. And I think that speaks directly to the goal of the comprehensive plan rather than sprawl and let the students spread out farther, let's keep them kind of corralled next to the university and increase the density as needed to make that happen.

0:39:52.4 Scott Webb: Likewise, in the housing section, they talked specifically about enhancing the neighborhoods within the Mile Square, improving rental housing. We certainly believe that this will do both of those redevelopment of existing residential areas to have a strong neighborhood quality, maintaining the small town character. We feel that the design guidelines that Planning

Commission and City Council put in place worked toward that end and staff seems to agree that we are providing a historically appropriate and compatible design for this site.

0:40:25.0 Scott Webb: We want to continue to foster a high quality community with a distinct sense of place. That's why we're not doing vinyl siding here. This is a brick house. This is a historically designed house. We want to continue pedestrian connectivity and walkability. We're eliminating a curb cut, connecting sidewalks everywhere that we can connect them. And it suggests, the comp plan suggests we investigate off-street parking solutions, which I believe that we have provided in this particular case and improve on-street parking by the elimination of the driveway.

0:40:56.2 Scott Webb: So I have a different read on the decision standards than staff does. Whether the property in question will yield a reasonable return, we believe that a reasonable return can be achieved by providing the principal permitted use that was expanded by the rezoning of the area. So when opportunities arise, when zoning changes, regardless of what it was when they bought the property, it's the applicant's opportunity to reinvest in his property, and in the community, and so yes, there may be some benefit of an existing single-family house there, but we don't believe that that particular standard is designed to preclude you from trying to do more on your property. Just because you have something that makes money, doesn't mean if the opportunity to grow it is there, that you don't take that opportunity.

0:41:48.2 Scott Webb: Whether the variance is substantial, we believe this variance is clearly not substantial, as I said. I believe four-foot is imperceptible as a lot width if you were walking by in the neighborhood, and as I pointed out, where only staff seems to wanna focus on half of the standard, the lot width standard, but really isn't addressing the lot area standard, which goes hand in hand. In this case, we have an excess of area.

0:42:18.7 Scott Webb: We believe the essential character of the neighborhood would be improved with a new building, more historically appropriate, designed in accordance with current building codes, safer and the Mile Square guidelines, providing the required parking. Whether the delivery of governmental services would be affected, obviously, we, my clients jumped at the opportunity to attend to the fire chief's concerns and will continue that and get that fence out of the way there. Whether the property was purchased with the knowledge of the zoning restriction, as Zach pointed out, this property was purchased about three zoning restrictions ago.

0:42:56.8 Scott Webb: I mean, zoning changes, zoning is a fluid document. We hold public hearings when we change the zoning maps, so people are aware of their opportunities to improve their property. So yes, it was zoned R1 at one time, but... And yes, they knew about it, but I don't think that works against them to want to be able to reinvest here. Whether the property owner's predicament can feasibly be obviated through some other method, as Zach pointed out, these lot sizes were set probably with the original plat of the city in 180... Whatever that was, 1811 or something. So we don't have the opportunity to buy four feet from the neighbor in this particular case, but again, I go back to the fact that we have excess area and a little less width, that's what makes it a good variance case, in my opinion.

0:43:49.5 Scott Webb: We also disagree with staff, we believe that the spirit and intent of the zoning code is considered in this application for a couple of reasons. This is considered a principal permitted use, R3 in an R3 district is a principal permitted use. And we have this board and we have the chapter of the zoning code called variances. The standard that we're looking at, the Duncan

standards, is not specifically about R3, it says, "Substantial justice being done in the spirit and the intent behind the zoning code." The zoning code in its entirety takes into account variances, in fact, it describes how you go about them and so this is why we're here.

0:44:34.6 Scott Webb: This is an opportunity to exercise the rights. And as I pointed out, from the purpose statement in that zoning chapter, it's set up so that no specific provision prevents development of a specific site, we feel that that's exactly why we're here. And lastly, the other relevant factors, I think I pointed out to you how we feel that we comply with the comprehensive plan, both the goals and the objectives, and I would be happy to answer any questions that you have.

0:45:09.0 Michael Schnipper: Thank you, very well done as always. Mr. Conrad?

0:45:16.6 Calvin Conrad: Who owns the fence?

0:45:16.9 Scott Webb: The applicant.

0:45:17.7 Calvin Conrad: Alright.

0:45:17.9 Scott Webb: I mean, they can't take down their neighbor's fence.

0:45:21.4 Michael Schnipper: I appreciate him asking, that was a question we hadn't clarified. Excuse me. Ms. Rousmaniere...

0:45:27.6 Kate Rousmaniere: I got a question. Does the current single-family house abide by the width regulation or does it exceed it?

0:45:36.7 Scott Webb: I'm certain it complies. I mean, there's a whole driveway to the north and it's not over those setback to the south side as I can... As far as we can tell.

0:45:46.0 Kate Rousmaniere: Okay.

0:45:46.7 Michael Schnipper: Mr. Allison, you have anything?

0:45:50.7 Chris Allison: You said that, obviously, a three-family would give greater return than a two-family.

0:45:57.6 Scott Webb: Sure.

0:45:58.3 Chris Allison: But are you saying that a two-family would not return a reasonable profit?

0:46:04.7 Scott Webb: Well, I'm really not gonna mix that up at this point. I mean, the math is the math. I mean the two-family would generate more income, the three-family would generate even more, they're also more expensive to build and more expensive to maintain, so whether or not the number is completely fleshed out, that's a decision for my client to make.

0:46:27.5 Michael Schnipper: Anybody else?

0:46:29.3 Kate Rousmaniere: I think I have one more question. I think I'm allowed to ask this, I'm not, tell me if I'm not. Could a two-family house be built without exceeding the width regulation?

0:46:42.6 Scott Webb: Sure. Well, just to be fair, our building isn't exceeding the width regulation, the lot is the width regulation. And as Zach pointed out, 50-foot is the minimum for a two-family and 60-foot is the minimum for a three-family, so we have the lot width for a two-family.

0:46:58.7 Kate Rousmaniere: So you have a lot width for a two-family, I guess that's what I... Yeah, that's the way to put it. Okay.

0:47:05.2 Michael Schnipper: Anybody else? Thank you, sir. Is there anybody else who would like to speak before this board?

0:47:13.5 Jack Grove: Excuse me. I'm an attorney, Jack Grove and I'm here representing the applicant tonight; just in an advocacy role, not as a witness, but I do have a question for Scott before he sits down...

0:47:22.6 Michael Schnipper: Scott, approach the podium.

0:47:23.9 Jack Grove: And this does bear upon investment and return. Approximately in your knowledge of construction costs, what is the investment for this three-family as is proposed with this kind of architectural detail and brick?

0:47:38.6 Scott Webb: Sure. I mean, based on the size of the units and the development cost here, I think we're probably looking at between 750 and a million dollars. It's not uncommon for a single unit to cost 250 on its own right now. So three units, plus the site work and the demo and everything else, it could be anywhere between 750 to a million.

0:48:00.2 Michael Schnipper: Thank you, sir. Board members. Anything else? Mr. Grove, do you have something?

0:48:07.1 Jack Grove: Yes. I'd like to introduce Greg Dale, is the next witness. Mr. Dale is a land planning expert known nationally for his work and he has a report he would like to share and render his opinion, having to do with the Duncan decisional standards that we're discussing tonight. I have the entire text of the report. I'm sharing it with the court. Mr. Conrad. Mr. Moore...

0:48:50.0 Michael Schnipper: Thank you, sir.

0:48:50.8 Jack Grove: Mr. Conrad.

0:48:54.1 Calvin Conrad: Thank you.

0:49:01.3 Michael Schnipper: Mr. Dale, would you step to the podium, please? Please state your name and title for the record.

0:49:07.0 Gregory Dale: Greg Dale, I'm a principal with a planning and zoning consulting firm, with McBride Dale Clarion.

0:49:12.2 Michael Schnipper: And raise your right hand for me. Do you swear to tell the truth, the whole truth and nothing but the truth in matters before this board?

0:49:17.8 Gregory Dale: I do.

0:49:18.2 Michael Schnipper: Please proceed.

0:49:19.3 Gregory Dale: Great.

0:49:19.5 Christopher Conard: Could I have one point of clarification to supplement the record?

0:49:22.8 Christopher Conard: What is your business address please? I don't see it on the report.

0:49:27.4 Gregory Dale: Yeah, 5721 Dragon Way, Cincinnati 45226.

0:49:30.9 Christopher Conard: Thank you.

0:49:32.3 Gregory Dale: 227. I'm sorry. Thank you. Mr. Chairman, members of the board, I've been asked by the applicant to review the facts relevant to this case and share my thoughts about them. And that's what I would propose to do. I was not involved in the planning of this. I was not involved in the design of this. I was brought in as the application was being filed. So what I'd like to do is to walk through the same, same decision-making standards, the same factors that you've heard. And I do have a different take than staff.

0:50:05.7 Gregory Dale: I appreciate staff's professional presentation, but I'd like to add maybe a different perspective on that. But just by way of background, I indicated that I'm a principal with McBride Dale Clarion. That's a planning and zoning consulting firm. We have practice here in the region, but I've practiced work nationally with communities all over the country. I've drafted zoning codes, I've drafted comprehensive plans. I've been involved in many of the same kinds of issues that you have here before you.

0:50:36.2 Gregory Dale: I've also been asked to mention that I have actually been qualified as what in court is referred to as an expert witness in county courts and federal court, in a variety of different zoning cases. I've also done, over the years, a lot of work in training planning and zoning commissions, and also specifically, boards of zoning appeals. And I wanna be careful that doesn't mean that I'm better qualified than you all to assess the facts. I just want you to understand, I spent a lot of time in my career working with communities to think about how to weigh evidence and here ultimately, your responsibility here is to weigh evidence. I'm gonna talk about the factors that you have before you, I think the board probably understands that none of those factors are controlling. You don't have to meet all of them, you weigh those factors in coming to your conclusion, so that's what I'd like to talk about.

0:51:25.3 Gregory Dale: So, you know what I did, I came in, I reviewed the plans, I've walked the neighborhood. We put together some maps that I'm gonna share with you that are actually in the report, reviewed the code. Reviewed your comprehensive plan, which has been mentioned here, which is a very significant issue. And I did review some of the staff reports on other cases and I'll talk about that as I go. So I'd like to just jump into the different factors. Some of them, I'll hit lightly and some of them, I'll spend a little bit more time with.

0:51:55.0 Gregory Dale: Factor A is the issue of, or the question of whether or not the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance. So it is true that a single family and a two-family building can be built meeting the lot width requirements. But one of the things I wanna point out is a three-family is not just something to be reluctantly accepted. The three-family is actually referred to, in your comprehensive plan, as one of the "preferred uses", along with single family and two-family.

0:52:31.7 Gregory Dale: And that's in furtherance of the kind of urbanist principles that are in your comprehensive plan, this area, this neighborhood, and I'll talk about neighborhood a little bit differently maybe than you've heard tonight, is specifically encouraged to have this uses. It's not a reluctantly accept issue that I think that kind of sentiment has seeped into these discussions here. The three-family is just as preferred as a two-family or a single family. In fact, when you read the purpose statement of the R3MS, it specifically refers to three-families. Three-family is actually in the title of the district. So again, three-family is not a secondary thing that only cuts one way.

0:53:14.1 Gregory Dale: And my point there is this term beneficial use which is in the factors is not defined in your zoning code, there's no guidance in your zoning code as to what that means. So beneficial, benefit, the benefit certainly is beneficial to the property owner, but if you look at your comprehensive plan as actively encouraging this use, I think you can make the argument that it's beneficial to the community as well, and I think that's important to understand.

0:53:41.0 Gregory Dale: The question on whether the variance is substantial, 40 feet over 60 feet is obviously one of the factors. Substantial, the term substantial is also not defined in your zoning code, and what your zoning code says is that when a term is not specifically defined in the definition section of the zoning code, you essentially use the common dictionary meaning of the word. So I looked it up in multiple dictionaries. The word substantial, the common theme that runs throughout that is large in size. That's basically what we're talking about. Is this variance large in size?

[Background conversation from audience]

0:54:16.8 Gregory Dale: Mr. Chairman, shall I keep going?

0:54:20.2 Michael Schnipper: You may proceed. Please keep your comments to yourself. Thank you.

0:54:23.5 Gregory Dale: So I'm also aware that your zoning code actually discourages the consideration of other variances that have been granted, and I wanna talk about that because the question of whether or not this variance is large in size is substantial, is obviously a judgment. Staff indicated that in their opinion, it is substantial, I appreciate that perspective, but you notice, there were truly no rationale, no factual basis for coming to that conclusion. It's just their judgment and that's fine. That's their professional opinion. But when you look at how the city has applied that question in other instances, it's clear that has been looked at differently, and I wanna talk about that in just a minute here, but one of the things I wanna talk about, I wanna be careful here because I'm not an attorney, but as a planner, particularly in the kind of work I've done, I'm expected to understand what some of these legal principles are as they apply to us as planners.

0:55:19.2 Gregory Dale: Your seven factors here, eight, if you count the other, your factors here that you're considering are verbatim taken from an Ohio Supreme Court decision that planners in our business and the kind of work that I do are very familiar with, it's the Duncan versus Middlefield case, through Ohio Supreme Court that basically said, "When you're considering this question of practical difficulties, here are the factors that you consider." And what Oxford did smartly, is just pulled those into their code. If the Supreme Court says those are the factors, we're gonna make them the factors in our code.

0:55:51.6 Gregory Dale: Just like other communities have done, we've written zoning codes that put those same factors in, to guide you in decisions about whether or not practical difficulty is met, but what Duncan says is interesting on this point of substantial. If you actually read the Supreme Court case, what the court says is, "We can't make a judgement on this particular case, this Duncan family that was building in the village of Middlefield, we can't make a decision on whether or not the lot width is substantial because no one talked about what other cases, other examples were being applied in the community." So the very case that put these factors into your zoning code says that substantial has to be looked at in the context of what has happened in other cases.

0:56:36.6 Gregory Dale: I won't go through all the details, again, it's in my report, but you heard the architect talk about two other cases where greater percentage of variances were considered to be not significant. In those cases, one of them is in the same district in the R3MS district, the one at 112 Poplar Street, which I think is actually now 114 Poplar Street on the ground, was proposing an eight-foot variance, twice the variance that we're talking about here. Same regulations, same 60-foot lot width, 8 feet, twice the variance was determined not to be significant here. So I think that's something that the board can and should consider. The other thing I would point out in terms of that context, we put together a map that I'll share with the board, where we did some analysis...

0:57:45.0 Gregory Dale: This map is in the report but I just wanted to have it free-standing so you could look at it. So the R3MS district is what's depicted on here, the one in the northeastern quadrant of the Mile Square, and I'd like to point out that what we did using GIS off of the county's website, is simply to identify those lots that do not meet the 60 feet requirement and those that do. And the architect made the point, which I agree with, if you go out and you walk the streets and you look at these, other than some of the corner lots that are obviously different shape, if you go look at those that are 60 feet and those that are slightly less than 60 feet, me as a planner, I can't see the difference. To the human eye, to my eye, I can't see the difference. And I wanna point out a couple of things, so you can see the site highlighted there in the middle of the page, on University between Sycamore and Vine, and you can see that is one of six different lots that are in that area. So I would suggest then that once you look at that, that you go over to the west to North Poplar, also between Sycamore and Vine, and look on the east side of Poplar, and you see all those that do comply, and there's the same number of lots in there.

0:59:12.6 Gregory Dale: Again, the naked eye can't detect those. So we've written zoning codes, I know what these dimensional standards are like. 60 is a round number. Right? It could have been 58, it could have been 62. There's no science to that. Typically, what planners do is they look at context, they look at prevailing lot sizes, and they come up with what they think are reasonable estimates for what that lot width should be. I would suggest to you that I think it's highly unlikely that someone sat down and specifically said, "All of these lots in red, we don't wanna have three-families, and all of the lots in white, we do want to have three-families." So the point is that there's really no logical reasons why you would say, on that Poplar side, we want all of those to be three-

families, one of the preferred uses, and on this block, we don't want any of them to be.

1:00:08.5 Gregory Dale: When again, you walk around, same context, same neighborhood, same general pattern of buildings and so forth, so I would suggest that that's an important consideration for the board to keep in mind. The next factor, Factor C, is whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. Notice there's two different terms there, it's almost like it's two different factors, is the essential character of the neighborhood going to be substantially altered and are adjoining properties going to suffer? So let me take those one at a time, and again, I would like to pass on one more map for you to consider, that's also in the report.

1:01:11.8 Gregory Dale: This is a map that was prepared based upon the auditor's definition of uses. So first of all, I'd like to make a distinction, when we talk about the character of the neighborhood, so what staff talked about was the block in which this is located on. When I think of neighborhood, I think of something larger or a larger context. I think of something that looks more like this R3MS district. There's probably a reason why this area was zoned R3MS because it has common characteristics that I think would be more characteristic of a neighborhood.

1:01:47.0 Gregory Dale: And what I point out in there is, you can see that there's a mix of single family, two-family, three-family, commercial housing and apartments, which is what the auditors called it, and those are things like fraternity houses as well, there's even a retail use in the area. So that existing context, that neighborhood, I believe if you look at this map, a three-family in this location would be perfectly in character, within the essential character of the neighborhood.

1:02:18.3 Gregory Dale: The other thing that I would point out, when we talk about essential character, is you can look at it both as existing character and as desired character. So the desired character as represented in your comprehensive plan, as implemented through the zoning regulations, is part of that. I attached a number of different excerpts from your comprehensive plan, the architect talked about those as well.

1:02:49.5 Gregory Dale: I would point out though, that in your comprehensive plan, specifically on the map that refers to neighborhood enhancement concept area, this area is specifically shown as that designation, and multi-family, that's where the term preferred use comes in. There's no question that three-family, multi-family is designated as a use that's appropriate in that area. And I'll also point out, this hasn't been mentioned yet, but your economic development staff, the city's own staff, referred to this as a "positive change in residential development and infill in Oxford."

1:03:28.1 Gregory Dale: The other thing I'd point out in terms of the adjoining properties, which is the other term that's within that factor is the idea, and the architect talked about this, the idea that when we look at lot width, you have to look at that in concert with other dimensional standards, and what's happening here is that the setback requirements are exceeded, and specifically, they're exceeded by my estimate, my scaling, by 7 or 8 feet or so. So when you look at the four feet lot width that the variance is requested from, that's more than offset by increased setbacks. So in terms of impact on adjoining properties, a single family or a two-family could actually be built closer to the lot line than what's being proposed here. I hope that makes sense, because I think that goes to the issue of the adjoining property factor in there.

1:04:26.8 Gregory Dale: Factor D, whether the variance would adversely affect the delivery of

government services (i.e, water, sewer, garbage). That's already been discussed. We think everyone agrees, staff included, that that factor is now met. Factor E, whether the property owner purchased the property with knowledge of the zoning restriction, it's always been an interesting one to me. Anybody that purchased this property should know what the property zone. Right? I mean that's part of what you look at. But what's interesting here is, if you just read this on its face, did the property owner know when they purchased the property that this zoning restriction existed? They didn't because this district didn't exist at that time.

1:05:04.4 Gregory Dale: The zoning map has been changed, if I understood correctly, two different text amendments have been passed, so clearly the property owner, when they purchased this property in 2000, couldn't have known about their zoning restriction. Whether the property owner... I'm sorry, Factor F, whether the property owner's predicament can be feasibly obviated through some other method other than a variance, again, it depends on how you look at it. Yes, you could build a one or two-family there, but you can't build a principally permitted use that is specifically encouraged in the comprehensive plan with this, without, as the architect said, trying to buy four feet from somebody else, who doesn't have the lot width suited to sell either.

1:05:46.3 Gregory Dale: And then finally, the question, Factor G, whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. I'm not gonna repeat the discussion about the comprehensive plan, but when you look at the spirit and intent of the zoning regulation, clearly zoning regulations are a tool to implement the comprehensive plan. So when you look at the spirit and intent of the zoning code, you should always look at the comprehensive plan. But that's already been discussed. I just would reiterate that the issue of lot width, think about what the purpose, the spirit and intent of a lot width is, it is to preserve essentially, adequate spacing between buildings.

1:06:32.8 Gregory Dale: Staff described it as predictability in terms of spacing. Again, the lot width variance that's being requested here is more than offset by the setbacks. The buildings could actually be built closer to the other buildings, for a single family and two-family use. In terms of the spirit and intent of the lot width is more than being met with that offset. The other thing that staff noted is this predictable ratio of building size to lot size, and that this would result in a denser residential environment. Lot size and density. Those are a function of lot size. The minimum lot size required here is 8,000 square feet. This lot has more than 10,000 square feet.

1:07:23.9 Gregory Dale: So from a density perspective, from a ratio of building to lot size, it's actually lower than what could be permitted. It's actually a net gain, in terms of the ratio of lot size to building size. Just in conclusion, let me just kind of sum up. The variance would benefit the applicant. No question about that. They wouldn't be here if they didn't see a benefit in it, but it would benefit the community by providing a use that's specifically provided for here; four feet, which is less than 7% is not substantial according to how the city has applied that in the past. The city has already concluded that a variance in the same district from the same lot width requirement of twice the size here, was determined to be not substantial. The other point, think about this, a single family or two-family could be actually be built closer to the lot lines than what's being proposed here.

1:08:25.9 Gregory Dale: The structure exceeds the setback requirements. Again, more than offsetting any potential impact of a slightly narrower lot. And then, with the 10,000 plus square foot lot size, even with the variance, the density of the site will be substantially less than what's required

by the code. Based upon that, Mr. Chairman and members of the board, I realize your job is to weigh all of this evidence. I believed, from my professional opinion, perspective, that there is in fact reliable and substantial evidence that the dimension... Dimensional variance meets those decision factors. And thank you for your patience in that presentation, I'd be happy to try to answer any questions that you have.

1:09:08.3 Michael Schnipper: Thank you, sir. Before we go any further, I want the record to reflect that we have two handouts given to the staff and to the board by Mr. Dale, one concerning lots in the R3MS district in question, showing lots with less than 60 feet, and the second handout in the same zoning district, showing land uses in the R3MS zoning district. Just wanna have those in the record.

1:09:32.9 Christopher Conard: Well, and to further clarify, both of those maps or exhibits are contained in the primary report. These are just blowups.

1:09:43.0 Michael Schnipper: Okay. Very good. Board members, do you have any questions?

1:09:48.1 Kate Rousmaniere: Yeah. Thanks, Mr. Dale. I have two questions, just for clarification. One is about these two maps.

1:09:55.7 Gregory Dale: Yes.

1:09:55.9 Kate Rousmaniere: The one map has lots with less than 60 feet of width and they're a bunch of red. Those...

1:10:02.0 Gregory Dale: Yes.

1:10:02.9 Kate Rousmaniere: Properties are marked red. And the second one says land uses in the R3MS zoning district, which is the same district and it notes properties in red that are three-family dwellings. My question is, how many of the lots with less than 60 feet of width have three-family houses on them? And I came up with two out of about 30; one is on North Campus at about East Sycamore Street. And one is on Bishop at about Vine, I think. Does that match with what others are thinking? I sort of tried to overlay the two maps to figure out how many lots with less than 60 feet of width in the R3MS zoning district have three-family houses on them. And out of about 30, I couldn't count all these lots, but out of over 30, I came up with only two, I believe.

1:10:57.5 Gregory Dale: That's a good question. I did not specifically look at that. You have a quick eye in coming up with that, but I did not specifically look at that.

1:11:07.3 Kate Rousmaniere: That's of interest to me because we are talking about a three-family house and a lot with less than 60 feet of width. Then my other question has to do with the board of... And I didn't have time to read all this, but your exhibits, the staff reports of the Board of Zoning Appeals for South Poplar Street is on page 38 of this little booklet and on page 42, I think, there are two staff reports, one for South Poplar Street and one for North Campus Avenue. And in both cases, the staff recommended not supporting the variance. I don't know how the board actually voted. South Poplar and North Campus, the staff did not support the variance request. This also had to do with minimum lot width.

1:12:00.5 Gregory Dale: Yes. Another very good question. I was focusing specifically on the determination of substantial or not substantial, and in both cases, staff concluded, offered the opinion that it was not substantial. My understanding, and I believe we have copies of those resolutions that others will enter into the record as that both of those were approved.

1:12:22.8 Jack Grove: Yeah. The court clerk has the, there in the back of that book, the resolutions from the zoning board, whether they were approved.

1:12:30.0 Kate Rousmaniere: The board and the staff recommended against approval, but the board ended up voting... Which often happens, or sometimes happens.

1:12:37.5 Gregory Dale: That's my understanding.

1:12:42.5 Kate Rousmaniere: Okay.

1:12:42.9 Jack Grove: Here are the two BZA resolutions. I don't have multiple copies, but those are the resolutions, the board determined that the variance should be granted, even though they were both larger.

1:12:58.0 Gregory Dale: If I could just go back one question, if I could. One of the things that I think is worth thinking about is the lack of three-families that you're seeing there, can be explained, at least in part, by the fact that three-families were only recently permitted with the amendment. There's not a long history of the ability to construct three-families.

1:13:22.2 Michael Schnipper: Board members, anything else? Thank you, sir.

1:13:27.9 Christopher Conard: May I ask a question? I've got a question for a point of clarification. The... Your focus was obviously on three units.

1:13:37.4 Gregory Dale: Yes.

1:13:38.2 Christopher Conard: But based upon the diagrams and the maps that you showed, a number of the properties there would support a three-family because the lot width is wide enough, is that right?

1:13:50.9 Gregory Dale: Yes.

1:13:52.4 Christopher Conard: And you're suggesting that, if I understand your testimony, that the fact that there is, or two-families allowed wasn't a conscious decision in some way by the council that passed the code, to say that there's variations in lot width, therefore, we would allow one, two or three, by way of infill. And somehow that's not consistent with that comprehensive plan that was encouraging the infill.

1:14:23.7 Gregory Dale: Right. So the comprehensive plan identified this entire area as being appropriate for three-family. I think though to clarify my comments from earlier, my point is when the comprehensive plan suggests all of this area is appropriate for three-family, it's all zone R3MS. And yet, because of what effectively are historic accidents of some of these lots being 58, 56 square feet, that the net result of that being the pattern of what's permitted for single fam... Or for three-

family and that it's not, would, to me, border on an arbitrary distinction that's being made. There's nothing that I could find in your record in your comprehensive plan or your zoning code that says, these lots in red are not appropriate. Those lots in green are not appropriate. And also again, I wanna just keep in mind that lot width is one of the tools in concert with things like lot area and setback requirements, and on all the other points, those are more than offset or those more than offset the lot width issue we're discussing.

1:15:29.2 Christopher Conard: But wouldn't that what you just talked about, in terms of lot width, had been taken into account the lot size by virtue of the fact that the zoning allows for single, double or three-family housing? So by having variations in the lot size and dimensional standards, wouldn't that account for an explanation of why single, double, triple-families...

1:15:52.2 Gregory Dale: I appreciate the question. And I can't put myself in the place of ultimately, City Council when they adopted this. But when you look at the condition on the east side of Poplar versus what we have here, six lots that to the naked eye, look exactly the same, at least to me. And to say that all of those on the east side of Poplar were thought to be appropriate for three-family. And all of those along this stretch of University were not thought to be appropriate. Frankly, I just think that defies credibility, whatever that word is.

1:16:26.7 Christopher Conard: That's the right word. Thank you. Okay. I don't have anything else.

1:16:31.2 Kate Rousmaniere: I have one more question. Did you say that three-family housing is in the comprehensive plan?

1:16:37.2 Gregory Dale: Yes.

1:16:37.9 Kate Rousmaniere: Where did... Can you point that out somewhere? I am in the housing... You've attached that.

1:16:43.2 Gregory Dale: Yeah. It's actually, it's actually in the map. So if you work your way back about halfway through, halfway through the book, and you'll see the map and then a matrix that looks like this.

1:17:00.4 Kate Rousmaniere: Okay, now, I see.

1:17:00.4 Gregory Dale: This actually refers to multi-family, which is, so it refers to single family, two-family and then multi-family, which is anything above. So actually, four-family and five-family are preferred uses...

1:17:09.4 Kate Rousmaniere: Or apartment complexes.

1:17:10.7 Gregory Dale: Or apartment complexes are, yes, because this is in that purple color, the neighborhood enhancement on the map.

1:17:22.0 Kate Rousmaniere: Okay. Yeah. I see it's the Mile Square, the purple color neighborhood enhancement. So then you go back to the matrix and it says neighborhood enhancement area north of Spring Street around Uptown and Homestead.

1:17:34.8 Gregory Dale: So then you go all the way over to the right where it's got the check marks.

1:17:36.5 Kate Rousmaniere: Single family... I see, single family, SF, TF, two-family...

1:17:44.2 Gregory Dale: And then...

1:17:44.3 Kate Rousmaniere: I see ASF, attached single family, multi-family. Okay. So in the comprehensive plan, to review, the Mile Square area was identified as a place where that would be good for those kinds of housing; a variety of housing options, including single family, two-family, attached single family and multi-family, okay.

1:18:11.3 Gregory Dale: Right. And that in fact, I think is reflected in the actual pattern that was the other map that I distributed to you all.

1:18:17.5 Michael Schnipper: Board members, anything else? Thank you, sir.

1:18:28.8 Gregory Dale: Thank you very much.

1:18:29.5 Michael Schnipper: Is there anyone else who'd like to speak to this case?

1:18:31.8 Jack Grove: Yes. Jack Grove again. I would like to share some perspective as an attorney doing land use work zoning from the outside in. Of course, I've been doing zoning cases in Oxford, this city for over 40 years. And I handled the Tempo case a long time ago, involving fraternity housing that went on up and it actually changed some of the law in Ohio at the time, having to do with making a record and how Council that acted on the conditional use permit, rather than the zoning board, had to act in a quasi-judicial capacity. And that's what this board does. It's quasi-judicial, as you're well aware of, from your experience, Mr. Schnipper and the others, it's, you're not making your own policy, but you're applying this particular code.

1:19:22.7 Jack Grove: In Ohio, we have two different kinds of uses or variances, excuse me, a use variance, which means changing the use to something that would not be permitted in that district. For example, if you have single family, residential, exclusionary zoning, a use variance would be an example, putting a three-family in a single family residence. And years ago, we had mostly exclusionary zoning, all R1. All multi-family. We didn't have this blending and mixing of neighborhoods. An area variance, on the other hand, is changing a dimensional requirement. Perhaps it's a setback; perhaps it's lot size, and it's a much different standard. For a use variance, you must show a hardship. And that's why you look at the property owner's original knowledge when he acquired it, because you can't have a self-induced hardship.

1:20:25.2 Jack Grove: Area variance, hardship standard does not apply. The Ohio Supreme Court stated many, many years ago that it's a practical difficulty standard. And the notion behind that is that if there is some practical difficulty having to do with the dimension of this lot, ought we to change it to accommodate the intended use. So the question that you have before you is, if we relax the four-foot requirement, can we accomplish other objectives? And those objectives are stated in your comprehensive plan. The comprehensive plan, when it was adopted back in 2008, said that it is a using document. Staff is supposed to cite the comprehensive plan in rendering its reports and

making its decisions.

1:21:17.0 Jack Grove: The zoning board is supposed to look at the comprehensive plan. I don't know if any of you were around at the time, but at Shiver Hall, many of us were invited to speak around new urbanism and it predated the comprehensive plan. The speaker was nationally renowned, county commissioners were there, city council folks from all around the county, zoning administrators, township trustees, zoning board members, law directors, anybody involved in land use was welcome to attend and it was through the Harry Wilks Conference Center that this speaker was brought to our community.

1:22:03.0 Jack Grove: And he cited communities like little New England villages, where there were mixed uses and how walkable they were, and tried to explain that the exclusionary zoning that did not invite that blending of uses maybe wasn't the best way to conserve our land use and it was a way to avoid sprawl. Well, I wanna tell you that Oxford Council embraced new urbanism. And so the comprehensive plan speaks to walkability. And I might add that walkability to campus, this is only two blocks away. They talk about redevelopment, encouraging improving housing stock, and anybody that looks at the photos knows that this is a vast improvement over the structure that's already there. It's a major reinvestment. Mr. Schnipper, I think you reacted a little bit to Mr. Webb's explanation about other investments of this property owner.

1:23:06.3 Jack Grove: That's really meant to rebut comments in the staff report. And I'll explain, to the effect that the property owner acquired this, so that means it was a single family and that was his stated long term investment backed objective. I say not so, I've worked with this portfolio of properties for over 20 years and there have been major redevelopments, including historical renovations, one that received an award from the city on High Street. So the long term investment backed objective is improved land use utilization, reinvestment, replenishment, reinvigoration of this community. And that is the tradition that this property owner has exhibited consistently. It's a large portfolio. This is a rather drab structure that's there right now, unremarkable, not consistent with the historical character of the Mile Square.

1:24:08.0 Jack Grove: When I moved to my farm in Oxford Township, my late sister-in-law who was a Dewitt, and for those of you who know, the Dewitt's were original settling family members in Oxford back in the days before the University even. She gave me the 1875 Atlas of Oxford Mile Square and Oxford Township, and it hangs in our breakfast room. And I see these lots that are laid out, ones that we're talking about today, that harken back to well over 100 years ago. Nobody contemplated that we would be doing this today.

1:24:48.6 Jack Grove: So I think that we're asking for something that's minimal, other communities I go to would say, this is not significant. We can accomplish so much of a betterment by allowing this relaxation. It's called ameliorative, that we can lessen this restriction. But we're exceeding all of these other lot density setbacks and bringing a beautiful, lovely, more remarkable, up to date, safer structure compliant with current codes. And that's what this property owner would be delivering with this board's assistance, if we can go forward. So that's what I have to share with you.

1:25:29.2 Michael Schnipper: Thank you, sir.

1:25:30.2 Jack Grove: One final comment. Justice Brennan, late Justice Brennan from the United

States Supreme Court, cautioned that if police officers need to know the law, so do land planners. We've heard a lot about legal discussion tonight. And perhaps some of us don't like to get into that, but it really guides us in our decision-making. And so we know from other cases, how the courts look at these things and that's why we're having this legal discussion because it guides us all in our approach to this. I wanna thank you. Everybody's paid close attention and I really appreciate that. Thank you.

1:26:07.2 Michael Schnipper: Thank you, sir. Is there anybody else that would like to speak to the board?

1:26:10.9 Tony Miller: Yeah, I'll speak...

1:26:20.4 Michael Schnipper: Please state your name for the record.

1:26:22.6 Tony Miller: Tony Miller.

1:26:22.7 Michael Schnipper: And Mr. Miller, do you have standing to testify in this case, meaning do you live within 200 feet around the property?

1:26:28.7 Tony Miller: I have adjoining property, right next to the property they're trying to do.

1:26:31.7 Michael Schnipper: Thank you, sir. Raise your right hand for me. Do you swear to tell the truth, the whole truth and nothing but the truth, in matters before this board?

1:26:38.8 Tony Miller: I do, I do.

1:26:39.6 Michael Schnipper: Please proceed.

1:26:39.7 Tony Miller: Okay. So, basically, the whole thing about this variance is just to put more people on the property; not about all the beauty and all this other crap, it's just adding four more people. And the guys showing us map reading stuff, 'cause we did the map reading when the students were in town and the alley is full of cars, so basically, that's all I'm saying is that the variance is nothing but just to get more people on the property. And if it's passed, then I guess I can put another unit on the back of mine 'cause we're right behind those... His properties. Do you understand that or do I need to say more?

1:27:28.1 Michael Schnipper: Board members, do you have anything for Mr. Miller?

1:27:31.1 Tony Miller: Any questions?

1:27:31.2 Kate Rousmaniere: I have... My one question is, which property do you own? Like on that...

1:27:34.9 Tony Miller: Right behind... Directly behind the property.

1:27:38.1 Kate Rousmaniere: So it's the one on North... Is it the North Campus Ave address?

1:27:42.5 Tony Miller: Yes.

1:27:43.1 Kate Rousmaniere: Yeah. Okay.

1:27:43.8 Tony Miller: 317 to 321.

1:27:46.3 Kate Rousmaniere: I see.

1:27:46.4 Michael Schnipper: Which one are we talking about?

1:27:46.7 Tony Miller: Right.

1:27:47.7 Kate Rousmaniere: So it's North... Yeah, that...

1:27:48.5 Michael Schnipper: There?

1:27:49.5 Tony Miller: So I guess, Scott can design another unit of property for me back there, right?

1:27:52.1 Tracy Allen: I can't hear you...

1:27:52.2 Tony Miller: Huh?

1:27:54.5 Michael Schnipper: Mr. Miller?

1:27:54.5 Tony Miller: Oh!

1:27:54.8 Tracy Allen: I couldn't hear you...

1:27:54.9 Tony Miller: Oh, I just asked something. I asked Scott, would he design another four-unit for me then.

1:27:58.2 Tracy Allen: Thank you.

1:28:00.3 Tracy Allen: So I'll just report...

1:28:02.0 Tony Miller: Okay, alright, Jack.

1:28:04.3 Tony Miller: He's my neighbor.

1:28:04.5 Jack Grove: Yeah, we're neighbors and we're friends. So I've got a question for you.

1:28:08.0 Tony Miller: What? Oh, for me?

1:28:11.5 Jack Grove: Yeah. You don't live at the property that's next door, right?

1:28:14.1 Tony Miller: I own it.

1:28:15.1 Jack Grove: You own it, right. How do you use it?

1:28:17.0 Tony Miller: Student rental.

1:28:17.9 Jack Grove: Oh, okay. So you're a competitor, right?

1:28:19.6 Tony Miller: Oh, yeah.

1:28:20.1 Jack Grove: Okay. That's fine.

1:28:22.1 Tony Miller: Yeah.

1:28:22.1 Kate Rousmaniere: It's a two-family...

1:28:25.5 Tony Miller: I think that was the question, right?

1:28:25.6 Jack Grove: Yes.

1:28:25.7 Tony Miller: Okay.

1:28:28.2 Kate Rousmaniere: According to this map, Mr. Miller, that house is a single family house.

1:28:31.8 Tony Miller: Well, originally, the City of Oxford made me consolidate the lot 'cause it was a split lot on 317 and Kathy Dale made me consolidate it, 'cause it was two lots in it, on record, Butler County. And then the City of Oxford made me consolidate it just to put one up and then they changed the zoning stuff, and then... So they allowed me to put another unit on the back.

1:28:58.5 Kate Rousmaniere: Oh, so how many units are on that property? I know this is not really our case, but I'm just...

1:29:04.5 Tony Miller: It's 317 and 317 and a half, it's just four and four.

1:29:11.8 Kate Rousmaniere: You got two single-family houses on there, I just...

1:29:15.0 Tony Miller: Right. Which is allowed.

1:29:17.3 Kate Rousmaniere: Okay, I got it. Yeah. Okay, okay, thank you.

1:29:19.5 Tony Miller: Okay.

1:29:22.0 Michael Schnipper: Thank you, sir.

1:29:22.5 Tony Miller: No questions.

1:29:23.9 Michael Schnipper: Board members, anything else for Mr. Miller?

1:29:24.2 Tony Miller: Pardon?

1:29:25.3 Michael Schnipper: We're just making sure that nobody has any further questions.

1:29:27.7 Tony Miller: Oh, okay, I'm still here.

1:29:30.3 Michael Schnipper: We're good, thank you, sir. Anybody else? Okay, I need a motion to exit adjudication and re-enter regular session.

1:29:44.0 Chris Allison: So moved.

1:29:45.0 Calvin Conrad: Second.

1:29:46.7 Michael Schnipper: Thanks, Mr. Allison. Mr. Conrad seconds. All in favor say "aye".

1:29:49.6 Board members: Aye.

1:29:51.6 Michael Schnipper: Opposed? Without opposition, we're back in regular session.

1:29:54.9 Christopher Conard: Mr. Chair, can I make a recommendation? At this point before you go into whatever deliberations you do, given the fact that we've got multiple exhibits, I think that we ought to, for purposes of the record, identify them as to what they are in the event, however this plays out, whether there's an appeal or not. Mr. Grove, does that make sense to you?

1:30:16.7 Jack Grove: Yes, I agree.

1:30:17.8 Christopher Conard: Okay, so my suggestion would be is that we use numbers and that Exhibit One would be the Staff Report that was presented by Mr. Moore and that his PowerPoint be Exhibit Two.

1:30:34.2 Michael Schnipper: Okay.

1:30:34.2 Christopher Conard: Then I don't think that there's anything else until the applicant made a presentation and that the Applicant's Report that was presented by Mr. Webb was contained within the Staff Report. Is that a fair statement?

1:30:47.7 Scott Webb: Staff has my PowerPoint. Yes.

1:30:47.8 Christopher Conard: Okay. Did you have a separate PowerPoint or was that part of the original application?

1:30:55.7 Scott Webb: I have my own PowerPoint but it was submitted to the City prior to the hearing.

1:30:58.9 Christopher Conard: Okay, well, should we identify that as a separate exhibit then... Three?

1:31:02.7 Jack Grove: Yes.

1:31:02.8 Jack Grove: And we have the application also, which ought to be the very first.

1:31:04.5 Christopher Conard: Okay, well, you're right, the applicant's application would be Exhibit Three, the applicant's PowerPoint would be Exhibit Four. Then we've got Mr. Dale's report, which would be Exhibit Five.

1:31:19.4 Jack Grove: Yes.

1:31:19.8 Christopher Conard: And then we have the two blowups of the exhibit and we'll start with the lots less than 60 square feet would be Exhibit Six.

1:31:27.4 Jack Grove: Yes.

1:31:31.7 Christopher Conard: And then the land uses in R3MS zoning district would be Exhibit Seven.

1:31:33.9 Jack Grove: Yes.

1:31:36.1 Christopher Conard: Am I missing anything?

1:31:37.1 Jack Grove: Yes, the two...

1:31:38.6 Christopher Conard: Yes, yes. Okay.

1:31:39.2 Jack Grove: BZA resolutions where they approved the 8-foot and the 15-foot...

1:31:43.4 Christopher Conard: So for purposes of this record... By reference number BZA-2018-6 related to 112 South Poplar will be Exhibit... We have Eight now?

1:32:01.1 Jack Grove: Yes.

1:32:01.1 Christopher Conard: Okay. And then BZA-2018-09 related to 209 North Campus Avenue would be Exhibit Nine. So I think that's everything.

1:32:14.0 Michael Schnipper: Okay.

1:32:14.0 Christopher Conard: Okay, anything else, Jack?

1:32:18.6 Jack Grove: No, sir.

1:32:18.6 Christopher Conard: Okay, alright, that's all I wanted to do for purposes of the record.

1:32:22.6 Michael Schnipper: I guess for the purposes of the record, do we wanna go through each one of those from staff or are we gonna be satisfied with Mr. Conrad's summation?

1:32:28.3 Kate Rousmaniere: I'm good with that summation.

1:32:32.3 Michael Schnipper: Mr. Conrad? I am all set. Let the records show the exhibits and their corresponding numbers, as suggested by the legal... Okay. Now, we can start deliberations and/or a

motion.

1:32:43.7 Kate Rousmaniere: Did we, did we... Are we ready for... Can we do deliberations now, do we make the motion for that?

1:32:47.7 Michael Schnipper: Yes.

1:32:51.7 Kate Rousmaniere: Okay. I want to start my deliberation and thank Mr. Grove for reminding us that this is about the law, because in fact, by law, we are debating here, minimum lot width for three-family use. We are not debating diverse housing stock or land use issues, or even the total lot coverage, which Mr. Webb suggested that we think about. But our job here is to review a variance request on minimum, and the minimum lot width for a... In this zone, is 60 feet for a three-family house. And so the variance request is for a reduction of the 60 feet regulation for a three-family house. That's what we're deliberating here.

1:33:47.1 Michael Schnipper: Correct.

1:33:47.8 Kate Rousmaniere: Okay. There was a lot of other stuff that was said, and I just wanna clarify that part. And I'll follow up just by saying that I was part of the Planning Commission that recommended the up zoning for this area. And I do agree, I follow and support the philosophy of increasing densification in this area, but I also really like and agree with the staff report that said that that up zoning, the intent was not to allow three-family on every property, just for the sake of increasing density. We can increase density but that doesn't mean we... There's no... No one ever said, in that Planning Commission meeting, how much density we were gonna increase it, it doesn't mean we were gonna suddenly put high rises in there or multi-family or even three-family. That's my understanding of the intent of that up zoning. And so, I think I'm done with that.

1:34:55.4 Michael Schnipper: I appreciate your concern there, but as was pointed out, in this zoning district, three-families were the preferred. It's not that they're trying to fit it on every one, but it is preferred housing stock within that district.

1:35:08.6 Kate Rousmaniere: I never saw the word preferred. Where do you see the word preferred?

1:35:11.6 Michael Schnipper: It's in the comprehensive plan.

1:35:13.2 Kate Rousmaniere: Comprehensive plan, it was one of the options, single family, two-family, multi-family were all the options for that area. And then the up zoning asked, it gave allowances that we could increase density, but nowhere did it say, we prefer three-family housing here. And in fact, although it is true, as someone mentioned that three-family housing is sort of a new option here, it is also true that of, in that area, in that up-zoned area, only three lots with less than 60 feet of width have three-family house... Only two, sorry, of the lots with less than 60 feet of width in this area, only two have three-family housing out of about 30 plus lots of less than 60 feet of width. It's actually, at the moment, a minority, that doesn't mean it has to be that way, but it is not... It does... It seems that in the up zoning process what's happened is a lot of people have put in two-family houses or two single family houses, like Mr. Miller.

1:36:16.2 Michael Schnipper: Okay. Mr. Conrad, anything?

1:36:23.1 Calvin Conrad: No.

1:36:23.2 Michael Schnipper: Mr. Allison?

1:36:25.6 Chris Allison: Okay. I happen to agree with what you've said and noticing the recent development, which is the slide that's up there right now, you can see that people are building single and double. They're not building three-family. That said, I often look at when we, when we talk about a variance, I look at the... Whether the person has taken advantage of us. For instance, if he had built, if he had built the building, was proposing a building that extended beyond the setbacks, I would be very much against this, but he didn't do that. I'm looking at this and saying that, from the perspective of maintaining the neighborhood, he's accomplished that; from the perspective of improving the neighborhood, there's no question, but that would be accomplished by doing this. So I'm still on the fence here because I think our primary charge is to find that there is a substantial reason to comply with the code, like issuing a variance. And I can't say that I see there is a substantial issue that would cause me to want to issue the variance. That's where I am right now.

1:38:06.6 Michael Schnipper: This board, you heard a lot of cases over the years of people where we may have had to stretch the definition of hardship that had to be overcome obviated by a variance, but we've also had a lot of cases where we realized that people wanna make, in their estimation, full use of their property and therefore, chose to come before the board asking for a variance. I don't think it's unreasonable for a person to wanna maximize their profit. I do not think that it is a substantial variance in this case, so that they can maximize their profit. We have a substantial difference between staff's opinion on this one and the applicant's opinion on this one, but we can go through every one of those step by step, if that would help the board to reach a consensus.

1:39:00.1 Chris Allison: I don't know that it would, I've gone through each one of them myself and... In every case, except one. After each party was finished, I agreed in the same way, but for the opposite outcome.

1:39:22.7 Christopher Conard: My recommendation is that you go through each one for purposes of the record.

1:39:25.1 Michael Schnipper: I agree, sir.

1:39:28.5 Michael Schnipper: Okay. Let's do that. Looking at the Duncan standards, Criterion A, whether the property in question will yield a reasonable return, or whether there can be any beneficial use of the property without the variance. Staff has said that it's not. Obviously you've got a rented single family structure there. There is a return, but it is, again, a situation that I feel that the property owner is seeking to maximize their profit from their property. But in the strictest sense, can it yield a reasonable return? And I'll have to say, yes, it can. Would you agree with that, Mr. Allison?

1:40:09.0 Chris Allison: Without the variance.

1:40:09.8 Michael Schnipper: Without the variance...

1:40:12.5 Kate Rousmaniere: Because they could build the two-family a...

1:40:13.9 Mike Schnipper: Well, they could leave the way it is, put up a new single-family. Okay. So it could yield a reasonable return.

1:40:17.8 Kate Rousmaniere: I agree.

1:40:20.2 Michael Schnipper: You agree? Mr. Conrad, do you agree?

1:40:22.1 Calvin Conrad: Yes.

1:40:22.6 Michael Schnipper: Thank you, sir. Criterion B, whether the variance is substantial.

1:40:27.3 Kate Rousmaniere: Not substantial.

1:40:28.5 Michael Schnipper: We are looking at a 6.7% reduction, 4 feet out of 60. That, to me, is not substantial. Mr. Allison, would you agree?

1:40:41.0 Chris Allison: I agree, especially since they're exceeding the setbacks.

1:40:44.3 Michael Schnipper: Thank you, sir. Ms. Rousmaniere?

1:40:46.0 Kate Rousmaniere: Yep. I agree.

1:40:46.9 Michael Schnipper: Thank you. Mr. Conrad?

1:40:48.8 Calvin Conrad: I disagree with your position. The applicant is asking for a significant, what I deem as significant reduction in size.

1:41:12.3 Michael Schnipper: Okay. That's fine. That's fine.

1:41:16.3 Michael Schnipper: Thank you.

1:41:18.3 Chris Allison: So Mike, if I could...

1:41:18.8 Michael Schnipper: Yes, sir.

1:41:19.6 Chris Allison: Where I came down on the other side is the city has reduced the lot widths, which in the past, we've looked at areas that had, didn't have enough width to the lots. And we've said, well, nobody could build anything here if we don't provide a variance and we didn't really have guidance, but it seems to me, in this case, we have definitive guidance. They've said that we will reduce the size of the lot width and here are the sizes, and this is what we want.

1:42:00.1 Michael Schnipper: Okay. But at the same time, we look back at what was done with the up zoning on this and planning and council reduced the minimum lot width for a three-family from 90 feet to 60 feet. That reduction to me is huge.

1:42:16.3 Chris Allison: Correct.

1:42:16.8 Michael Schnipper: The reduction here is not, the reduction requested in this variance is not.

1:42:23.7 Chris Allison: So, the question is, is if we are trying to maintain the spirit of the law or the ordinances, where do you... Where do you say it becomes substantial? Is it 50 feet, 52 feet, 54 feet?

1:42:43.9 Michael Schnipper: And I agree with you there. And I think it needs to be decided on a per case basis, based on the facts with that application. And this application, 6.7% is not substantial to me.

1:42:56.3 Chris Allison: Okay.

1:42:56.9 Michael Schnipper: Criterion C, whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. I think we're looking at a situation here, putting up a new building that is going to improve the property value because there's a possibility of improving the property values on adjacent properties and you're gonna eliminate a 1960 zero home to put up a new structure that's gonna substantially improve the neighborhood.

1:43:32.0 Michael Schnipper: Mr. Allison, would you agree?

1:43:33.1 Chris Allison: I agree with what you've said, also a lot, the setbacks and also the parking, I think, it's really important in this part of the city to address the parking, and we've done that.

1:43:46.6 Kate Rousmaniere: So the, essentially, you're saying the essential character of the neighborhood would not be substantially altered?

1:43:50.9 Michael Schnipper: Correct.

1:43:51.4 Kate Rousmaniere: Correct. I agree with that.

1:43:52.5 Michael Schnipper: Okay. Thank you.

1:43:54.2 Christopher Conard: There's another part to that though, but which also has to do with...

1:43:58.1 Michael Schnipper: Let's go through...

1:44:00.6 Christopher Conard: Okay.

1:44:01.1 Michael Schnipper: Okay. Whether the, we're looking at, the essential character of the neighborhood would substantially be altered or whether adjoining properties would suffer a substantial detriment. What we're looking at right now is the altered. And as I said, we're looking at an improvement. If there's an alteration, it's to the positive.

1:44:24.8 Calvin Conrad: I disagree.

1:44:30.1 Calvin Conrad: Because of the parking lot

1:44:34.0 Michael Schnipper: Okay. The parking is at the rear of the lot, which is the preferred area for parking, and I'm not following your...

1:44:48.5 Calvin Conrad: How do they get to the rear of the lot?

1:44:51.1 Michael Schnipper: Through the alley. There is no curb cut. Curb cuts being eliminated. So they don't even have to cross a sidewalk. They're going through the alley.

1:45:03.0 Kate Rousmaniere: Which is...

1:45:05.0 Scott Webb: 7-foot wide.

1:45:05.5 Kate Rousmaniere: Which is a way, I mean going parking off the alley is now a common... It's in the code... We approved parking in the alley?

1:45:13.6 Zachary Moore: May I respond to that, Mr. Chair?

1:45:16.1 Kate Rousmaniere: Yeah.

1:45:16.3 Michael Schnipper: Okay. I don't think it's parking in the alley. It's parking from the alley.

1:45:19.4 Kate Rousmaniere: From the alley. Sorry. Correct.

1:45:22.4 Michael Schnipper: Or access. Go ahead.

1:45:24.6 Zachary Moore: Yes. So parking is allowed off the alley by right. That is an acceptable place to put parking.

1:45:30.2 Michael Schnipper: Okay.

1:45:30.3 Chris Allison: I think the third item that we didn't discuss is density.

1:45:36.3 Michael Schnipper: Well, let's stick with...

1:45:37.1 Chris Allison: No, that's part of this.

1:45:38.0 Michael Schnipper: Okay.

1:45:38.8 Kate Rousmaniere: Oh, the essential character of the neighborhood would be substantially altered by the density? Is that what you're suggesting?

1:45:48.2 Chris Allison: That's what I'm suggesting that we should discuss.

1:45:51.1 Kate Rousmaniere: Okay. Ah, so the... So a proposal here is that the essential character

of the neighborhood would be substantially altered by the variance because it would increase the density of the neighborhood.

1:46:04.5 Kate Rousmaniere: And the adjoining...

1:46:05.1 Michael Schnipper: You're saying it would be altered to the negative?

1:46:08.6 Chris Allison: Well, but ameliorate that by saying that's what Council wants. There's a there's a reason this was up-zoned and yes, it does change the neighborhood, but that's the goal...

1:46:24.0 Michael Schnipper: Okay.

1:46:24.5 Chris Allison: As I understand it.

1:46:26.5 Calvin Conrad: And I agree.

1:46:26.5 Michael Schnipper: Okay.

1:46:26.5 Kate Rousmaniere: I agree. I don't know whether it would or would not? So we're saying the essential character of the neighborhood would be substantially altered?

1:46:38.6 Chris Allison: No, I'm saying it wouldn't, would not because that's the goal.

1:46:44.7 Michael Schnipper: So two parts, on Criterion C, are we gonna say the neighborhood would substantially be altered? Okay.

1:46:55.2 Chris Allison: By the physical presence of a building and by the density of the...

1:47:00.5 Michael Schnipper: Okay. Again, I'm kind of going back to, even though it's gonna be altered, it could be altered in the positive. It could be altered in the negative.

1:47:06.5 Chris Allison: Correct.

1:47:06.7 Michael Schnipper: Okay. Are you saying it would be altered in the positive?

1:47:11.2 Chris Allison: In total, yes.

1:47:12.6 Michael Schnipper: Okay. Ms. Rousmaniere?

1:47:15.6 Kate Rousmaniere: I'm saying would not, on both of these, that the essential character would not be substantially altered.

1:47:21.8 Michael Schnipper: Okay. And I agree with that.

1:47:23.7 Calvin Conrad: And I relate to Kate's comments.

1:47:27.3 Michael Schnipper: Okay. So the essential character of the neighborhood would not be altered. Whether adjoining properties would suffer a substantial detriment as a result of the

variance, my take is no.

1:47:41.0 Chris Allison: I agree.

1:47:45.5 Michael Schnipper: Mr. Allison agrees, Ms. Rousmaniere, do you agree?

1:47:47.2 Kate Rousmaniere: Yeah.

1:47:47.3 Mike Schnipper: Mr. Conrad?

1:47:49.8 Calvin Conrad: No, I do not agree.

1:47:53.1 Michael Schnipper: Okay. Do you want to expand on that or do you just want me to take your vote as no?

1:48:06.2 Calvin Conrad: Are we talking about...

1:48:08.0 Michael Schnipper: Whether...

1:48:08.3 Calvin Conrad: Criterion C?

1:48:12.2 Michael Schnipper: Criterion C, the second half of it, whether adjoining properties would suffer a substantial detriment as a result of the variance. Three other board members have said, no, it would not suffer.

1:48:25.6 Calvin Conrad: Then I would agree with all the board members.

1:48:30.7 Michael Schnipper: Okay. 4-0-1. Criterion C. Criterion D, whether the variance would adversely affect the delivery of governmental services, fire, water, sewage, in this case, fire protection, I think we've addressed that, it's been removed as a consideration. Mr. Allison, would you agree, it does not affect delivery of governmental services?

1:48:50.9 Chris Allison: It seems like we should put a requirement that a fence not be built.

1:48:56.9 Michael Schnipper: We can do that, we're just looking at the decision criteria right now

1:49:00.9 Michael Schnipper: That can be part of a motion.

1:49:02.4 Chris Allison: I agree.

1:49:02.8 Michael Schnipper: Okay. Ms. Rousmaniere, do you agree?

1:49:04.3 Kate Rousmaniere: Agree. Yep.

1:49:04.5 Michael Schnipper: I agree. Do you agree, Mr. Conrad?

1:49:09.8 Calvin Conrad: Yes. With removal of those poles.

1:49:12.4 Michael Schnipper: Again, that'll be part of a motion. Okay. Criterion E, whether the property owner purchased the property with knowledge of the zoning restriction. We've had two different changes in the zoning code since the owner bought this, unless he was clairvoyant and I knew Ned Hoelzer and I never saw him as clairvoyant, no, I don't think he bought it with a knowledge that the zoning restriction was in place. So, no, he did not buy it with the knowledge.

1:49:45.4 Chris Allison: I think it's irrelevant because the zoning code changed.

1:49:50.7 Michael Schnipper: My point exactly. So whether this property owner purchased the property with knowledge, no, he did not. Would that be accurate, Mr. Allison?

1:50:01.4 Chris Allison: That's correct.

1:50:02.1 Michael Schnipper: Okay. Ms. Rousmaniere?

1:50:02.8 Kate Rousmaniere: Right, I agree.

1:50:03.5 Michael Schnipper: I agree, Mr. Conrad?

1:50:05.0 Calvin Conrad: I agree.

1:50:07.6 Michael Schnipper: You agree. 4-0-1. Now, Criterion F, whether the property owner's predicament feasibly can be obviated through some method other than a variance. It can.

1:50:16.9 Kate Rousmaniere: It can. Yes.

1:50:18.2 Michael Schnipper: It can, but he can choose to put up a single family. He can choose to put up a two-family with no variance request, to put up a three-family that he wants to and maximize the return on his investment, no, it cannot be obviated without a variance.

1:50:34.2 Chris Allison: Correct.

1:50:34.6 Michael Schnipper: Mr. Allison, you agree?

1:50:35.9 Chris Allison: I agree.

1:50:36.3 Michael Schnipper: Ms. Rousmaniere, do you agree?

1:50:41.4 Kate Rousmaniere: Oh, shoot. I don't know that. I don't know. I had... It can be obviated through some method other than a variance because he can build a two-family or a one-family.

1:50:53.8 Michael Schnipper: Well, the question here is can it be obviated without a variance to build a three-family?

1:51:00.5 Kate Rousmaniere: Okay. Correct. No, it cannot.

1:51:02.3 Michael Schnipper: Okay. And I agree. Mr. Conrad?

1:51:03.3 Calvin Conrad: I do not believe that it can be. I would vote for a two-family.

1:51:21.9 Michael Schnipper: I understand that but in this particular case, to build a three-family on this, is there another means of doing it other than a variance?

1:51:29.4 Calvin Conrad: No.

1:51:29.8 Michael Schnipper: Okay. Then we're in agreement on that. Criterion G, whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. I think it would be because the whole purpose of variances is that not every property is gonna be an exact match with what your individual code may be, whether in 1962, when this property was built or today. You have to be a little flexible. You have to respect property rights. And I think in this particular situation that the intent and spirit behind the zoning code would be observed. Mr. Allison, do you agree?

1:52:22.0 Chris Allison: This is one of the areas where I have trouble, because it, it seems to me that the city came down and set some fairly nice restrictions on this by lowering the width requirements. And the problem is, was it an arbitrary 60 or was 60, you know, was that a definite cutoff? Was that just an arbitrary number? And it's a 56. It's really 60, that's where I have the trouble with this particular issue.

1:53:00.7 Michael Schnipper: And without knowing the history behind the zoning change, I don't think we can do more than speculate on that.

1:53:05.5 Chris Allison: Right.

1:53:07.1 Michael Schnipper: So, but in light of that, would the spirit and intent be upheld? Yes or no?

1:53:15.9 Chris Allison: The part that it's being upheld is the desire to increase the density in this particular area.

1:53:21.6 Michael Schnipper: Okay.

1:53:22.9 Chris Allison: So I think I would be okay with that.

1:53:24.6 Michael Schnipper: Okay. So we'll take that as a yes. Ms. Rousmaniere?

1:53:27.1 Kate Rousmaniere: I disagree. I think he said it would not be observed, the spirit and intent behind the zoning requirement would not be observed because the code exists for a reason and there's been a lot of changes to this land, to this area that has allowed for a lot of changes. And this is not following the code, so that's why I would say not.

1:53:51.0 Michael Schnipper: Okay. I'm gonna say, it is gonna follow the spirit and intent. Mr. Conrad?

1:53:58.6 Calvin Conrad: I personally believe that it does not follow the spirit or the intent.

1:54:04.9 Michael Schnipper: Thank you, sir.

1:54:06.9 Chris Allison: Yeah, I think I would have to change my vote so.

1:54:10.4 Michael Schnipper: Okay. Criterion H, any other relevant factor, do we have any that we want to consider?

1:54:25.9 Kate Rousmaniere: The two-family thing is kind of tricky here. I mean, you know, I'm not a developer and I don't own this property, but like the fact that a variance would not be required to build a two-family to me is a relevant factor.

1:54:41.1 Michael Schnipper: Okay.

1:54:44.2 Calvin Conrad: And I agree with Kate's position completely.

1:54:50.5 Michael Schnipper: Mr. Allison?

1:54:51.5 Chris Allison: It seems that people, I mean, people are running property to earn money. They aren't, it's not out of the goodness of their heart, so they're going to push the boundaries. And in this particular case, they're pushing the boundaries and there is an alternative that fits within the code.

1:55:19.9 Michael Schnipper: Okay.

1:55:20.8 Chris Allison: It's just human nature.

1:55:23.2 Michael Schnipper: Welcome to capitalism. I'm not gonna include, for me, I'm not gonna agree with that in terms of relevant factors, we've discussed it repeatedly and again, we're looking at a lot with variances. But I appreciate your input on that. To summarize this, Criterion A was a 4-0 vote that it does not support the variance. Criterion B, whether it's substantial. It was a 3-1 vote that it is not substantial. Criterion C, essential character of the neighborhood or detriment to adjoining properties, it would not do that by a 4-0. Criterion D, whether the variance would adversely affect the delivery of governmental services, again, a 4-0 vote that it would not. Criterion E, whether the property owner purchased property with knowledge of the zoning, it was 4-0 vote that he did not. And it would support the variance. Criterion F, whether the property owner's predicament feasibly can be obviated through some method other than a variance, I was specific that this was to build a three-unit on this property, and it was 4-0 that it could not be.

1:56:36.4 Michael Schnipper: Criterion G, whether the spirit and intent of the zoning code would be observed and substantial justice done by granting the variance, it was a 1-3 vote that it would not support the spirit and intent. Criterion H, we again had repeated comments about the ability to build two-family or a single family without variance. And have gone through all of that. Board members, is there a motion? And I would remind you that Mr. Conrad has suggested that we have a stipulation or a condition that the rest of the fence is removed if we grant the variance.

1:57:14.5 Chris Allison: And no new fence put up...

1:57:16.7 Michael Schnipper: We can include that. That's fine. Is there a motion?

1:57:22.8 Chris Allison: So if I copied this down, right, Criterion B, C, D, E support the variance?

1:57:32.7 Michael Schnipper: Criterion B, C, D, E and F support the variance.

1:57:44.8 Kate Rousmaniere: Okay. The F and ones... Okay. So...

1:57:51.7 Christopher Conard: And when you're ready to take your vote, just because we don't have a full panel, just to remind you, that the motion would require three votes and then three votes to approve...

1:58:00.7 Michael Schnipper: Yes, sir.

1:58:02.0 Christopher Conard: Which I'm sure you knew.

1:58:05.6 Michael Schnipper: I have been here before. Thank you, sir.

1:58:06.3 Christopher Conard: Yes, you have. But not everyone may have been.

1:58:08.4 Kate Rousmaniere: Yeah. Missed that, okay. So I'll try and phrase a motion to deny the variance, right? So with regard to request for variance BZA-2022-02, a variance to section 1143.07(c), minimum lot width for a three-family dwelling, I make a motion to deny the variance because... Now I have to say why?

1:58:44.9 Michael Schnipper: Yes, using individual standards.

1:58:47.9 Kate Rousmaniere: Because the property in question will, A, will yield a reasonable return and can be used beneficially without the variance. The property owner... I lost track of my numbers.

1:59:22.1 Kate Rousmaniere: Okay. The property owner purchased the property with knowledge of the zoning restrictions. That's Criterion E and the property owner's predicament can be obviated through... No, sorry. Wrong. I'm sorry. And G, the spirit and intent behind the zoning requirement would not be observed by granting the variance. Is that alright?

1:59:56.0 Michael Schnipper: Yeah.

1:59:56.4 Kate Rousmaniere: Okay.

1:59:56.8 Michael Schnipper: Thank you, is there a second?

1:59:57.7 Calvin Conrad: Second.

2:00:00.4 Christopher Conard: Could you go over it? Could you go over the motion again?

2:00:01.9 Michael Schnipper: Motion is to deny the variance for a lot width based on Criterion A, that it can yield a reasonable return...

2:00:10.8 Kate Rousmaniere: E, G and H. And H.

2:00:11.2 Michael Schnipper: Criterion E, that the property owner purchased the property with knowledge of the zoning. E, G...

2:00:22.9 Kate Rousmaniere: G...

2:00:24.2 Michael Schnipper: As it would not uphold the spirit and intent of zoning code, in Criterion G.

2:00:29.9 Kate Rousmaniere: And also, I wanna add Criterion H to my motion, other relevant factors which is that a two-family property could be built without a variance. So, A, E, G and H. That's my motion to deny the variance.

2:00:51.3 Michael Schnipper: Is there a second?

2:00:55.7 Calvin Conrad: Aye. Yes.

2:00:56.9 Michael Schnipper: Mr. Conrad has seconded.

2:00:57.6 Chris Allison: Can I make an amendment?

2:01:03.8 Mike Schnipper: Certainly.

2:01:04.6 Chris Allison: That a fence not be allowed to be put up on that side of the house.

2:01:09.2 Christopher Conard: You have to vote, I think on the main motion first because that's a different...

2:01:13.3 Michael Schnipper: I was gonna say...

2:01:14.6 Chris Allison: That's what I was trying to figure out.

2:01:16.8 Michael Schnipper: Okay. There is a motion before the board to deny variance in...

2:01:26.4 Michael Schnipper: In case BZA-2022-02, subject property 314 University, requesting a reduction in lot width, under Section 1143.07(c), using Criterion A, E, G and H. Mr. Moore, if you do a roll call for us please and a yes vote denies the variance; it upholds the motion and denies the variance.

2:02:05.6 Zachary Moore: All right. I will start with Mr. Conrad.

2:02:09.8 Calvin Conrad: Yes.

2:02:10.2 Zachary Moore: Ms. Rousmaniere.

2:02:12.0 Kate Rousmaniere: Yes.

2:02:12.8 Zachary Moore: Mr. Allison.

2:02:13.9 Chris Allison: Yes.

2:02:14.7 Zachary Moore: Mr. Schnipper.

2:02:15.9 Michael Schnipper: No. The motion does carry, the variance is denied. Mr. Allison?

2:02:23.8 Michael Schnipper: Point on the fence then?

2:02:28.2 Michael Schnipper: Okay. That concludes BZA-2022-02. Do we have any new business coming up on the next?

2:02:39.8 Zachary Moore: We have... Mr. Chair, we have not received any applications in time for the deadline for the July meeting, but I did want to take a moment to thank you and Mr. Allison for your service to the board, on behalf of the Community Development Department. So we thank you very much for your time, your energy contributed to the board.

2:03:00.7 Michael Schnipper: I appreciate that. I've got a couple of thoughts I'd like to share before we adjourn. Mr. Conard?

2:03:05.6 Christopher Conard: And I want to echo on what Zach has had to say. I have been to some BZA meetings in various areas and I want to commend you, Mr. Schnipper, for... You run excellent meetings, control the proceedings in an appropriate way, and manage the deliberation so that chaos doesn't ensue, which is sometimes difficult when it comes to BZA. So I want to recognize those extraordinary talents that you've demonstrated.

2:03:33.0 Michael Schnipper: Thank you, sir. I appreciate both of your comments. I have a couple of thoughts and Scott, don't run off. Before we adjourn this evening, I'd like to take a few min... A few moments to share a couple of thoughts. This will be my last meeting as a BZA member since I am term-limited out. Paul Brady asked me to apply for membership on this board nine years ago and I was reluctant to make that application, but Paul convinced me that it really would not take much time since the board only met a couple of times a year.

2:04:01.4 Kate Rousmaniere: Yeah..

2:04:04.4 Michael Schnipper: Needless to say his estimation of the caseload was way off. Still, being on this board, has been both gratifying and educational. It's given me a much better insight into the workings of our local government, the city administration and staff. For one contemplating... For anyone contemplating applying to a board committee or commission, I would urge you to do so. We are a small community and we need and value the participation of our fellow Oxonians. Perhaps the biggest takeaway from my tenure on this board is the competency and thoroughness of the city staff, both past and present. Every case the BZA heard was well researched and well presented, and that made the BZA's decision-making process that much easier. Thank you for doing so. Now Zach, I'm gonna bust your chops a little here. Zach's presentations to the board have always been well researched and well presented, so much so that I've made comments to him about being too thorough.

2:05:12.3 Michael Schnipper: Zach, you do a great job, but you have to make Scott Webb earn his money once in a while.

2:05:18.7 Michael Schnipper: So if I was asked for a negative about being on BZA, it would be the weakness of our zoning code in terms of enforcement. Without effective enforcement, our code and our decisions become a little more than wish list with a hope for voluntary compliance. I would urge Planning Commission and then City Council to address the needed changes and give staff the enforcement tools they so badly need. There'll be two new board members at the next hearing and I wish you well during your tenure. I hope you make good decisions while you're on the board and I remind you that property rights are highly valued by the courts, but they're not absolute. Be certain to underpin every one of your decisions with using the Duncan standards, so that the applicant, and if necessary, the court, understands it. So nine years have flown by much faster than I thought it would. Fellow board members, it's been a pleasure to work with you. Is there a motion to adjourn?

2:06:17.8 Kate Rousmaniere: Aww.

2:06:17.9 Chris Allison: So moved.

2:06:19.2 Michael Schnipper: Thank you, sir. Second?

2:06:20.6 Calvin Conrad: Second.

2:06:22.4 Michael Schnipper: All in favor?

2:06:23.8 Board members: Aye.

2:06:24.5 Michael Schnipper: Aye. Meeting's adjourned, Thank you.