

APPEAL CASE NO. ZH20180091
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II Centennial Plaza
 805 Central Avenue, Suite 500
 Cincinnati, Ohio 45202
 Monday- Friday 7:30 am- 4 pm
 513-352-1559
Boards@cincinnati-oh.gov

ZONING HEARING EXAMINER

Application for Zoning Relief

Office Use Only
 Case Number: _____

Hearing Date: _____

Section 1. SUBJECT PROPERTY
 ADDRESS 2623 Erie Avenue COMMUNITY Hyde Park
 PARCEL ID(S) 041-0004-0103-00
 BASE ZONING CLASSIFICATION OL- Office Limited ZONING OVERLAY (if applicable) UDOD
 Non-Residential Project Residential Project (RCO) One -, Two -, and Three- Family Dwelling

Section 2. APPLICANT
 NAME DLM Realty, Ltd. CONTACT PERSON (if legal entity) Peter Saba, Esq.
 ADDRESS 2623 Erie Avenue CITY Cincinnati STATE OH ZIP 45208
 EMAIL pas@sspfirm.com RELATIONSHIP TO OWNER (if not owner) legal representative
 TELEPHONE 513-533-2701

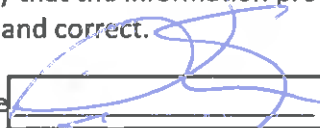
Section 3. OWNER
 NAME DLM Realty, Ltd. CONTACT PERSON (if legal entity) Peter Saba, Esq.
 ADDRESS 2623 Erie Avenue CITY Cincinnati STATE OH ZIP 45208
 EMAIL pas@sspfirm.com RELATIONSHIP TO OWNER (if not owner) legal representative
 TELEPHONE 513-533-2701

Section 4. NATURE OF RELIEF REQUESTED. (select all that apply)
 Variance Use Variance Special Exception Conditional Use
 Expansion or Substitution of Non Conforming Use Hillside Overlay District Permission
 Urban Design Overlay District Permission DD District Phased Development Approval

Section 5. BRIEF DESCRIPTION OF PROPOSED PROJECT *(Do not write "see attached" or leave blank. You may attach a longer statement to this application if the space provided is insufficient to describe your proposed project)*
Demolition of detached garage which can only fit one car, in order to create three parking spaces in essentially the same space. The demolition will also allow for use of an additional parking space at 2620 Erie and for the creation of 5-6 parking spaces at 3443 Zumstein Avenue. All areas will be appropriately landscaped and screened and will help alleviate parking issues on both Zumstein Ave. and Mooney Ave.

Section 6. SUMMARY OF REASONS WHY RELIEF SHOULD BE GRANTED.
 You must provide a written statement explaining how the proposed project meets the standards for all relief requested. Separate instructions for preparing this statement are attached. If you fail to follow the instructions for your type of request, your application may be denied.

Section 7. SIGNATURE. The undersigned does hereby certify that the information provided in connection with this application is, to the best of his or her knowledge, true and correct.

Print Name Peter A. Saba, Esq. Signature  Date 5/2/2018

Revised 07/01/2017

April 18, 2018



SUBJECT: Plan No.: 2018P01320
Request: Commercial
Zoning District: OL

Location: 2623 ERIE AV
Office Limited

ALAN ZAHUMENSKY
1286 MAYLAND DR
CINCINNATI OH 45230

Dear ALAN ZAHUMENSKY

I have received and reviewed the subject project for compliance with the Zoning Code of the City of Cincinnati, and it is being delayed for the following reason(s):

The subject property at 2623 Erie is in the Hyde Park Urban Design Overlay. As such, the requirements of the urban design overlay (section 1437-07 of the zoning code) demolition of a building/garage requires a public hearing and approval from the Zoning Hearing Officer. The proposed parking lot also requires review and approval from the Zoning Hearing Officer. Please submit an application for the Urban Design Review along with a site plan showing the parking and landscaping. Please note that the site at 3445 Zumstein also is in the Urban Design Overlay and the parking revisions proposed also require approval via the Zoning Hearing Office and the public hearing process. Both sites can be reviewed simultaneously at the same hearing as they are a coordinated site plan.

The Zoning Code is Title XIV of the Cincinnati Municipal Code. The Municipal Code can be accessed through a link on our department's webpage at www.cincinnati-oh.gov/planning.

You may obtain a Zoning Hearing Application Form with instructions on the City website at <http://www.cincinnati-oh.gov/buildings/hearing-appeals/zoning-hearing-examiner/>. If you have any questions with regards to the submission of your Zoning Hearing application and documentation, please contact me or Rodney Ringer, Senior City Planner at 513-352-4847.

All revisions to plans must be made **in person** at Buildings and Inspections, 805 Central Avenue, Suite 500. Please submit as many copies of the revisions as were submitted with the original Building Permit Application.

I will be happy to assist you with any Zoning questions or concerns you may have. Please call me at with questions or to make an appointment.

Sincerely,

A handwritten signature in black ink that reads "Weston Munzel". The signature is written in a cursive, flowing style.

Wes Munzel
Zoning Plans Examiner
513.352.2442

*Check the status of your permit via the web by using the following link:
<http://cagis.hamilton-co.org/opal/apd.aspx?QSPerm=2018P01320>

April 17, 2018



SUBJECT: Plan No.: 2017P09413 **Location:** 2623 ERIE AV
Request: Commercial Demolition
Zoning District: OL **Office:** Limited

ALLAN ZAHUMENSKY
1286 MAYLAND DR
CINCINNATI OH 45230

Dear ALLAN ZAHUMENSKY

I have received and reviewed the subject project for compliance with the Zoning Code of the City of Cincinnati, and it is being delayed for the following reason(s):

The subject property is in the Hyde Park Square Urban Design Overlay. As such, the urban design overlay requirements (Section 1437-07 of the zoning code), demolition/wrecking requires a public hearing before the Zoning Hearing Officer. Please submit an application for the urban design review. Also, please prepare a site plan showing the new parking lot layout and 3' perimeter landscaping on the boundary of the parking lot. The site plan should be included with the urban design review application.

The Zoning Code is Title XIV of the Cincinnati Municipal Code. The Municipal Code can be accessed through a link on our department's webpage at www.cincinnati-oh.gov/planning.

You may obtain a Zoning Hearing Application Form with instructions on the City website at <http://www.cincinnati-oh.gov/buildings/hearing-appeals/zoning-hearing-examiner/>. If you have any questions with regards to the submission of your Zoning Hearing application and documentation, please contact me or Rodney Ringer, Senior City Planner at 513-352-4847.

All revisions to plans must be made in person at Buildings and Inspections, 805 Central Avenue Suite 500. Please submit as many copies of the revisions as were submitted with the original Building Permit Application.

I will be happy to assist you with any Zoning questions or concerns you may have. Please call me at [redacted] with questions or to make an appointment.

Sincerely,

A handwritten signature in black ink that reads "Wes Munzel". The signature is written in a cursive, flowing style.

Wes Munzel
Zoning Plans Examiner
513.352.2442

*Check the status of your permit via the web by using the following link:
<http://cagis.hamilton-co.org/opa/app.aspx?QSPerm=2017P09413>

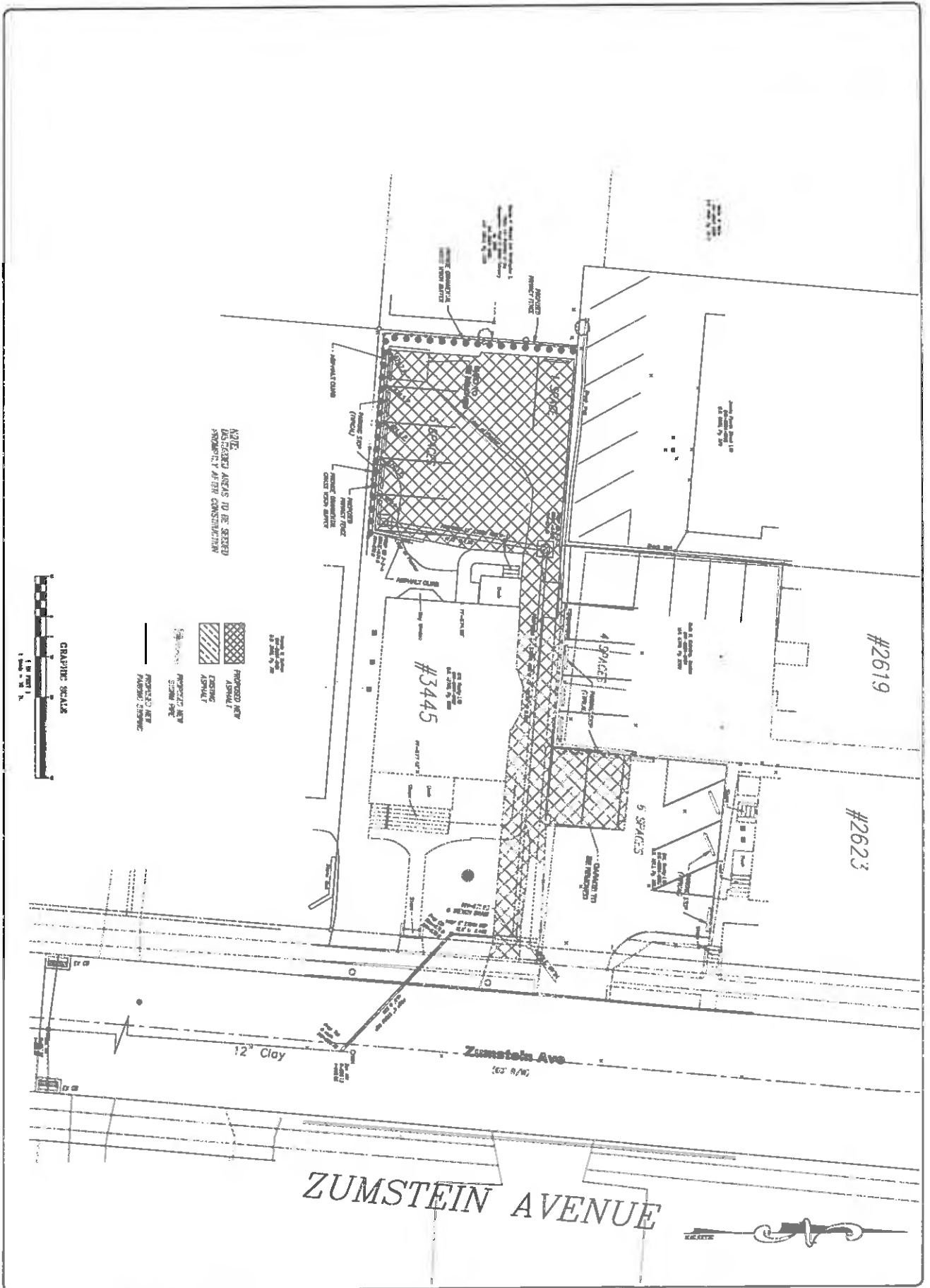
DML Realty, Ltd. is seeking a demolition permit for the detached dilapidated garage located at 2623 Erie Avenue, in order to increase off-street parking and help alleviate parking issues on both Zumstein Avenue and Mooney Avenue. As confirmed by the enclosed photos, the garage does not contribute to the architectural quality of the district. Although the foot print of the garage covers approximately 2.5 parking spaces, the garage only has capacity for one vehicle, and generally remains unused for parking because of the impracticality created by the car being frequently blocked into the garage. (On a different note, despite efforts to control infestation, the garage has also become a haven for rodents and squirrels.)

Additionally, the position of the garage leaves an awkward configuration for the balance of the rear parking area of 2623 Erie Avenue. As result, people parking in the remaining portion generally do so inefficiently, such that, the vast majority of the time, four or fewer cars are parked in the lot located at 2623 Erie Avenue. The position of the garage on the west property line of 2623 Erie, also makes the parking space in the southeast corner of 2620 Erie Avenue unusable. Removal of the garage would permit at least two additional parking spaces at 2623 Erie Avenue and the use of one additional parking space at 2620 Erie Avenue. Furthermore, the demolition of the garage would also allow for the installation of a driveway extending to the rear of 3443 Zumstein Avenue and the creation of up to 6 additional parking spaces in the back area of 3443 Zumstein Avenue. (Currently, 3443 Zumstein has no off-street parking.) Therefore, from a practical standpoint based upon actual use, demolition of the garage would allow for a net gain of 9 parking spaces.

As indicated by the enclosed site plans and landscaping plan, removal of the garage complies fully with requirements of the Cincinnati Municipal Code (“CMC”), including base requirements of the applicable Urban Design Overlay District as set forth in Sec. 1437.09, as well as the other applicable requirements of the CMC:

1. The Plan provides appropriate landscaping where required;
2. The Plan provides appropriate screening where required;
3. The Plan contains appropriate wheel stops where required; and
4. The Plan provides for adequate drainage and surfacing.

Demolition of the garage would also permit 3443 Zumstein to move more into compliance with the applicable Urban Design Overlay District and the CMC. 3443 Zumstein is grandfathered in as a 3-family dwelling, which is permitted to be used for law office purposes by Stagnaro, Saba & Patterson Co., LPA pursuant to a Notwithstanding Ordinance. The demolition of the garage and corresponding installation of up to 6 spaces in the rear of 3443 Zumstein Avenue would bring the building into compliance with the parking requirements set forth in CMC § 1425.19.



NOTE:
 UNSECURED AREAS TO BE SECURED
 PRIOR TO ANY CONSTRUCTION

LEGEND

- PROPOSED NEW ASPHALT
- EXISTING ASPHALT
- PROPERTY LINE
- EXISTING DRIVE
- EXISTING SIDEWALK
- PROPOSED NEW SIDEWALK

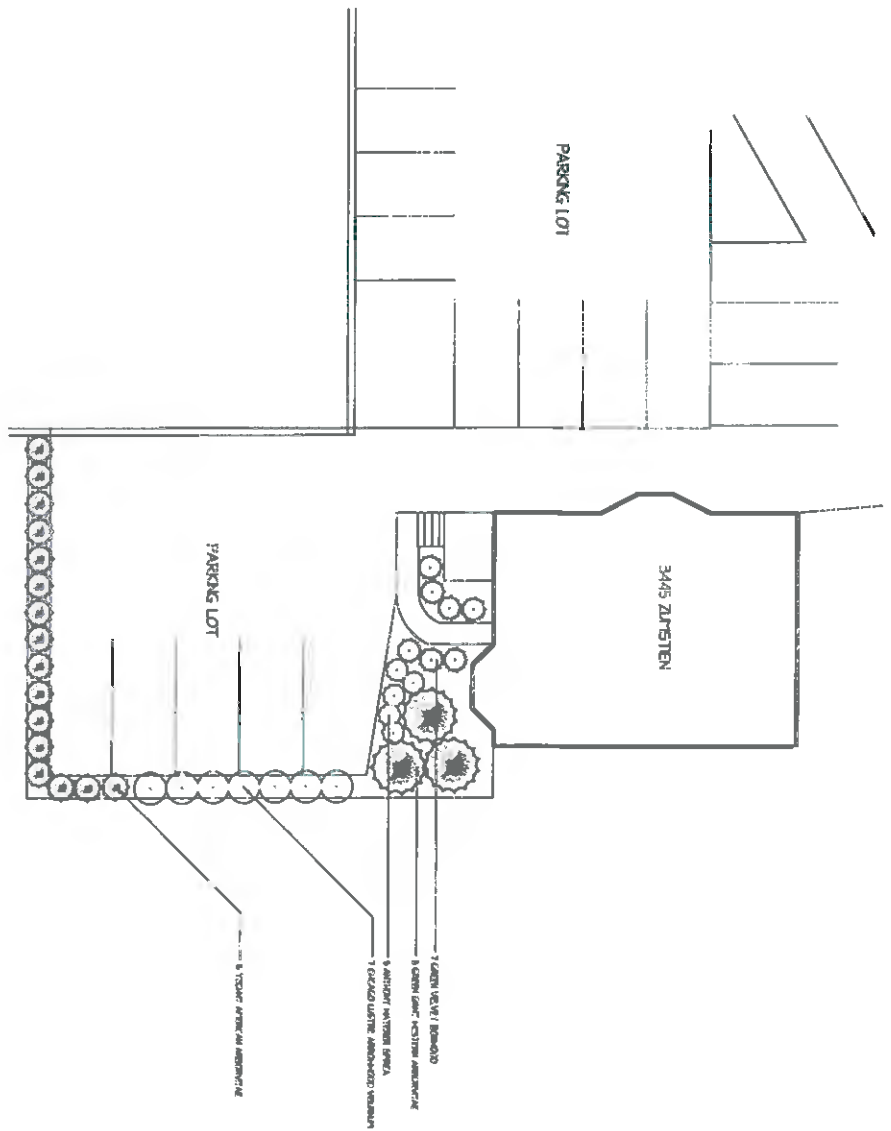


NO.	DATE	DESCRIPTION	BY	CHECKED
1	1/1/11	PRELIMINARY PLAN		
2	1/1/11	FINAL PLAN		

PLAN

- ZUMSTEIN AVENUE -
 CITY OF CINCINNATI
 HAMILTON COUNTY, OHIO

DEVELOPMENT PLANNING, INC.
 ENGINEERS, LAND PLANNERS, SURVEYORS
 3400 WETZ ROAD, CINCINNATI, OH 45241



THIS DRAWING REPRESENTS THE IDEAS AND DESIGN CONCEPTS OF HYDE PARK LANDSCAPE & TREE SERVICE AND REMAINS THE SOLE PROPERTY THEREOF. THE USE OF THIS DRAWING IN ANY FORMER NOT AUTHORIZED BY HYDE PARK LANDSCAPE & TREE SERVICE.

Stagnaro, Saba, & Patterson

2823 Erie Ave.

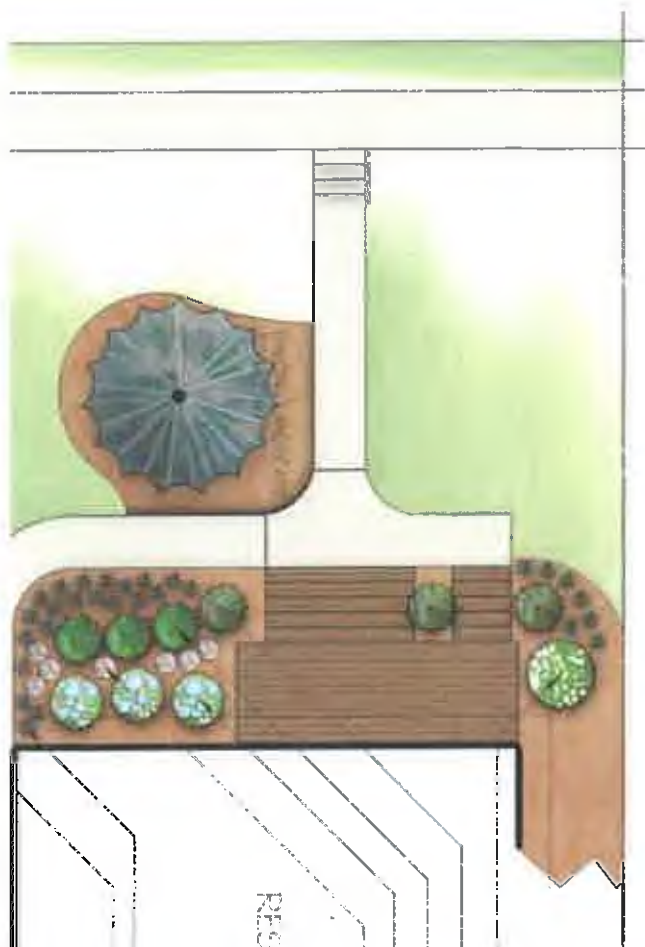
1-7
 28-24
 8-7-2017



NORTH



Proposed Driveway



- 1 JUDO VELOURNI
- 3 AMERICAN BOWWOOD
- 3 GREEN VELOURNI BEAUMOND
- 3 TWIST & SHOUT HYDRANGEA
- 7 CORNFLOWER

Plant	Quantity	Notes
1 JUDO VELOURNI	1	
3 AMERICAN BOWWOOD	3	
3 GREEN VELOURNI BEAUMOND	3	
3 TWIST & SHOUT HYDRANGEA	3	
7 CORNFLOWER	7	

ZUMSTEIN AVE
 3443 ZUMSTEIN AVE
 205 731-1334

Drawn by [Name]





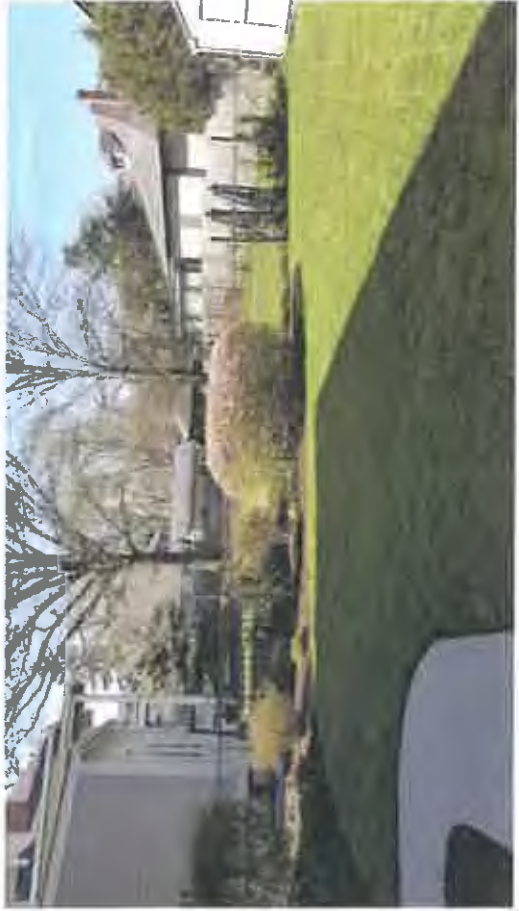
















EADS Fence Company, Inc.

131 Broadway Street
 Loveland, Ohio 45140
 (513) 677-4040
 Fax (513) 677-4045

Date Sold _____

Lead # 56233

Proposal Final Contract

1 of 2

Customer Stagnaro Saba and Patterson Date Estimated 02/04/2018
 Billing Address 2623 Erie Ave. Cincinnati Ohio 45208
 Job Location / Neighborhood Hyde park contact : Lori
 Home Phone _____ Work Phone _____ Source previous
 Cell Phone 5135335159 Email las@sspfirm.com

To furnish and install 116 feet of 6 feet tall privacy fence
 All treated pine framework,
 2x4x8 stringers (3 per section)
 4x4x8 post set 8 foot on center
 all post set in cement
 all picket are 5/8 x 5 1/2 with dog-eared top
 for treated pine pickets total cost \$2210.00
 for red cedar pickets Total cost \$2930.00
 cost does not include removal or disposal of existing chain link fence
 For removal and disposal of existing chain link fence total Cost \$450.00

TERMS: All accounts past due are subject to a service charge of 2% per month or 24% annum on invoices that are unpaid and over 10 days old. Should action be brought to collect any sums past due, Eads Fence Company shall be entitled to recover collection costs, court costs and attorney's fees. Invoices not paid in full void any and all warranties and all materials remain the property of Eads Fence Company until invoices are paid in full.

Conditions: Installations and workmanship will be consistent with the generally recognized standards in the industry. Eads Fence Company shall not be responsible for damage or delays due to strikes, fires, accidents, weather, seasonal business conditions, soil conditions, late shipment of materials or other causes beyond our reasonable control. However, all efforts will be made to complete work on time. Eads Fence Company is not responsible for compensation to the customer for any consequential damages including but not limited to time lost from work. This agreement, when accepted by the purchaser named above, shall become a contract under the laws of the state in which the job is located and shall be so construed. All changes or alterations in measurements or materials will be treated as an entirely new contract. If installation is suspended at the purchaser's request, the ensuing expense for time and travel and/or the installer to complete the job is to be paid by purchaser. There are no warranties expressed or implied including the warranty of merchantability on the materials used in the construction of the above proposal except those warranties extended by the manufacturer. *The removal of rocks larger than holes being dug, tree roots, buried foundations, debris, shale and other obstructions, will be added to the contract price as an additional cost to the purchaser.* 15% Restocking fee on cancelled jobs / orders. No refund of non-stock materials. Eads Fence Company sign must be on your completed fence or any and all warranties are voided. QUOTE VALID FOR 30 DAYS, unless otherwise stated.

<u>DEPOSIT</u>		<u>BALANCE</u>		<u>TOTAL</u>	
Amount	<u>\$ 0.00</u>	Amount	<u>\$ 0.00</u>	Amount	<u>\$ 0.00</u>
Received	<u> / / 20</u>	*DUE DAY OF COMPLETION*			

Acceptance of Proposal – The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified.

Signature _____
 Date of Acceptance _____

Sales Rep Barney McCart
 Cell # 5134783337

WHITE - Office CANARY - Installer PINK - Customer GOLDENROD - Salesperson



EADS FENCE CO, INC.

COMMUNICATION CHECKLIST

CUSTOMER NAME

Stagnaro Saba and Patterson

2 of 2

- PERMIT (Must be present on-site) By Customer
- HOME OWNERS ASSOC. APPROVAL By Customer
- UNDERGROUND UTILITIES - PUBLIC By Eads
- UNDERGROUND UTILITIES - PRIVATE By Customer

Eads Fence assumes no responsibility for damages to Private Utilities

- ESTABLISHED LINE BY CUSTOMER To Survey
- FRONT YARD / CORNER LOT SET BACK N / A
- TEAR OUT By Customer
- HAUL AWAY By Customer
- CLEAR FENCE LINE By Customer

- APPROVED SPACING BETWEEN HORIZONTAL OR VERTICAL BOARDS OR PICKETS 0
- APPROVED HEIGHT OF FENCE 6 ft.
- MESH / FABRIC SIZE n/a

- SETTING OF POST See Other
- IF POSTS CEMENTED Down From Grade
- TOP OF FENCE Straight Across
- BOTTOM OF FENCE Hold Up Hold up 2 inches
- FABRIC PLACEMENT Out Other _____
- WOOD PANEL PLACEMENT Inside Other _____

	<input checked="" type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C
<p><u>DIRT / SPOILS</u></p> <p>Customer MUST choose One of the Three options:</p>	<p>Customer takes care of dirt / spoils</p>	<p>Move but stays on site</p> <p>Location:</p> <p>Add \$ _____</p>	<p>Haul off site</p> <p>Add \$ _____</p>

- GATE POSITION Tight to Ground
- GATE SWING DIRECTION In
- GATE HINGE Right Other _____
- SELF CLOSURE SPRING NEEDED No

Job Notes:

CUSTOMER SIGNATURE: _____ DATE: _____

List of Witnesses

Peter Saba, Stagnaro Saba & Patterson

Alan Zahumensky, President, Pinnacle Paving

Joe Alan, Engineer, Development Planning, Inc.

**APPLICATION FOR WRITTEN ADMINISTRATIVE DECISION
ZONING HEARING EXAMINER PUBLIC HEARING
STAFF REPORT**

APPLICATION #: **ZH20180091**
APPLICANT: DLM Realty Ltd.
OWNER: DLM Realty Ltd.
ADDRESS: **2623 Erie**
PARCEL: 041-0004-0103
ZONING: OL (office) and Hyde Park Square Urban Design Overlay
COMMUNITY: Hyde Park
REPORT DATE: 5.11.18 (Revised 6.7.17)
HEARING DATE: 6.13.18
STAFF REVIEW: Matthew Shad, Zoning Administrator
Weston Munzel, Zoning Plan Examiner

Details of Zoning Relief Required:

- 1. Sec. 1437- Urban Design Overlay Review** – The proposed detached garage demolition and parking lot construction in the rear of the structure require an urban design review due to their location in the Hyde Park Square Urban Design Overlay.

Existing Conditions:

The subject property is one of two contiguous lots owned by the applicant and that are both proceeding through the urban design review process. The 2623 Erie Avenue lot is a 50'x 132' (6,600 SF) parcel on the edge of the Hyde Park Square business district. The site contains a two-story building that contains an office use. The site has a small parking lot in the rear that can hold approximately three cars. There is also a two-car detached garage in the rear.

The Hyde Park Square area is primarily zoned CN-P (commercial neighborhood pedestrian) with an urban design overlay. However, OL office zoning exists to the north across Erie and to the west. The areas to the east of the subject property are zoned CN-P (commercial) and to the south is zoned SF-6 single family. The site to the south is also owned by the applicant and has a "Notwithstanding" ordinance allowing an office use.

It should be noted that the office use allowed currently applies only to the current SSP law firm use. Should the law firm cease occupancy of the building, the office use would cease. Please see the following aerial and street view images that show the existing conditions and locational context. The subject property is outlined in red.



Aerial view of the subject and the two separate parcels (outlined in red). Each parcel has its own case number and report, but both sites are incorporated into coordinated site design. Erie Avenue is on the top of the image. Residential uses abut the subject property partially to the west and south.



The Erie Avenue site as viewed from Erie Avenue looking south.

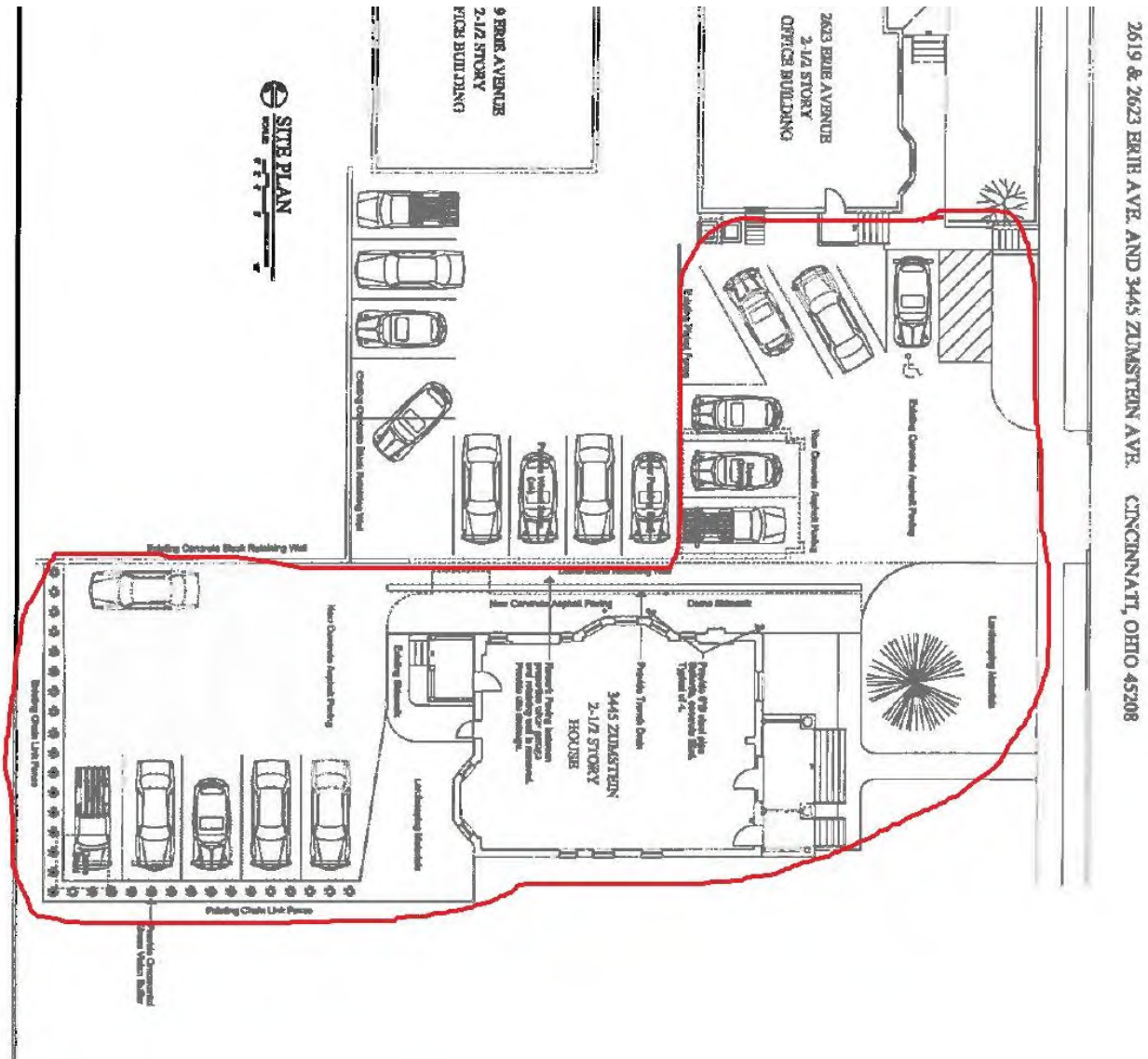


Image showing the detached garage that is proposed to be demolished on the left; and parking lot coordinated with new driveway on parcel to the south. New driveway proposed where re-cycling containers are located.

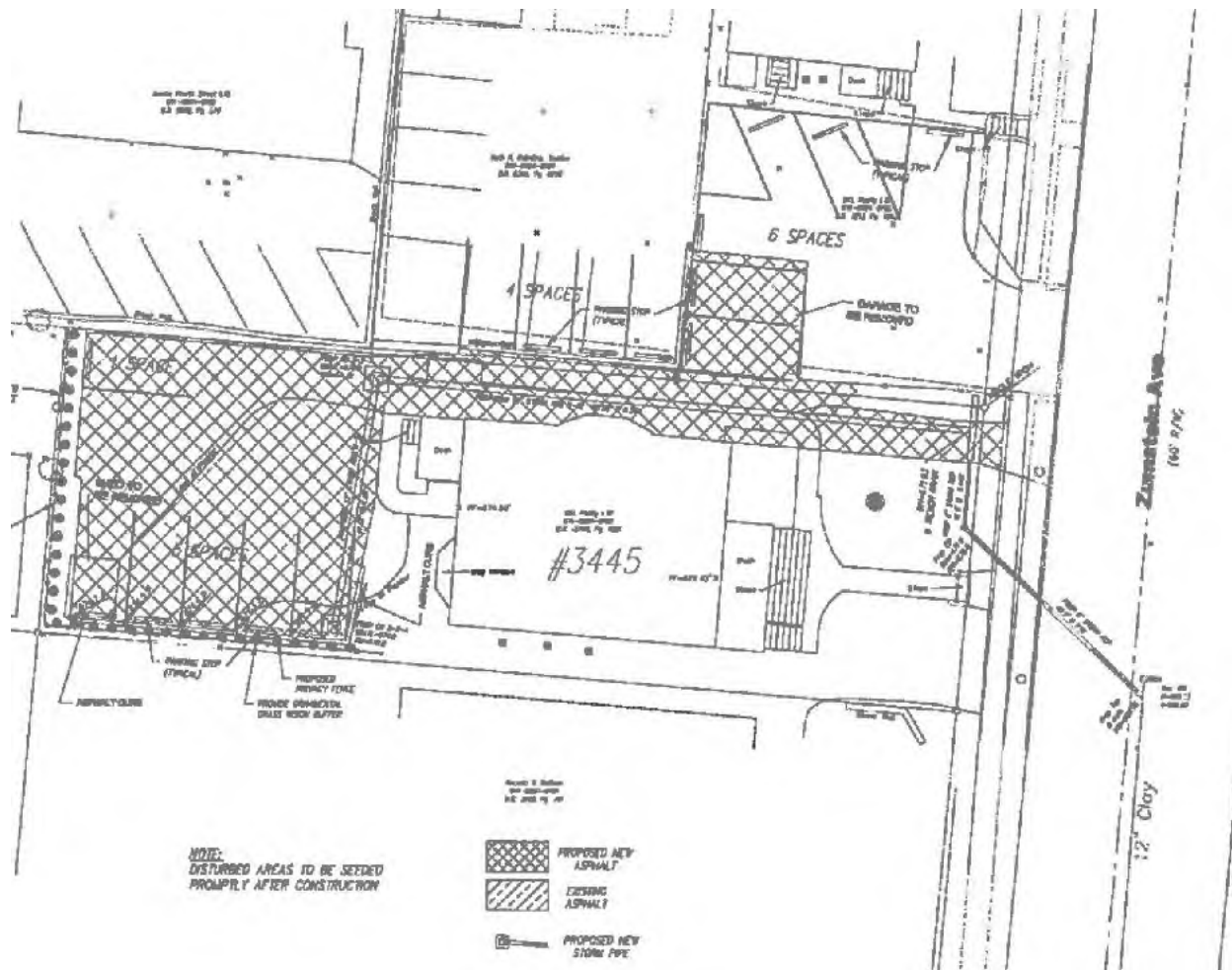
Proposed Conditions:

The applicant has requested an urban design review for the demolition of the existing detached garage and proposed parking lot revisions. Per Section 1437 of the zoning code, an urban design review and approval is required for the proposed garage demolition and parking lot.

The proposed parking lot has six spaces in the rear of the site. Removal of the garage allows for a more efficient parking lot design. Please see the following images that outline the proposed parking lot.



Site plan showing proposed parking lot highlighted in red. Landscaping is not required on the Erie Avenue lot since it abuts commercial/office zoned land to the west.



Site plan showing new pavement in hashed area.

Urban Design Review

- Urban Design Review is part of the review process for demolition of the detached garage and new parking lot in an urban design overlay.
- The parking lot is appropriately designed. Screening is not required due to the zoning district of abutting property being office zoning.
- Zoning staff worked with the applicant to develop the site plan based on zoning code requirements as well as coordinating stormwater drainage from both sites.
- The new parking lot is more efficient and is able to handle six vehicles compared to the current three (plus garage).
- The demolition of the garage is considered a reasonable request since it is not a historic structure.
- The demolition of the garage would not have an adverse impact on surrounding properties.
- The proposed parking lot would not have an adverse impact on surrounding properties.

Applicable Zoning Code Sections:

1445-15, 13: Standards for Variances; General Standards, Public Interest
1443: Zoning Hearing Examiner Procedures

Based on a review of the zoning code, the information provided by the applicant and the existing conditions; it appears that an urban design approval for the proposed garage demolition and parking lot construction is reasonable.

Additionally, applications should demonstrate some degree of value to the public interest, potentially utilizing at least one of the factors provided within Section 1445-13 – General Standards. This proposal is of value to the public interest, as it enhances:

- **(A) Zoning**, the proposal conforms to the underlying zoning district regulations and is in harmony with the general purposes and intent of the Cincinnati Zoning Code.
- **(D) Traffic**, due to the combination of expected staff and customer visits, and the subject's location embedded in a viable street grid, traffic impacts are expected to be accommodated by the existing street network and will not overload the existing adjacent streets.
- **(H) Neighborhood Compatibility**, the proposal is generally compatible with the predominant mixed-use/commercial development patterns of the surrounding neighborhood and will not have a material net cumulative adverse impact on the neighborhood; and
- **(J) Adverse Effects**, the proposal does not appear to have any adverse effect on the access to the property by fire, police, or other public services; access to light and air from adjoining properties; traffic conditions; or the development, usefulness or value of neighboring land and buildings.
- **(L) Economic Benefits**, the proposal indicates that this will make the overall office operation more attractive to customers and will help contribute to the viability of the office use.
- **(O) Private Benefits**, the applicant's investment would yield an improvement to an existing building and a viable parking for their growing business.
- **(P) Public Benefits**, the public benefits realized would be adequate parking provided off-street rather than using public on-street parking for staff.

Conversely, in reviewing for concerns with this proposal

- **(J) Adverse Effects**, the applicant's proposal will not have a material net cumulative adverse impact on the neighborhood, because the proposal is compatible with the neighborhood.

Consistency with Approved Plans:

Plan Cincinnati (2012). The proposed work would be consistent with the policy principle to retain and expand existing businesses.

Hyde Park/Mt. Lookout Interim Development Control District Analysis

The City of Cincinnati recently adopted an interim development control (IDC # 81) district for the Hyde Park and Mt. Lookout neighborhoods. This regulatory tool is in place for at least three months and would require any demolition within the IDC to be reviewed and approved by the city's Planning Commission.

The applicant applied for the demolition permit for the garage in October of 2017 (permit application 2017p09413). The applicant's permit request was prior to the IDC being adopted and thus the applicant's request is not required to follow the IDC review procedures. The applicant's demolition request is allowed to proceed.

In addition, it should be noted that it is the city's position that the Zoning Hearing Examiner (ZHE) is the appropriate reviewer for this demolition request since the ZHE is responsible for reviewing demolition requests within the Hyde Park Square Urban Design Overlay District.

Recommendation:

1. Section 1437 – Urban Design Review- **APPROVE** - The proposed garage demolition and parking lot construction conforms to the relevant urban design parameters outlined in the zoning code.

Findings:

- The subject parking lot is an appropriate use for a small office use.
- Demolition of the garage and construction of a parking lot will not negatively impact the surrounding properties.

3446 Mooney



© 2018 Pictometry

Mooney and Zumstein parking



From: George, Louis D. [<mailto:lgeorge@taftlaw.com>]
Sent: Thursday, October 08, 2015 11:40 AM
To: Peter A. Saba, Esq.
Subject:

•

I talked to Cindy again today. She now understands. The real issue with her is: commercial creep and parking. I told her to turn her attention to parking. Commercial creep is somewhat set in stone with the transition zone in place (at least until someone changes that which will happen no doubt). She was shocked to learn that you offered to revert the zoning back to residential if you sold the property. She was likewise upset that the objector to your reasonable offer was not a neighbor near your house. When people get inflamed listening skills go down as you know.

We need to establish field of view setbacks on our driveways. You could be a hero if you help with that. And potentially you will reconsider reverting the zoning back to residential years if you ever sell.

By the way my wife is Anne Vertuca. She has your daughter in class. So I can be bribed to bribe anne. Ha.

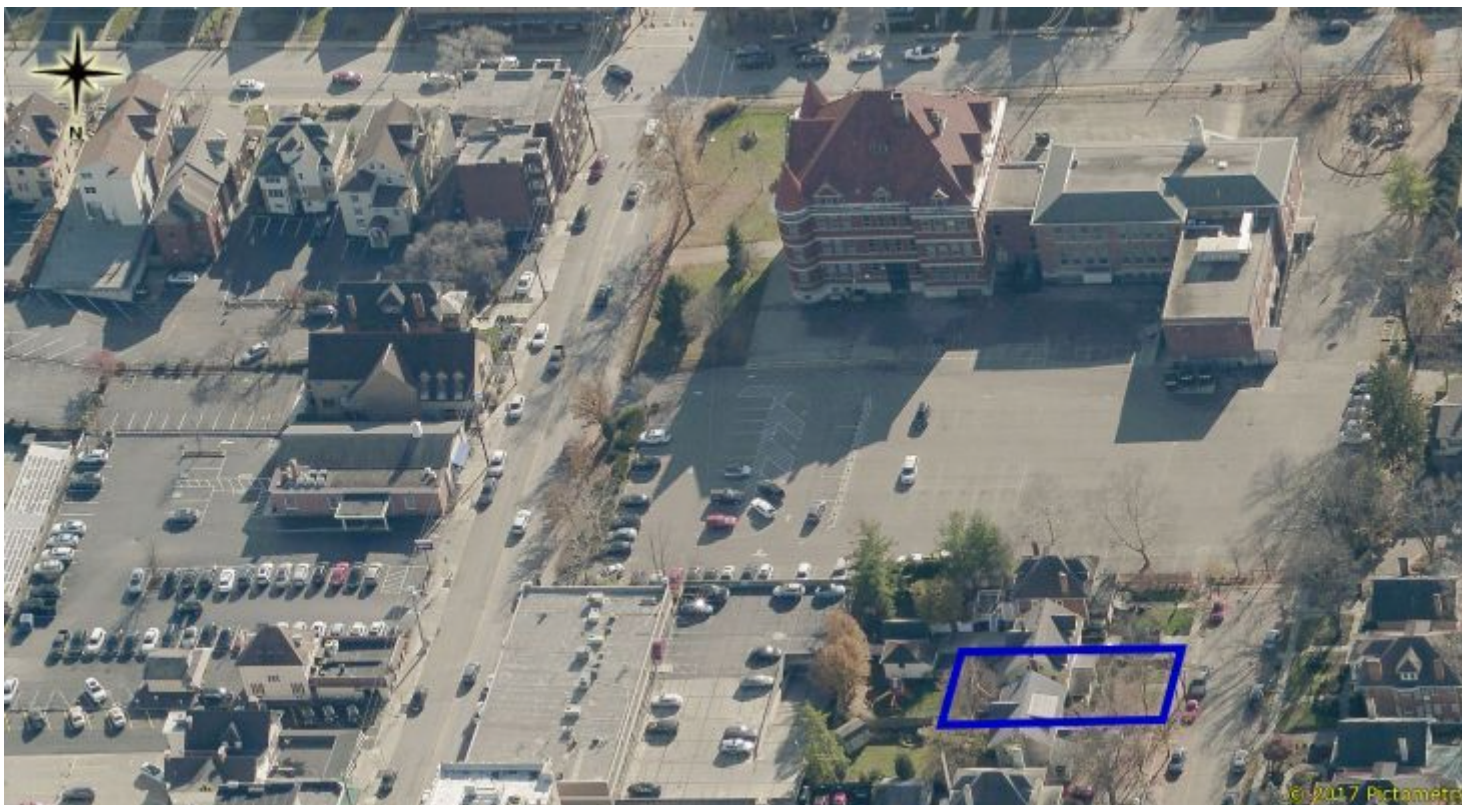
Taft /

Louis D. George, CPA

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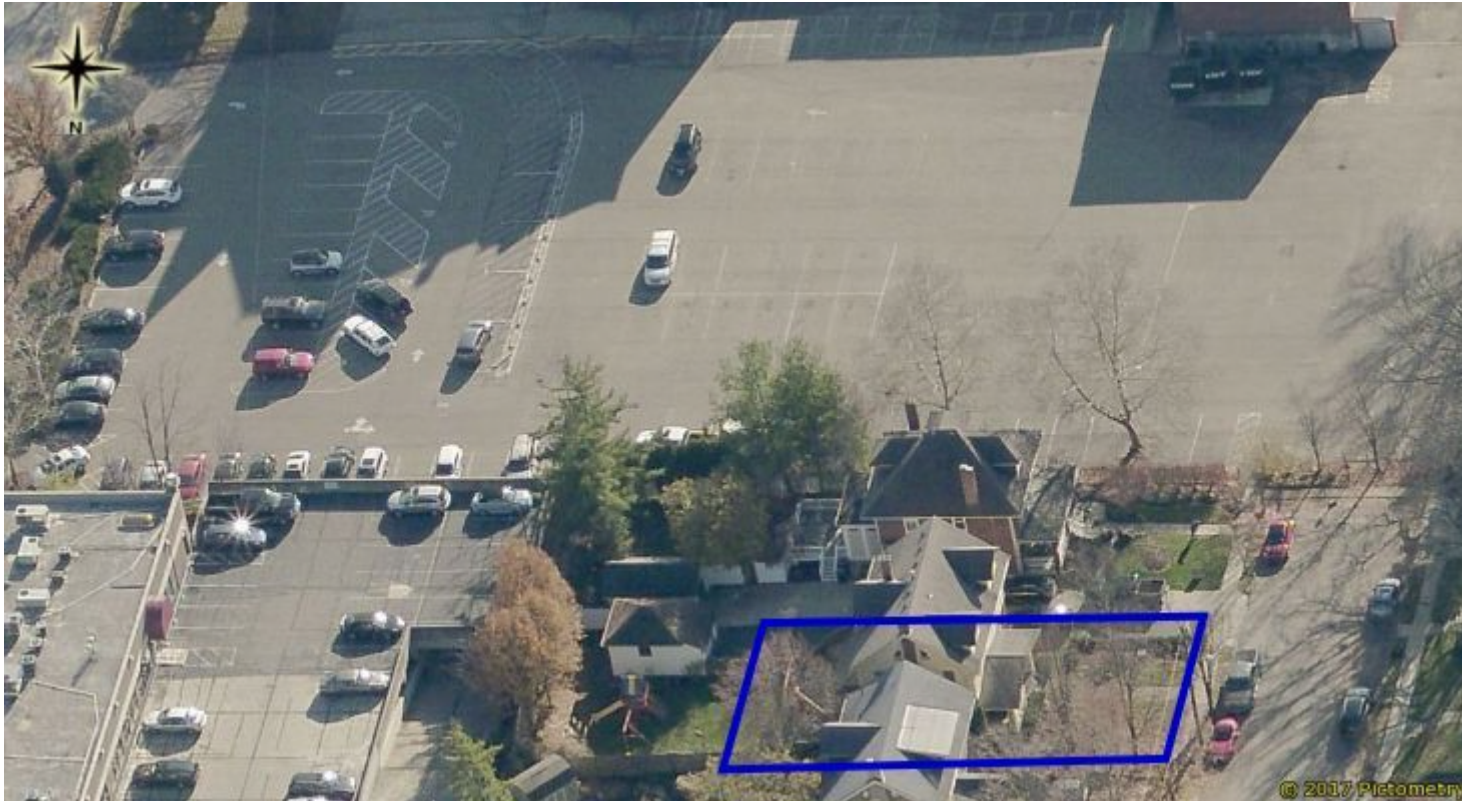
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3434 Zumstein



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3434 Zumstein



Maxwell
Hyde Park Square
Conservation Plan

Volume 1 of 2



Department of Neighborhood
Housing and Conservation
100 N. High Street, Room 1000
Cleveland, Ohio 44114

HYDE PARK SQUARE CONSERVATION PLAN
AN URBAN DESIGN PLAN

Cover: Photo by Steven C. Beasley
Layout by Fred C. Orth

HYDE PARK SQUARE
CONSERVATION PLAN
AN URBAN DESIGN PLAN

Summary of Planning Process

The Hyde Park Square Neighborhood Business District Urban Design Plan was initially developed by Howard Tommelein Associates, Incorporated and The Doepke/Lesniewicz Partnership during 1978-79 under contract to the City's Department of Development. A series of discussions followed with the Hyde Park Business Association, the Hyde Park Neighborhood Council and the Hyde Park Planning Task Force. The latter group, with members representing property owners, businesses, residents, churches and older adults, performed a comprehensive review of Hyde Park Square as part of its work in preparing the Hyde Park Community Plan. Work on the Urban Design Plan was halted until the Task Force deliberations on the Community Plan were complete and a general development framework for the Square was established. Assisted by the City's Department of Neighborhood Housing and Conservation, the Task Force completed the Community Plan in April, 1983 and it was accepted by the City Planning Commission June 24, 1983.

Revisions to the Urban Design Plan began shortly thereafter. However, the construction of a new medical building on Edwards Road, renovation of a commercial building to include a major restaurant on Erie Avenue and the closing of the Hyde Park Theatre raised immediate concerns over the future of Hyde Park Square. A committee of residents and business owner's requested and City Council approved in 1984 an Interim Development Control (IDC) district around the Square to control any construction. These controls expired in December, 1984. The Urban Design Plan as presented here has been edited to reflect the evolving community consensus for developing Hyde Park Square and to provide a smooth transition from the IDC to the establishment of an Environmental Quality (EQ) District for the Square. The Conservation Plan and EQ District were passed by City Council on December 19, 1984.

CREDITS

City of Cincinnati:

Department of Neighborhood Housing and Conservation
Steven F. Bicomfield, Director
Paul D. White, NBD Division Director
William T. Geyer, Development Officer

Consultants

Howard Tommelein Associates, Inc. and
The Doepke/Lesniewicz Partnership
Cincinnati, Ohio

City Council Ordinance #540-1984
Passed December 19, 1984

5. Tied in directly to point 4 above, to recognize that promotion of the high-investment zone requires recognition of a two-phase phenomenon. The first will facilitate the transition from residential to office or multi-family use through zoning the area for office use. The properties' use may change, but most will remain, architecturally speaking, essentially the same. The second phase will entail assemblage of parcels, demolition and construction of a facility requiring high investment, be it an office structure or a multi-family building. The critical point to remember about phase 2 is that assemblage and the ensuing high investment project will not take place unless the demand is present, the project is economically feasible and financing can be obtained. Overall, real estate economic principals, will cause change only as the market forces and specific economic/financial feasibility circumstances merit.

6. In principal, future retail and commercial expansion should be strongly encouraged to take one of two courses:

- a. expand existing facilities.
- b. locate/construct in the core block which is bounded by Erie-Michigan-Observatory and Edwards.

C. Parking

Parking is a major concern of the businesses in Hyde Park Square. Parking conditions as they now exist are a substantial irritant to not only the shoppers and businesses, but to the residents living immediately adjacent to the Square.

Based upon the recommended number of parking spaces in relation to the Gross Leasable Area of the business district, there is a current shortage of spaces (See Appendix B). Investigation revealed a number of facets to the problem, the major ones being:

1. Excessive use of prime shopper parking spaces by employees and business managers. This occurred because of (a) early arrival; (b) convenience; (c) low daily costs on the meters; (d) inconsistent company policy discouraging this practice; (e) few company furnished parking areas; and (f) no enforcement of the Hyde Park Square Business Association's policy discouraging this habit.
2. Competition (and occasionally conflict) among employees, shoppers and establishments for space in certain off-street parking areas (Zino's, Eagle's, Fifth-Third, First National, Medical Building, etc.).
3. Bumper to bumper parking on both sides of the street in front of residences on Zumstein, Edwards and Michigan north of the Square.

4. Poorly organized off-street parking in the core block (bounded by Erie-Michigan, Observatory and Edwards).
5. A serious shortage of off-street space to serve the north side of the Square.

D. Vehicular/Pedestrian Circulation

Hyde Park Square is conveniently located, providing access from I-71, Madison Road, Paxton Road and Observatory. Although not far from I-71, no direct traffic route exists and no signs are provided to guide the driver, hence potential visitors may by pass the Square.

Vehicular circulation within the Square is provided by four streets: Erie, the main thoroughfare running east-west with an average daily traffic count of 10,000 vehicles; Observatory Road, parallel to Erie, handles the second heaviest traffic load; Edwards Road (State Route 561), on the north-south axis, is the third busiest; and Michigan which carries a small percentage of traffic on the north-south axis. The predominant accident locations are Edwards at Observatory (most frequent), Erie at Michigan, Observatory at Michigan and Erie at Edwards (least frequent).

Pedestrian circulation around the Square is very active because of the large number of specialty shops covering a broad range of shopping needs, novelty stores that offer treats (e.g., Graeter's) and a few restaurants that offer moderately priced meals. All are located in a well defined, contained, and generally well-maintained area. The shops offer such varied items as clothes, toys, gifts, drugstore items, jewelry, art, gourmet foods, wines, etc. Most of the shops are small, and as a result, much more of a personal touch is given to the customers. This unique environment is very inductive to pedestrian shopping.

Conflicts between the vehicular and pedestrian circulation are bound to exist because of the intense volumes within a small area. Listed below are problems that are serious enough to call attention to and to consider taking appropriate action to remedy.

Type	Locations
a. Intersections	Especially at school, and west end of Square.
b. Crosswalks	Those which intersect the main traffic island.

III. GOALS AND OBJECTIVES

The over-riding goal of this urban design plan is to maintain and enhance the business and economic vitality of the Square -- within the context of an adaptive containment land use policy. The adaptive containment land use policy recommended has been structured specifically to protect the majority of long term single family residential interests. It has also been structured to recognize that here is a "battle ground zone" where strong commercial investment expansionary forces meet equally strong residential forces. The adaptive containment land use policy breaks this historic conflict by proposing a unique conceptual framework. This framework is based on understanding and accepting the real estate economic forces which are at work in the Hyde Park Square area.

A. Maintain and enhance economic vitality of the Hyde Park Square business environment.

1. Develop stronger, broad-based leadership within the business/property owners.
2. Encourage selective expansion of businesses.
3. Maintain diversity of products and services available to the local and regional market.
4. Improve cooperative advertising programs, sponsor special Square events and promotions.
5. Improve private sector cooperation and unity by forming a catalyst group and establishing quarterly meetings between the executive committee of the Business Association and the Neighborhood Council.

B. Employ a long range land use/zoning strategy that provides adaptive containment.

1. Encourage growth of commercial and residential uses through higher density development and more efficient utilization of space within the urban design plan boundary.
2. Maintain and encourage a diverse mix of uses in the Square (neighborhood and regional commercial, multi-family housing, public facilities).
3. Provide zoning with a transition from retail commercial to office to high density housing to low density housing.
4. Provide zoning which enables "zone of high investment" adjacent to the Square buffering commercial uses from low density housing.
5. Establish an Environmental Quality - Urban Design District that provides development guidelines for implementing the adaptive containment policy.

C. Improve parking conditions by increasing the number of off-street parking spaces.

1. Create a private parking authority to coordinate parking improvements.
2. Establish broadly accepted and enforced employee off-street parking policies.

D. Improve vehicular circulation through better directional signage.

E. Provide safe and comfortable pedestrian access to shopping.

1. Improve and maintain cross walks.
2. Improve walking connections from the north side of the Square and along Gregson Place.
3. Provide direct pedestrian access from core block parking to the south side of the Square.

F. Improve the streetscape and reinforce the village green character.

1. Maintain/upgrade facades.
2. Coordinate upgrading on signage.
3. Install all-weather canopies/awnings in continuous sections for pedestrian comfort.
4. Remove excess or unsightly newspaper boxes, trash containers, utility poles, planter boxes, etc.
5. Prepare and execute an in-ground tree planting scheme.

G. Maintain and improve housing conditions

1. Support multi-family projects in the high investment zone adjacent to commercial properties.
2. Maintain architectural character of residential buildings now used for office purposes.
3. Maintain and/or upgrade where necessary the quality of rental units.
4. Improve accommodations for senior citizens.

Smith Carnes Parking



Response to Lou George Objection

1. As demonstrated by the aerial photos attached as **Exhibit 1** and **Exhibit 2**, our plans for 3443 Zumstein are consistent with the use of both the property located at 3446 Mooney Avenue and the properties neighboring 3446 Mooney. A driveway stretching from the street in front, with parking for multiple vehicles in the rear of the building,
2. The property located at 3446 Mooney Avenue already has a 6 feet high privacy fence surrounding it on all sides. Just like the property located at 3446 Mooney Avenue, the property on 3443 Zumstein will also have a 6 feet high privacy fence.
3. Contrary to Mr. George's objection we are NOT adding any additional lighting. There will be no more lighting than previously existed. (As indicated below, all employees typically vacate the building by 6:00 p.m. on weekdays, therefore in addition to the presence of the privacy fence, little to any light would come from any cars that park in the lot. The property receives little to no use on weekends, much less a weekend evening or night.)
4. Contrary to Mr. George's objection there would actually be less noise than any typical residential use, because the building at 3443 Zumstein gets little to no use in the evening or at night (all employees usually vacate the building by 6:00 p.m. on weekdays) as well as little to no use on weekends.
5. Mr. Georges' email from 2015 confirms (see **Exhibit 3**) that the real issue and concern is the need for additional parking in the area. He further indicates that we would be a "hero" if we could help alleviate some of the parking issues on Mooney, which is exactly what this plan seeks to do.
6. The parking that is being installed is consistent with 3443 Zumstien's historic use as a 3 unit apartment building.

CITY BULLETIN NOTICE

06/05/2018

**PUBLIC HEARING
BEFORE THE
ZONING HEARING EXAMINER
Wednesday, June 13, 2018, at 2:30
pm
At
Centennial II
805 Central Ave., Suite 500
Cincinnati, Ohio 45202**

CASE NUMBER: ZH20180091

SUBJECT PROPERTY: 2623 ERIE AV

Applicant: DML REALTY LTD

Owner: DML REALTY LTD

REFERENCE REQUEST: The applicant requests urban design overlay approval to demolish a detached garage and construct a parking lot in the rear of the property in conjunction with ZH20180090, and any other related relief required under the Zoning Code.

ZONING DISTRICT: OL Office Limited District

**Kevin Tidd
Zoning Hearing Examiner
City of Cincinnati
(513) 352-1559**

DECISION
OFFICE OF THE ZONING HEARING EXAMINER
CITY OF CINCINNATI
DATE OF DECISION: JULY 6, 2018

APPLICANT: DLM REALTY, LTD
2623 ERIE AVENUE
CINCINNATI, OHIO 45209

OWNER: DLM REALTY, LTD
2623 ERIE AVENUE
CINCINNATI, OHIO 45209

CASETYPE: URBAN DESIGN REVIEW

CASE NO.: ZH20180090/ ZH20180091

PROPERTY: 3443 ZUMSTEIN AVENUE/2623 ERIE AVENUE

SUMMARY OF REQUEST:

DLM Realty, Ltd. (the "Applicant") owns the properties commonly known 2623 Erie Avenue (the "Erie Property") and 3443 Zumstein Avenue (the "Zumstein Property") (collectively, the "Property"). The Applicant requests Urban Design Overlay approval to demolish an existing detached garage on 2623 Erie Avenue and approval to construct a surface parking lot in the rear yard of 3443 Zumstein Avenue.

SUMMARY OF DECISION:

The Applicant's request for Urban Design Overlay District permission to construct a parking lot in the rear yard of the Zumstein Property, ZH20180090, is hereby **APPROVED** subject to the conditions provided below.

The Applicant's request for Urban Design Overlay District permission to demolish the detached garage on the Erie Property, ZH20180091, is hereby **DENIED**.

PUBLIC HEARING:

After reviewing the application and materials submitted by Applicant and other concerned persons, and visiting the Property and surrounding area, Kevin M. Tidd, the Zoning Hearing Examiner, conducted a public hearing on the application, prior notice of the time and place of the hearing having been published in *The City Bulletin* and mailed to the Applicant and all abutting property owners and other interested parties.

The hearing was held on June 13, 2018 at 2:30 pm. A recording was made of the hearing and is available for review and transcription.

THE RECORD:

1. Application and Written Statement
2. Site Plan and Drawings
3. LDG Letter of Opposition
4. Letter from Attorney Sean Suder
5. Hassell 1 – Letter of Scott Hassell and Julia Anixt
6. Hassell 2 -- Zumstein Neighbor Opposition Signatures
7. Hassell 3 – Witness – Opposing Neighbors
8. Applicant Exhibits 1-7
9. Applicant Response to Lou George Objection
10. GSW Exhibits 1-3
11. Shelia Sherman Exhibits 1-3
12. Letter from the Hyde Park Neighborhood Council
13. Testimony of Peter Saba
14. Testimony of Joe Allen
15. Testimony of Allen Zahumensky
16. Testimony of Scott Hassell
17. Testimony of Sheila Shermann
18. Testimony of Gary Wollenweber
19. Testimony of Jeff Nye
20. Testimony of Janet Buening
21. Testimony of Cooper Gardiner
22. Testimony of Carl Ubelacker
23. MSD Comment
24. Department of Buildings and Inspections Staff Report
25. Amended Department of Buildings and Inspections Staff Report
26. Hearing Sign-In Sheet
27. Recording of Hearing held on June 13, 2018

FINDINGS OF FACT:

1. The hearings for ZH20180060 and ZH20180061 were held together as they involved similar facts and issues of law.
2. The Erie Property is located in a OL (“Office Limited”) Zoning District and the Hyde Park Square Business District Urban Design Overlay District in the Hyde Park neighborhood.¹
3. The Zumstein Property is located in a SF-6 (“Single-Family”) Zoning District and the Hyde Park Square Business District Urban Design Overlay District in the Hyde Park neighborhood.² However, the Zumstein Property permits an office use for the benefit of the law firm Stagnaro, Saba and Patterson pursuant to a Nonwithstanding Ordinance passed by City Council in 2016.

¹ Cincinnati Municipal Code 1417-01 and 1400-17.

² Cincinnati Municipal Code 1417-01 and 1400-17.

4. The Erie Property and the Zumstein Property are contiguous lots. The Erie Property contains a two-story building with a two-car detached garage and a small rear yard surface parking lot, while the Zumstein Property contains a two-story building without off-street parking. The Property houses the Hyde Park office of the law firm Stagnaro, Saba and Patterson.
5. The areas to the north and west of the Property are zoned OL, while the area to the east towards Hyde Park Square is zoned CN-P (“Commercial Neighborhood-Pedestrian”). The area south of the Property along Zumstein Avenue is zoned SF-6 (“Single-Family”).
6. Development within the Hyde Park Square Business District Urban Design Overlay District must comply with certain prescribed standards that are intended to implement policies in the District’s urban design plan.³
7. The Applicant proposes to demolish the existing detached garage on the Erie Property to create three off-street parking spaces in its place and to facilitate the construction of an access drive from Zumstein Avenue that would connect to a new six space surface parking lot in the rear yard of the Zumstein Property.
8. The Applicant’s request to demolish the existing detached garage on the Erie Property requires Urban Design Overlay approval as does the proposal to construct a surface parking lot on the Zumstein Property.⁴
9. The Applicant’s representative, Peter Saba, stated during the hearing that the project is necessary to create additional off-street parking for the law firm. He further explained that the Zumstein Property does not have off-street parking, and although the detached garage on the Erie property is a two-car garage, it is only functional for one vehicle.
10. Mr. Saba maintained that the proposal is consistent with Plan Cincinnati, would make the Zumstein Property more compliant with the Code’s off-street parking requirements and help alleviate on-street parking issues in the neighborhood.
11. Mr. Saba argued that the demolition of the garage would not adversely affect the aesthetics of the neighborhood noting that there is a surface parking lot directly across the street from the Property along Zumstein Avenue that benefits an office building on Erie Avenue.
12. Mr. Saba stressed that the Applicant does not plan to install additional lighting in the parking lot area and that the parking lot would meet all applicable site standards including the construction of a six-foot privacy fence with appropriate landscaping along the western and southern edges of the site.

³ Cincinnati Municipal Code 1437.

⁴ Cincinnati Municipal Code 1437-07(b)(1) and (2).

13. Civil Engineer Joe Allen testified on behalf of the Applicant as to the stormwater drainage system. Mr. Allen explained that the drainage system is compliant with Metropolitan Sewer District (“MSD”) requirements and is designed to funnel stormwater from the parking area into the existing storm water infrastructure on Zumstein Avenue.
14. Contractor Allen Zahumensky also testified for the Applicant and described the permitting process for the project and explained how the parking lot and access drive would be constructed.
15. Neighbors Scott Hassell and Julia Anixt oppose the project and were represented at the hearing by attorney Sean Suder. Mr. Suder maintained that the Applicant’s demolition proposal should be denied, because it fails to meet the threshold requirement of Cincinnati Municipal Code Section 1437-09(i)(D1), which requires the demolition to have been ordered by the Cincinnati Director of Buildings and Inspections. Mr. Suder stressed that although this section is restrictive, Urban Design Overlay Districts are intended to give certain neighborhoods special protections.
16. Mr. Suder further argued that the parking lot is inconsistent with the residential character of Zumstein Avenue and inconsistent with the historical use of the property noting that it has never had an off-street parking area.
17. Several neighbors of the Property and Hyde Park Neighborhood Council representatives attended the hearing and voiced opposition to the proposal. They maintained that the parking lot does not fit the residential character of Zumstein Avenue and further represents commercial creep into the neighborhood.
18. In addition, they argued that the garage contributes to the district by serving as a screen for the Erie Property’s rear yard parking lot and stressed that on-street parking has historically been difficult in the neighborhood and that it will remain difficult even if the new parking lot is constructed. Several neighbors also voiced concern about how such interdependent properties with a shared drive would be separated pursuant to the Notwithstanding Order if the law firm was to no longer operate at the Property.
19. The Department of Buildings and Inspections provided staff reports on the Applicant’s applications for zoning relief and recommended approval of the applications.

CONCLUSIONS OF LAW:

Urban Design Overlay District Permission

1. To demolish a building in an Urban Design Overlay District, an Applicant must demonstrate that:

Demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety and then certain prescribed circumstances:

- The structure does not contribute to the architectural quality of the district;
 - The demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan;
 - The demolition is necessary to provide parking and/or other uses in a manner specified in the urban design plan;
 - The owner has endeavored in good faith to find a use for the structure and is unable to obtain a reasonable rate of return on the property; or
 - Demolition has been ordered to remove blight.
2. Additionally, new construction in an Urban Design Overlay District must satisfy certain conditions.⁵ These conditions include:
- New buildings shall be compatible with their surroundings. Architectural style, bulk, shape, massing, scale and form of new buildings, and the space between and around buildings shall be consistent with the area, and should be in harmony with neighboring buildings;
 - New buildings shall respond to the pattern of window placement in the district. The designs of new buildings shall avoid long unrelieved expanses of wall along the street by maintaining the rhythm of windows and structural bays in the district. The preferred pattern of ground floor windows is open show windows, with inset or recessed entryways; and landscaping, lighting and other amenities equivalent to those existing in the district; and
 - Buildings shall de-emphasize secondary rear or side door entrances to commercial space, unless the entrances are associated with public parking areas.

In considering whether the conditions are met, the Zoning Hearing Examiner must also review and consider applicable community plans to determine whether the new construction is consistent with the plans' goals, objectives, and guidelines.

3. Taking the Urban Design Overlay standards into consideration, the Applicant failed to demonstrate it is entitled to demolish the detached garage on the Erie Property.

To demolish a structure in an Urban Design Overlay District, an Applicant must demonstrate that the demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety then demonstrate certain

⁵ Cincinnati Municipal Code 1437-09(h).

prescribed conditions.⁶ Here, the Applicant has not alleged or provided evidence, that the detached garage has been ordered to be demolished by the Director of Buildings and Inspections for reasons of public health and safety. As such an order is a threshold requirement for the demolition of a structure in the Hyde Park Square Business District Urban Design Overlay District, the Applicant's application must fail.

4. Taking the Urban Design Overlay standards into consideration, the Applicant demonstrated it is entitled to construct the proposed parking lot in the rear of the Zumstein Property.

The Applicant's proposed parking lot appropriately balances the goals of the district guidelines with its business needs. A primary purpose of Urban Design Overlay Districts is to encourage private investment to improve and stimulate the economic vitality and social character of selected business districts.⁷ The Applicant's project is in line with this purpose and will add to the vitality of the district by allowing the Applicant to expand the law firm of Stagnaro, Saba and Patterson at its current location. The rear yard parking lot is also consistent with the character of the Hyde Park Business District where off-street parking areas are typically located in the rear yards of primary structures and reduces the off-street parking non-conformity of the office use at the Property

The ZHE acknowledges the concerns of neighboring property owners and the Hyde Park Neighborhood Council, but the parking lot will not create any new negative visual impacts or degrade the residential character of the street as it will be screened from Zumstein Avenue by the existing structure on the property and screened from side and rear yard residential properties by a six-foot privacy fence. Further, the project will benefit the neighborhood by creating an additional off-street parking lot in a district where on-street parking is at a premium.

DECISION:

1. The Applicant's request for Urban Design Overlay District permission to construct a parking lot in the rear yard of the Zumstein Property, ZH20180090, is hereby **APPROVED**.
2. The Applicant's request for Urban Design Overlay District permission to demolish the detached garage on the Erie Property, ZH20180091, is hereby **DENIED**.

SUBJECT TO THE FOLLOWING CONDITIONS:

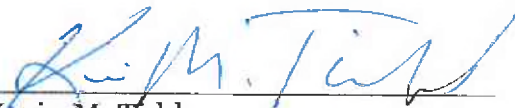
The foregoing decision is subject to the following conditions which are found to be in the public interest and necessary to mitigate any harmful effects:

⁶ Cincinnati Municipal Code 1437-09(i).

⁷ Cincinnati Municipal Code 1437-01(c).

1. The Applicant must note the zoning hearing case number from this decision on any building permits concerning the project.
2. The project shall be constructed in accordance with the plans stamped FINAL APPROVED PLAN by the Zoning Hearing Examiner and forwarded to the Business Development and Permit Center.
3. All building permits necessary for the prosecution of work shall be obtained within two years from the date of this decision.
4. The project must meet all applicable codes and regulations of the City of Cincinnati.
5. Except as otherwise provided in this decision, the project shall be constructed, configured and operated consistent with the testimony, representations and stipulations of Applicant, Owner and any person acting on his behalf at the hearing on this matter.
6. If Applicant and Owner do not meet all of the conditions required by this decision within the timeframes provided, this decision shall have no further force or effect. If no timeframe is provided for meeting a condition, the condition must be met prior to the time that all building permits issued in connection with the development are closed.

ORDERED THIS 6th day of July 2018.


Kevin M. Tidd
Zoning Hearing Examiner

APPEALS:

This decision may be appealed to the Zoning Board of Appeals, pursuant to Chapter 1449 of the Zoning Code. Appeals must be filed within 30 days of the date of this decision.

TRANSMITTED this 6th day of July 2018, by certified mail to:

**DLM REALTY, LTD
2623 ERIE AVENUE
CINCINNATI, OHIO 45209**

**SEAN S. SUDER, ESQ.
CALFEE, HALTER & GRISWOLD, LLP
2800 FIRST FINANCIAL CENTER
255 EAST FIFTH STREET
CINCINNATI, OH 45202**

TRANSMITTED this 6th day of July 2018, by interdepartmental mail to Rodney Ringer at the Permit Center.

2W Exhibit 1



garage blocks view of parked cars at 2619 Erie, rear yard

Aerial view of the subject and the two separate parcels (outlined in red). Each parcel has its own case number and report, but both sites are incorporated into coordinated site design. Erie Avenue is on the top of the image. Residential uses abut the subject property partially to the west and south.

one parked car, 3 spaces, garage blocks view of parked cars.

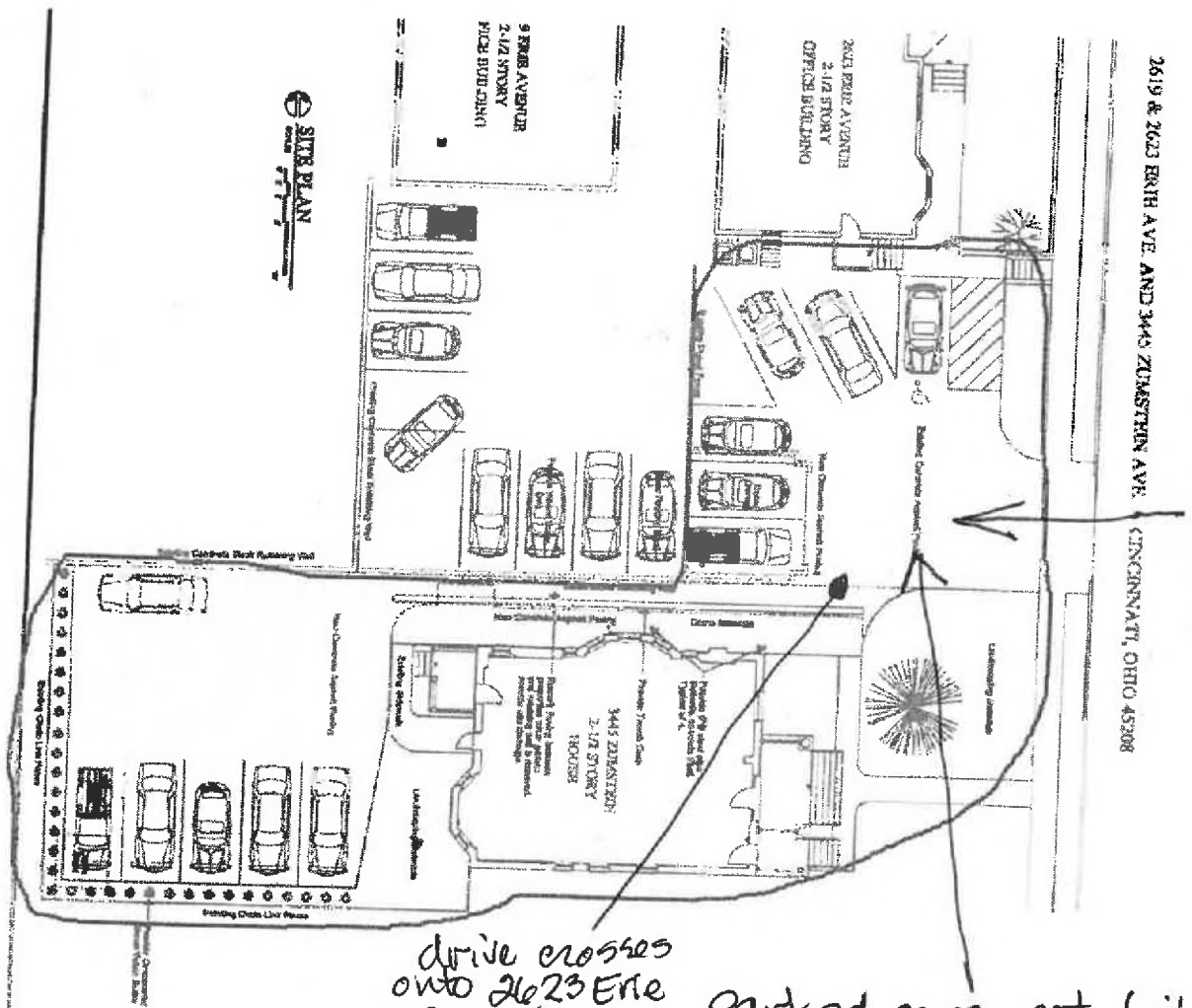
from page 2 from Staff Report

GCW Exhibit 3
 from page 4 staff report

Proposed Conditions:

The applicant has requested an urban design review for the demolition of the existing detached garage and proposed parking lot revisions. Per Section 1437 of the zoning code, an urban design review and approval is required for the proposed garage demolition and parking lot.

The proposed parking lot has six spaces in the rear of the site. Removal of the garage allows for a more efficient parking lot design. Please see the following images that outline the proposed parking lot.



Entire parking lots, 14 cars, visible to pedestrians

drive crosses onto 2623 Erie property

parked cars not hidden by garage or buffer yard

Site plan showing proposed parking lot highlighted in red. Landscaping is not required on the Erie Avenue lot since it abuts commercial/office zoned land to the west.

Visible from front yard of SF-6 properties

Six parked cars in 2623 lot. 100% increase over existing condition

GEM Exhibit 2



from 2010 CAGIS Aerial up to 3 cars hidden by garage

Scott Hassell & Julia Anixt
3434 Zumstein Ave
Cincinnati, OH 45208

June 12, 2018

Mr. Kevin Tidd
Zoning Hearing Examiner
City of Cincinnati
Cincinnati, Ohio 45202

Re: Zoning Hearing – ZH20180090 (3443 Zumstein) and ZH20180091 (2623 Erie)

Dear Mr. Tidd:

As the owners of 3434 Zumstein Avenue, as one of the key parties involved in negotiating the Notwithstanding Ordinance (NWO) related to 3443 Zumstein, and as individuals able to review the text of the NWO, we are writing to express our opposition to the proposed variances and explain the reasons they should be denied.

We especially want to call your attention to three reasons why the proposed driveway and rear parking lot are not allowed by the NWO or by the Zoning Code.

1. The NWO allowed use of the existing building for office purposes only; all other aspects of the property remain subject to SF-6 zoning.

The NWO gave SSP the right to use the existing building for office purposes. All other provisions of SF-6 zoning remain in place. As noted in the amended staff report, section 7 doesn't prevent SSP from seeking relief, but sections 2, 3, and 7 make clear that the property remains subject to SF-6 Zoning. For example:

- Section 2: “[...] Council hereby finds that the legislative variance [...] is **consistent with the purposes of the Zoning Code and the SF-6 Zoning District**”
- Section 3: “the existing building located at 3443 Zumstein Avenue [...] shall be permitted to be used as an office [...] and **for no other use not permitted in or that is inconsistent with the SF-6 Single Family Zoning District**”
- Section 7: “This ordinance does not provide a variance from any other laws [...] and the subject property **shall remain subject to all other provisions of the [...] SF-6 Single-Family Zoning District, including parking and loading regulations**”.

The NWO was the result of roughly 14 months of hearings and negotiations, including many public meetings, including two meetings of the Neighborhoods Committee. This is relevant because the Neighborhoods Committee and many members of Council sought to protect the residential neighborhood from further expansion of commercial activity. This is referenced in the preamble to the NWO:

“Whereas, at its regular meeting on November 30, 2015[...] the committee [...] approved the notwithstanding ordinance, finding it will not have an adverse effect on the character of the area [...] and is **consistent with the purposes of the [...] SF-6 Zoning District.**”

Accordingly, the NWO explicitly does not provide SSP with the ability to park vehicles on the 3443 Zumstein for purposes not allowed by SF-6 Zoning. If SSP wishes provide parking for office uses, they must apply to expand their rights under the NWO.

2. The proposed driveway is not allowed under Zoning Code Section 1425-35: if it were allowed, a recorded covenant is required.

Section 1425-35 states:

“Access drives for parking purposes are permitted only in connection with permitted uses”.

As noted in item #1 above, the NWO does not allow SSP to park vehicles on the property for commercial uses. Since this is not a permitted use, they may not use this as a justification for a driveway.

Notwithstanding the above, if SSP were to park vehicles on the property, Section 1425-35 (a) states:

“An access drive connecting the required parking spaces to a street must be provided either on the same lot as the principal use, or if located on a separate lot as the principal use by either of the following recorded instruments: (i) a recorded covenant if the lot containing the access drive is owned by the same owner as the lot containing the principal use [...]”

Since the proposed use is not allowed by the NWO, and since there appears to be no recorded covenant, the proposed driveway does not comply with section 1425-35 for two reasons.

3. Demolishing the garage at 2623 Erie requires installation of a Type A Buffer Yard between 2623 Erie and 3443 Zumstein.

If the garage at 2623 Erie is demolished and the parking lot reconfigured, then conditions (b) and (c) of Section 1423-11 Applicability of Buffer Yard Standards will apply. This is because the applicant will be redeveloping more than 30% of the property (30% is the standard for Section b) and there will be a “change in use that increases development intensity and results in increased traffic” (Section c). As noted by the applicant, this will double the intensity of parking and traffic at this location from 3 to 6 vehicles.

Given that buffer yards would now be required, Section 1423-13 and Table 1423-13-A shows that a Type A Buffer would be needed between 2623 Erie (OL zoning) and 3443 Zumstein (SF-6 Zoning).

(As a reminder, as shown in Item 1, 3443 Zumstein is subject to all SF-6 zoning requirements except that they are allowed to use the existing building for office purposes only.)


Closing

Beyond the arguments listed above, we respectfully ask that the applicant submit professional drawings delineating property lines and proposed work, and bearing professional stamps where appropriate. The lack of such documentation in the original application makes it impossible to know how much of the proposed driveway is on each property and how the proposed projects will relate to and affect adjacent property owners. Ensuring all parties understand this information is critical since the NWO is a temporary measure that will no longer apply if/when SSP sells 3443 Zumstein or ceases to use the existing building for more than 6 months.

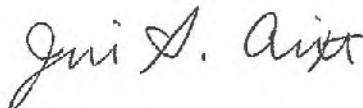
We also noted in both staff reports that "Zoning Staff worked with the applicant to develop the site plan based on zoning code requirements as well as coordinating stormwater drainage from both sites." Is it appropriate for the City Zoning Staff to assist the applicant in preparing their applications? What does it mean to "coordinate" stormwater drainage? Shouldn't SSP hire an independent professional who submits stamped plans certifying that stormwater requirements have been met? If the City has approved the stormwater design, if there are problems with stormwater runoff, is the city now liable for any damages?

We have included additional important arguments in an Appendix.

Sincerely,



Scott Hassell



Julia Anixt

Cc: Sean Suder; Calfee, Halter, & Griswold LLP

Appendix: Additional Comments of Scott Hassell, 3434 Zumstein Ave

Application for Zoning Relief at 2623 Erie (ZH20180091)

Proposed Garage Demolition

- Applicant claims the garage does not contribute to the architectural quality of the district. This is false.
 - This is a residential garage on a residential street. The residential garage contributes to the architectural quality of the street.
 - In contrast, removing the existing garage will harm the residential nature and architectural quality of the street by removing the architecturally compatible residential garage and replacing it with a large asphalt parking lot for 6 cars. A 6 car parking lot is not consistent with a residential neighborhood and it will not “protect and enhance the physical character of the area” as called for by the UDOD.
 - Aside from losing the garage itself, the neighborhood will also lose a visual barrier for the parking lot behind 2619 Erie which includes spaces for 8 cars. This means a total of 14 parked cars (6+8=14) will be visible from Zumstein Ave, as compared to the 3-4 that can currently be seen from Zumstein. Ask yourself, should a residential neighborhood have 14 cars parked in sea of asphalt visible from the sidewalk? Does this “protect and enhance the physical character of the area” as called for by the UDOD? The answer is no.
 - But there will be yet more asphalt... because the new driveway spanning both 2623 Erie and 3443 Zumstein will extend to the new 6 car parking lot in the backyard of the SF-6 zoned house at 3443 Zumstein Ave. Again, this will not “protect and enhance the physical character of the area” as called for by the UDOD.
 -
- Applicant claims the garage is "dilapidated" and that they are unable to control an infestation of rodents and squirrels. The applicant purchased this property in 1996, or 22 years ago. If it is dilapidated and infested, this is a condition they have allowed to occur and persist. From the outside, it appears to be in good condition. If they chose to remedy this situation, they could. Rather they are using it as an excuse to justify their request to tear the building down.

Other Comments

- For both applications, Section 2 (Applicant name) and Section 3 (Owner name) are incorrect. Applications list DLM Realty, but the Hamilton County Auditor's Site and NWO refer to DML Realty. The City Staff reports also refer to DLM Realty. If the applications have been submitted and evaluated under the wrong name, they should reapply because all official documents should have accurate information.

Comments on Staff Report for 2623 Erie (ZH20180091)

- Page 5. "The demolition of the garage would not have an adverse impact on surrounding properties." This is incorrect. See comments above labeled "Proposed Garage Demolition"
- Page 6. Neighborhood Compatibility. This characterization is grossly inaccurate. It describes the neighborhood as "predominantly mixed-use/commercial development" and then goes on to say that it will "not have a material net cumulative adverse impact on the neighborhood". The affected neighborhood has 11 residential homes that are zoned SF-6. This includes one of the two properties being modified in these applications. It is grossly inaccurate and wrong to describe this as "predominantly mixed-use/commercial development".
- Page 6. Adverse Effects. As described above, the loss of the architecturally appropriate residential garage, the loss of the garage as a visual barrier to 2619 Erie, and the addition of 3 new cars to the parking at 2623 Erie will increase the number of cars visible from the Zumstein sidewalk from the current 3-4 to 14. This is a materially adverse effect on a residential street. As a reminder, these houses are included in the UDOD to protect and enhance the physical character of the area. Tearing down a residential garage and linking two properties with an expanse of asphalt neither protects nor enhances the physical character of this residential block.
- Page 6. Economic Benefits. The adverse impacts on the 3400 block of Zumstein will have material negative economic impacts on the 10 neighboring property owners because this charming residential street will increasingly be overtaken by a commercial parking lot, not only on 2623 Erie, but, if approved, at 3443 Zumstein.
- Page 7. Consistency with Approved Plans.
 - The staff report cites a policy principle to "retain and expand existing business", but as has been shown, the staff report mis-represented the neighborhood by characterizing a block with 11 residential SF-6 homes that are zoned SF-6 as "predominantly mixed-use/commercial development". The Staff Report should acknowledge that Plan Cincinnati is a comprehensive plan with many elements that need to be balanced in the context of the actual neighborhood (which requires recognizing, rather than ignoring, the 11 residential homes on the block). For example, a balanced staff report should also acknowledge the following principles from Plan Cincinnati and provide a recommendation about how to balance them:
 - Preserve or create a pedestrian-scaled city (p.78).
 - *Bringing 9 more parking spaces into a residential street in Hyde Park will hack away at and undermine one of the city's most successful pedestrian-scale neighborhoods.*

- Strengthen Community Organizations (p.82).
 - *The Hyde Park Neighborhood Council opposed the original NWO. Have you asked the HPNC for their views on these applications? To strengthen community organizations, you should ask them for their input and give their recommendations serious consideration.*
- "Create a more livable community", "Become more walkable", "Support and Stabilize Our Neighborhoods" (p. 156).
 - *Degrading one of Hyde Park's most walkable and desirable streets by demolishing a residential garage that fits in with the neighborhood, adding more parking to make 14 cars visible from the sidewalk, and damaging the property values of 11 residential homes undermines all of these goals. **Bringing more cars onto the street and crossing the sidewalk to reach new commercial parking areas also puts school children at higher risk as they walk and bike to Hyde Park Elementary School.***
- Furthermore, on May 18, the City of Cincinnati presented to the Planning Commission in support of establishing "IDC #81 Hyde Park/Mt Lookout District". Their presentation cited to key documents to justify the action:
 - Page 16: Hyde Park (1983): Housing Plan Goal 2: "To maintain a high quality housing stock in Hyde Park" and the Action Step to "Maintain current architecture of the residential areas".
 - Page 16: Plan Cincinnati (2012): Live Initiative Area: Strategy to "Support and stabilize neighborhoods".
 - **These arguments were relevant for IDC #81, and they are relevant for these two applications. These variances should be denied.**
- Page 7. Recommendation and Findings: The conclusion/recommendation and findings are flawed as described above.

Comments on Staff Report for 3443 Zumstein (ZH20180090)

The comments on the prior staff report generally apply to this staff report as well.

- Page 6. "The proposed parking lot would not have an adverse impact on surrounding properties". This is incorrect.
 - As described above, the only parking uses allowed at 3443 Zumstein are those consistent with SF-6 uses. This building is zoned SF-6 but currently has no residential occupants. It is not appropriate to create a driveway

- and 6 car parking lot for residential uses (which is all that is allowed) if there are no residential occupants at the property.
- The proposed 6 car parking lot in the rear of 3443 Zumstein will negatively affect all of the homes on the 3400 block of Zumstein Avenue because the residential street, including 3443 Zumstein's rear yard, will, if allowed, be turned into commercial parking. This will damage this highly-desirable and unique neighborhood, making it less appealing and reducing property values for the 10 neighboring homeowners.
 - The property owner that will be most negatively affected is Mr. Sullivan at 3441 Zumstein Ave. Under this proposal, Mr. Sullivan's rear yard along the property line will face an asphalt parking lot with up to six cars and a very small landscaping buffer in between. This is a severe adverse impact on Mr. Sullivan and his property value. This is unacceptable for any homeowner and a clear abuse of Mr. Sullivan's rights under the UDOD which is intended to give homeowners additional protections against commercial encroachment.
 - Mr. Sullivan's back yard is lower in elevation than the rear yard of 3443 Zumstein. The applicant's proposal to remove the natural grass and trees and replace them with asphalt pavement that will be linked to the existing asphalt parking lots at 2623 Erie and 2619 Erie (and likely others, including 2619 Erie and 2607 Erie), could increase the amount of stormwater that will flow into Mr. Sullivan's rear yard. The applicant's plans to capture and manage this stormwater are not documented and there are no professionally stamped plans in the application. However, the City's staff report's noted that they have "worked with the applicant to develop the site plan based on zoning code requirements as well as coordinating stormwater drainage from both sites". Does this mean the City has provided professional approval of the site plans? In doing so, has the City taken on liability for any flooding-related damages that may occur at 3441 Zumstein or other neighbors as a result of the combined parking lots spanning the two SSP-owned properties and the adjacent properties on Erie?
 - Page 6 and 7. As described in comments to the previous staff report, it is not reasonable to approve the proposed parking lot and driveway. For example, see the comments about the prior staff report related to Neighborhood Compatibility, Adverse Effects, Economic Benefits. Similarly, see the prior comments about Consistency with Approved Plans, Recommendations, and Findings.

Statements of Opposition

See the attached 10 signatures opposing the requested variances.

cc: Sean Suder; Calfee, Halter & Griswold LLP

Statement of Opposition

The following residents of the 3400 block of Zumstein Avenue and surrounding neighbors oppose SSP's request to install a shared driveway on both 3443 Zumstein and 2623 Erie Ave and to install a parking lot in the rear of 3443 Zumstein.

We oppose the shared driveway on both 3443 Zumstein and 2623 Erie Ave because this driveway will link two properties with different zoning:

- 2623 Erie is zoned Office Limited.
- 3443 Zumstein is zoned SF-6.

While the Notwithstanding Ordinance for 3443 Zumstein allows SSP to use the existing building for office purposes while they own and occupy it, it did not give them the right to park on the property. Nor did it give them the right to effectively create an easement driveway that joins two differently zoned properties with a shared driveway.

We believe SSP should submit detailed plans showing the location of the proposed driveway, the property line, how much of the driveway will be on each property, and explain what will happen to the driveway and access to the rear parking lot if SSP sells this residential property and the NWO no longer applies.

Name	Address	Signature	Date
<i>JW Sullivan</i>	<i>3441 Zumstein</i>	<i>JW Sullivan</i>	<i>6/9/18</i>
<i>Sheila Siegmund</i>	<i>3433 Zumstein</i>	<i>Sheila Siegmund</i>	<i>6/9/18</i>
<i>Bob Sheeran</i>	<i>3435 Zumstein</i>	<i>Bob Sheeran</i>	<i>6/11/18</i>

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Name	Address	Signature	Date
Debra Case	3442 Zumstein	Debra Case	6/9/18
M.J. Case	3442 ZUMSTEIN	M.J. Case	6/9/18

Statement of Opposition

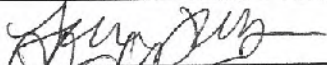
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Name	Address	Signature	Date
Jenna Kelly	3480 Zumstein Ave		6/10/18
CHARLES KELLY	3430 ZUMSTEIN		6/10/18

Statement of Opposition

The following residents of the 3400 block of Zumstein Avenue and surrounding neighbors **oppose SSP's request to install a shared driveway on both 3443 Zumstein and 2623 Erie Ave and to install a parking lot in the rear of 3443 Zumstein.**

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We believe SSP should submit detailed plans showing the location of the proposed driveway, the property line, how much of the driveway will be on each property, and explain what will happen to the driveway and access to the rear parking lot if SSP sells this residential property and the NWO no longer applies.

Name	Address	Signature	Date
J Nick Pratap	3438 Zumstein Ave	J Nick Pratap	6/10/2018

Statement of Opposition

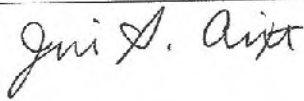
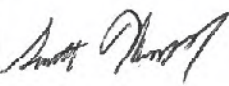
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Name	Address	Signature	Date
Julia S. Anixt	3434 Zumstein Ave		6/11/18
Scott Hassell	3434 Zumstein Ave		6/11/18

List of Witnesses – Opposing Neighbors

Scott Hassell
Sheila Siermann
Frank Sullivan
Jenna Kelly
Charles Kelly

cc: Sean Suder; Calfee, Halter & Griswold LLP

Louis D. George
2526 Observatory Ave.
Cincinnati, Ohio 45208
(513) 321-3537
ldgeorgeconsulting@outlook.com

TO: City of Cincinnati

FROM: Lou George

DATE: June 12, 2018

SUBJECT: Case number ZH20180091

This memo is in response to the above City notice for zoning change which I received on June 11, 2018. After a review of the proposed drawings submitted by the applicant, along with the conversation I had with the applicant years back when an initial zoning variance was requested, 3446 Mooney is opposed to the recent requested change for the following reasons:

- During a prior year's zoning request by the same owner, I contacted the law partner that was handling the matter for his firm/owner. Due to what was communicated to me during that call, along with my respect for the Stangero family, I did not object to that change.
- During that same conversation with the partner, I specifically talked about parking and that I would oppose his request if they intended to turn the site in to a parking lot. We also talked about any excess lighting needed, as that would not be consistent with a residential environment. He assured me no additional parking would be needed and no additional outside lighting would likewise be required. Based on those comments I told him I would not oppose that initial request.
- I have reviewed the detail drawings submitted with this new zoning request. The design submitted is a material change to what exists today and a material variance from what was committed to me years back.
- It is one thing using an interior space as an office when the outside still looks like a residential house. But it is another if the outside is changed to appear like a commercial building. It is my opinion the later would occur if the current request is approved.

Obviously, the partner underestimated the need for parking. As a result of this requested material change in use, I do not support his request. It violates what I believe is in the best interest of the property owners that were there long before the law firm purchased their original site on Erie. Further, if approved this rezoning will represent a material

change in the enjoinder of the backyard at 3446 Mooney due to noise and lighting.
Lastly, if this request is approved the creep will never stop.

Cc: George Vincent, Trustee Dinsmore & Shohl
Chris Fister, Trustee

City of Cincinnati

MEH/D / CBM / CTS

An Ordinance No. /

- 2016

NOTWITHSTANDING the provisions of Section 1403-05, "Land Use Regulations," of Chapter 1403, "Single-Family Districts," of the Cincinnati Zoning Code and any other applicable provisions of the Cincinnati Zoning Code and the Cincinnati Municipal Code, the existing building located at 3443 Zumstein Avenue in the Hyde Park neighborhood shall be permitted to be used as an office by the law firm of Stagnaro, Saba & Patterson Co., L.P.A.

WHEREAS, DML Realty, Ltd. ("DML") owns the real property located at 3443 Zumstein Avenue, which property consists of one parcel comprising 0.175 acres in the Hyde Park neighborhood ("Subject Property"); and

WHEREAS, DML also owns the real property located immediately north of the Subject Property at 2623 Erie Avenue, which real property houses the law offices of Stagnaro, Saba & Patterson Co., L.P.A. ("Law Firm"); and

WHEREAS, DML has petitioned the City to rezone the Subject Property from the SF-6, "Single-family," zoning district to the OL, "Office Limited" zoning district to permit the Law Firm to expand its law offices onto the Subject Property in order to accommodate its growth and the creation of additional jobs; and

WHEREAS, the Hyde Park Neighborhood Council ("HPNC") and several owners of residential properties located in proximity to the Subject Property oppose DML's petition to rezone the property, and they have raised concerns that rezoning the property will erode the residential character of Zumstein Avenue; and

WHEREAS, the City Planning Commission, at its regular meeting on September 18, 2015, considered DML's rezoning petition, the concerns raised by the HPNC and neighboring property owners, and the possibility of approving a legislative variance under Section 111-5 of the Cincinnati Municipal Code ("CMC"), commonly known as a "notwithstanding ordinance," as an alternative to the proposed rezoning; and

WHEREAS, the City Planning Commission determined that the DML's proposed change in zoning is in the interest of the general public's health, safety, morals, and welfare, and it recommended rezoning the Subject Property from the SF-6, "Single-family," zoning district to the OL, "Office Limited" zoning district, but it did not make a recommendation concerning the possibility of a notwithstanding ordinance; and

WHEREAS, at its regular meeting on November 2, 2015, a committee of Council held a public hearing on the proposed rezoning, at which meeting it took no action on the rezoning but continued the meeting to allow the Law Firm an opportunity to seek a notwithstanding ordinance; and

WHEREAS, the Law Firm subsequently applied for a notwithstanding ordinance that would allow the use of the Subject Property as an office without effecting a change in its zoning; and

WHEREAS, the Department of City Planning reviewed the Law Firm's application for a notwithstanding ordinance and determined that the proposed ordinance meets the criteria set forth in CMC Section 111-5, but it recommended against approval of the notwithstanding ordinance because it does not comply with the zoning laws the department is charged with enforcing; and

WHEREAS, at its regular meeting on November 30, 2015, a committee of Council held a public hearing on the notwithstanding ordinance following due and proper notice pursuant to CMC Section 111-5, and the committee, upon considering the factors in CMC Section 111-5, approved the notwithstanding ordinance, finding it will not have an adverse effect on the character of the area or the public health, safety, and welfare, and is consistent with the purposes of the CMC and the SF-6 Zoning District; and

WHEREAS, the Mayor and Council subsequently referred the notwithstanding ordinance to the City Planning Commission for its recommendation on the legislation and, at its regular meeting on December 18, 2015, the commission recommended passage of the notwithstanding ordinance; and

WHEREAS, Council finds that the notwithstanding ordinance is in the best interests of the City and in the general welfare of the public; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the Council hereby adopts and ratifies the Department of City Planning's findings regarding the legislative variance criteria set forth in Section 111-5 of the Cincinnati Municipal Code as detailed in the department's November 30, 2015 report to the Mayor and Council.

Section 2. That the Council hereby finds that the legislative variance requested by DML Realty, Ltd. ("DML") will not have an adverse effect on the character of the surrounding area or the public health, safety, and welfare, and it is consistent with the purposes of the Zoning Code and the SF-6 Zoning District.

Section 3. That, notwithstanding the prohibition on office uses in the SF-6 Single-Family Zoning District pursuant to Zoning Code Section 1403-05, "Land Use Regulations," of Chapter

1403, "Single-Family Districts," of the Cincinnati Zoning Code and any other applicable provisions of the Cincinnati Zoning Code and Cincinnati Municipal Code, the existing building located at 3443 Zumstein Avenue (the "Subject Property") shall be permitted to be used as an office by the law firm of Stagnaro, Saba & Patterson Co., L.P.A. (as it may be restructured or renamed from time to time, "SSP") for its use only, for no other user, and for no other use not permitted in or that is inconsistent with the SF-6 Single-Family Zoning District, on the terms and conditions set forth in this ordinance.

Section 4. That, notwithstanding anything in the Cincinnati Zoning Code to the contrary, no commercial sign shall be permitted on the Subject Property during its use as an office by SSP, with the exception of exempt signs under Zoning Code Section 1427-11, temporary signs under Zoning Code Section 1427-13, and home occupation signs under Zoning Code Section 1427-33.

Section 5. That, notwithstanding anything in the Cincinnati Zoning Code to the contrary, the right to use the Subject Property in the manner permitted by this ordinance shall be specific to SSP only and shall not run with or be deemed to run with the land, and this limited *in gross* right shall automatically terminate and be of no further force or effect if: (i) SSP ceases to use the building on the Subject Property for office purposes for more than 180 consecutive calendar days; or (ii) SSP demolishes or destroys more than 25% of the total amount of the square footage of the existing building on the Subject Property, excluding demolition caused or necessitated by acts of God, fire, wind, earth movement, or other natural causes.

Section 6. That, notwithstanding anything in the Cincinnati Zoning Code to the contrary, the existing lawful non-conforming use of the Subject Property as a three-family dwelling shall not be deemed to have been abandoned or intended to be abandoned as a result of the limited right granted by this ordinance, and upon termination of the limited *in gross* right created herein,

the Subject Property shall lawfully be permitted to continue to be used for a three-family dwelling in the manner existing immediately prior to this ordinance taking effect.

Section 7. That this ordinance does not provide a variance from any other laws of the City of Cincinnati, and the Subject Property shall remain subject to all other provisions of the Cincinnati Municipal Code, the Cincinnati Zoning Code, and the SF-6 Single-Family Zoning District, including parking and loading regulations; provided, however, this ordinance shall not prevent or limit DML or SSP from seeking any variance, special exception, conditional use approval, or other administrative relief in the manner provided under the Cincinnati Zoning Code.

Section 8. That the use of the Subject Property by SSP for office space permitted under this ordinance shall not be considered a nonconforming use of land.

Section 9. That the City Manager is authorized to take all necessary and proper actions to implement this ordinance.

Section 10. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: January 6, 2016

Attest: [Signature]
Clerk

[Signature]
Mayor

WE HEREBY CERTIFY THAT ORDINANCE No. 1-2016
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 1-19-2016

[Signature]
CLERK OF COUNCIL



II Centennial Plaza
 805 Central Avenue, Suite 500
 Cincinnati, Ohio 45202
 Monday- Friday 7:30 am- 4 pm
 513-352-1559
Boards@cincinnati-oh.gov

ZONING HEARING EXAMINER

Application for Zoning Relief

Office Use Only
 Case Number: _____

Hearing Date: _____

Section 1. SUBJECT PROPERTY
 ADDRESS 3443 Zumstein Avenue COMMUNITY Hyde Park
 PARCEL ID(S) 041-0004-0102-00
 BASE ZONING CLASSIFICATION SF-6 subject to NWO 1/2017 ZONING OVERLAY (if applicable) UDOD
 Non-Residential Project Residential Project (RCO) One -, Two -, and Three- Family Dwelling

Section 2. APPLICANT
 NAME DLM, Realty, Ltd. CONTACT PERSON (if legal entity) Peter Saba, Esq.
 ADDRESS 2623 Erie Avenue CITY Cincinnati STATE OH ZIP 45208
 EMAIL pas@sspfirm.com RELATIONSHIP TO OWNER (if not owner) legal representative
 TELEPHONE 513-533-2701

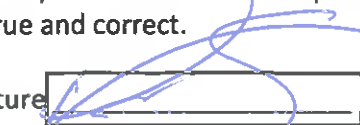
Section 3. OWNER
 NAME DLM, Realty, Ltd. CONTACT PERSON (if legal entity) Peter Saba, Esq.
 ADDRESS 2623 Erie Avenue CITY Cincinnati STATE OH ZIP 45208
 EMAIL pas@sspfirm.com RELATIONSHIP TO OWNER (if not owner) legal representative
 TELEPHONE 513-533-2701

Section 4. NATURE OF RELIEF REQUESTED. (select all that apply)
 Variance Use Variance Special Exception Conditional Use
 Expansion or Substitution of Non Conforming Use Hillside Overlay District Permission
 Urban Design Overlay District Permission DD District Phased Development Approval

Section 5. BRIEF DESCRIPTION OF PROPOSED PROJECT (Do not write "see attached" or leave blank. You may attach a longer statement to this application if the space provided is insufficient to describe your proposed project)
The project will create up to 6 additional parking spaces located in the rear of 3443 Zumstein Avenue. This application is made in conjunction with the demolition of detached garage located at 2623 Erie Avenue to allow access to the rear of 3443 Zumstein Avenue. All areas will be appropriately landscaped and screened and will help alleviate parking issues on Zumstein Avenue and Mooney Avenue.

Section 6. SUMMARY OF REASONS WHY RELIEF SHOULD BE GRANTED.
 You must provide a written statement explaining how the proposed project meets the standards for all relief requested. Separate instructions for preparing this statement are attached. If you fail to follow the instructions for your type of request, your application may be denied.

Section 7. SIGNATURE. The undersigned does hereby certify that the information provided in connection with this application is, to the best of his or her knowledge, true and correct.

Print Name Peter A. Saba, Esq. Signature  Date 5/2/2018

April 18, 2018



SUBJECT: Plan No.: 2018P01320
Request: Commercial
Zoning District: OL

Location: 2623 ERIE AV
Office Limited

ALAN ZAHUMENSKY
1286 MAYLAND DR
CINCINNATI OH 45230

Dear ALAN ZAHUMENSKY

I have received and reviewed the subject project for compliance with the Zoning Code of the City of Cincinnati, and it is being delayed for the following reason(s):

The subject property at 2623 Erie is in the Hyde Park Urban Design Overlay. As such, the requirements of the urban design overlay (section 1437-07 of the zoning code) demolition of a building/garage requires a public hearing and approval from the Zoning Hearing Officer. The proposed parking lot also requires review and approval from the Zoning Hearing Officer. Please submit an application for the Urban Design Review along with a site plan showing the parking and landscaping. Please note that the site at 3445 Zumstein also is in the Urban Design Overlay and the parking revisions proposed also require approval via the Zoning Hearing Office and the public hearing process. Both sites can be reviewed simultaneously at the same hearing as they are a coordinated site plan.

The Zoning Code is Title XIV of the Cincinnati Municipal Code. The Municipal Code can be accessed through a link on our department's webpage at www.cincinnati-oh.gov/planning.

You may obtain a Zoning Hearing Application Form with instructions on the City website at <http://www.cincinnati-oh.gov/buildings/hearing-appeals/zoning-hearing-examiner/>. If you have any questions with regards to the submission of your Zoning Hearing application and documentation, please contact me or Rodney Ringer, Senior City Planner at 513-352-4847.

All revisions to plans must be made **in person** at Buildings and Inspections, 805 Central Avenue, Suite 500. Please submit as many copies of the revisions as were submitted with the original Building Permit Application.

I will be happy to assist you with any Zoning questions or concerns you may have. Please call me at [redacted] with questions or to make an appointment.

Sincerely,

A handwritten signature in black ink that reads "Weston Munzel". The signature is written in a cursive, flowing style.

Wes Munzel
Zoning Plans Examiner
513.352.2442

*Check the status of your permit via the web by using the following link:
<http://cagis.hamilton-co.org/opal/apd.aspx?QSPerm=2018P01320>

April 17, 2018



SUBJECT: Plan No.: 2017P09413 **Location:** 2623 ERIE AV
Request: Commercial Demolition
Zoning District: OL **Office:** Limited

ALLAN ZAHUMENSKY
1286 MAYLAND DR
CINCINNATI OH 45230

Dear ALLAN ZAHUMENSKY

I have received and reviewed the subject project for compliance with the Zoning Code of the City of Cincinnati, and it is being delayed for the following reason(s):

The subject property is in the Hyde Park Square Urban Design Overlay. As such, the urban design overlay requirements (Section 1437-07 of the zoning code), demolition/wrecking requires a public hearing before the Zoning Hearing Officer. Please submit an application for the urban design review. Also, please prepare a site plan showing the new parking lot layout and 3' perimeter landscaping on the boundary of the parking lot. The site plan should be included with the urban design review application.

The Zoning Code is Title XIV of the Cincinnati Municipal Code. The Municipal Code can be accessed through a link on our department's webpage at www.cincinnati-oh.gov/planning.

You may obtain a Zoning Hearing Application Form with instructions on the City website at <http://www.cincinnati-oh.gov/buildings/hearing-appeals/zoning-hearing-examiner/>. If you have any questions with regards to the submission of your Zoning Hearing application and documentation, please contact me or Rodney Ringer, Senior City Planner at 513-352-4847.

All revisions to plans must be made **in person** at Buildings and Inspections, 805 Central Avenue Suite 500. Please submit as many copies of the revisions as were submitted with the original Building Permit Application.

I will be happy to assist you with any Zoning questions or concerns you may have. Please call me at [redacted] with questions or to make an appointment.

Sincerely,

A handwritten signature in black ink that reads "Weston Mungel". The signature is written in a cursive, flowing style.

Wes Mungel
Zoning Plans Examiner
513.352.2442

*Check the status of your permit via the web by using the following link:
<http://cagis.hamilton-co.org/opa/apd.aspx?QSPerm=2017P09413>

DML Realty, Ltd. is seeking a permit for the construction of parking in the rear of the property located at 3443 Zumstein Avenue, in order to help alleviate parking issues on both Zumstein Avenue and Mooney Avenue. (The application is being made in conjunction with the application to demolish a detached garage located at 2623 Erie Avenue. As indicated in the 2623 Erie Avenue application, demolition of the detached garage will allow for the placement of a driveway leading to the rear portion of 3443 Zumstein Avenue). Currently, 3443 Zumstein has no off-street parking. The requested construction would create up to 6 new parking spaces in the rear of 3443 Zumstein Avenue.

Demolition of the garage would also permit 3443 Zumstein to move more into compliance with the applicable Urban Design Overlay District and the CMC. 3443 Zumstein is grandfathered in as a 3-family dwelling, which is permitted to be used for law office purposes by Stagnaro, Saba & Patterson Co., LPA pursuant to a Notwithstanding Ordinance. The demolition of the garage and corresponding installation of up to 6 spaces in the rear of 3443 Zumstein Avenue would bring the building into compliance with the parking requirements set forth in CMC § 1425.19.

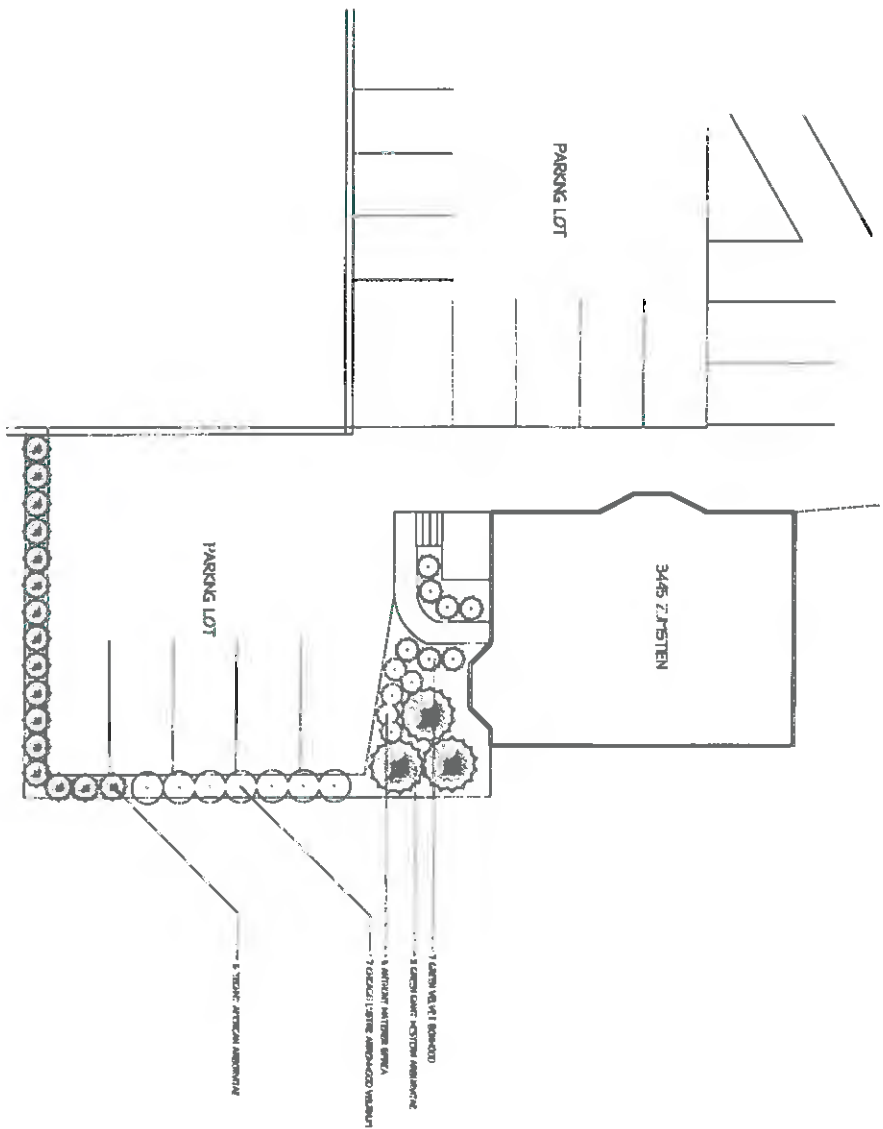
As confirmed by the enclosed site plan and landscaping plan, the requested construction complies fully with requirements of the Cincinnati Municipal Code ("CMC"), including base requirements of the applicable Urban Design Overlay District as set forth in Sec. 1437.09, as well as the other applicable requirements of the CMC:

1. The Plan provides appropriate landscaping where required;
2. The Plan provides appropriate screening where required;
3. The Plan contains appropriate wheel stops where required; and
4. The Plan provides for adequate drainage and surfacing.

Ultimately, the installation of parking in the rear of 3443 Zumstein Avenue in conjunction with the demolition of the detached garage located at 2623 Erie Avenue will create up to 9 additional parking spaces to help alleviate parking issues on both Zumstein Avenue and Mooney Avenue.



THIS DRAWING REPRESENTS THE DESIGN AND DESIGN CONCEPTS OF HYDE PARK LANDSCAPE & TREE SERVICE AND REMAINS THE SOLE PROPERTY THEREOF. THE USE OF THIS DRAWING IN ANY FORM OR MANNER NOT AUTHORIZED BY H.P.L.T.S. IS PROHIBITED.



Stagnaro, Saba, & Patterson

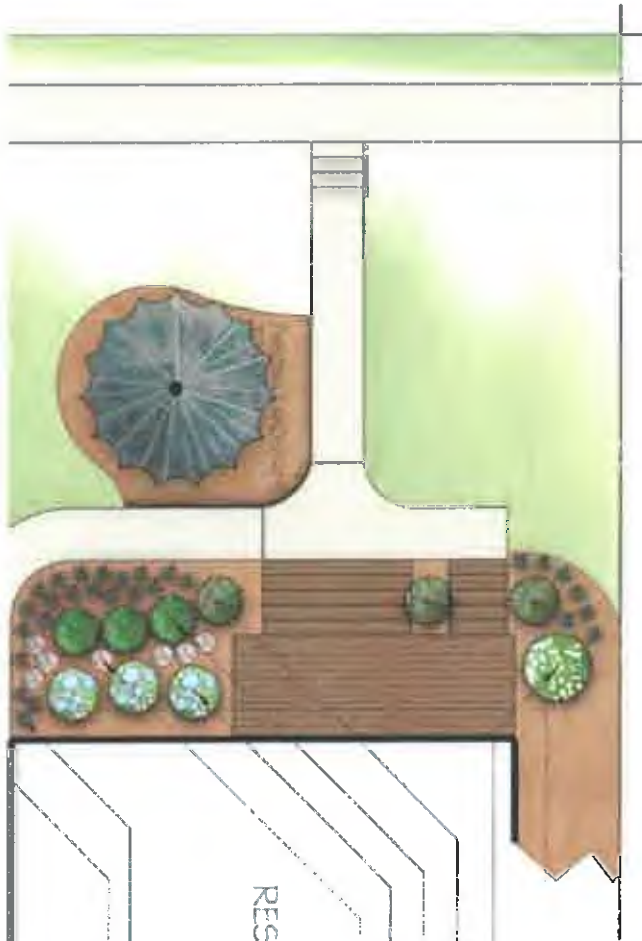
0823 Erie Ave.

DATE: 08-17-2017
 SCALE: 1/4" = 1'-0"





Proposed Driveway



RESIDENCE

29 LILYBUSH
1 CURTAIN 1 STRIP ARBOREWOOD VIBURNUM

1 JDD VIBURNUM
3 ARBOR VITAE
3 GREEN VELVET BOXWOOD
3 TWIST & SHOUT HIBISCUS
1 CORNELLONIA

Qty	Botanical Name	Common Name
1	Viburnum s. juddi	JDD VIBURNUM
3	Forsy. Green Velvet	GREEN VELVET BOXWOOD
3	Hydrangea serrata	ARBOR VITAE
1	Wiburnum acerifolium	TWIST & SHOUT HIBISCUS
1	Cornellonia	CORNELLONIA
29	Lilium	LILYBUSH
1	Arbovitae	ARBOREWOOD VIBURNUM

ZUMSTEIN AVE
3443 ZUMSTEIN AVE
DATE: APRIL 10 2015

Created by: [unreadable]





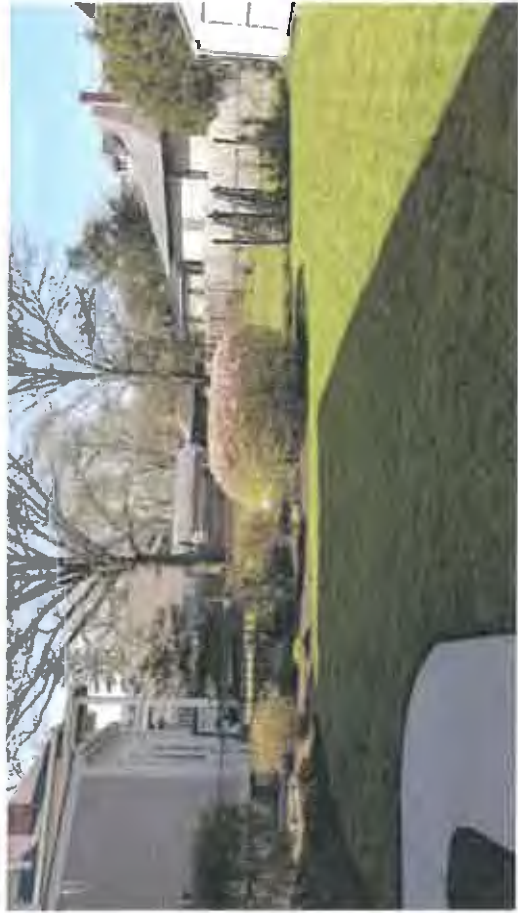
















EADS Fence Company, Inc.

131 Broadway Street
 Loveland, Ohio 45140
 (513) 677-4040
 Fax (513) 677-4045

Date Sold _____

Lead # 56233

Proposal Final Contract

1 of 2

Customer Stagnaro Saba and Patterson Date Estimated 02/04/2018
 Billing Address 2623 Erie Ave. Cincinnati Ohio 45208
 Job Location / Neighborhood Hyde park contact : Lori
 Home Phone _____ Work Phone _____ Source previous
 Cell Phone 5135335159 Email las@sspfirm.com

To furnish and install 116 feet of 6 feet tall privacy fence
 All treated pine framework,
 2x4x8 stringers (3 per section)
 4x4x8 post set 8 foot on center
 all post set in cement
 all picket are 5/8 x 5 1/2 with dog-eared top
 for treated pine pickets total cost \$2210.00
 for red cedar pickets Total cost \$2930.00
 cost does not include removal or disposal of existing chain link fence
 For removal and disposal of existing chain link fence total Cost \$450.00

TERMS: All accounts past due are subject to a service charge of 2% per month or 24% annum on invoices that are unpaid and over 10 days old. Should action be brought to collect any sums past due, Eads Fence Company shall be entitled to recover collection costs, court costs and attorney's fees. Invoices not paid in full void any and all warranties and all materials remain the property of Eads Fence Company until invoices are paid in full.

Conditions: Installations and workmanship will be consistent with the generally recognized standards in the industry. Eads Fence Company shall not be responsible for damage or delays due to strikes, fires, accidents, weather, seasonal business conditions, soil conditions, late shipment of materials or other causes beyond our reasonable control. However, all efforts will be made to complete work on time. Eads Fence Company is not responsible for compensation to the customer for any consequential damages including but not limited to time lost from work. This agreement, when accepted by the purchaser named above, shall become a contract under the laws of the state in which the job is located and shall be so construed. All changes or alterations in measurements or materials will be treated as an entirely new contract. If installation is suspended at the purchaser's request, the ensuing expense for time and travel and/or the installer to complete the job is to be paid by purchaser. There are no warranties expressed or implied including the warranty of merchantability on the materials used in the construction of the above proposal except those warranties extended by the manufacturer. The removal of rocks larger than holes being dug, tree roots, buried foundations, debris, shale and other obstructions, will be added to the contract price as an additional cost to the purchaser. 15% Restocking fee on cancelled jobs / orders. No refund of non-stock materials. Eads Fence Company sign must be on your completed fence or any and all warranties are voided. QUOTE VALID FOR 30 DAYS, unless otherwise stated.

<u>DEPOSIT</u>	<u>BALANCE</u>	<u>TOTAL</u>
Amount <u>\$ 0.00</u>	Amount <u>\$ 0.00</u>	Amount <u>\$ 0.00</u>
Received _____ / 20	*DUE DAY OF COMPLETION*	

Acceptance of Proposal --- The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified.

Signature _____

Sales Rep Barney McCart

Date of Acceptance _____

Cell # 5134783337

WHITE - Office CANARY - Installer PINK - Customer GOLDENROD - Salesperson



EADS FENCE CO, INC.

COMMUNICATION CHECKLIST

CUSTOMER NAME

Stagnaro Saba and Patterson

- 2 of 2
- PERMIT (Must be present on-site) By Customer
 - HOME OWNERS ASSOC. APPROVAL By Customer
 - UNDERGROUND UTILITIES - PUBLIC By Eads
 - UNDERGROUND UTILITIES - PRIVATE By Customer

Eads Fence assumes no responsibility for damages to Private Utilities

- ESTABLISHED LINE BY CUSTOMER To Survey
- FRONT YARD / CORNER LOT SET BACK N / A
- TEAR OUT By Customer
- HAUL AWAY By Customer
- CLEAR FENCE LINE By Customer

- APPROVED SPACING BETWEEN HORIZONTAL OR VERTICAL BOARDS OR PICKETS 0
- APPROVED HEIGHT OF FENCE 6 ft.
- MESH / FABRIC SIZE n/a

- SETTING OF POST See Other
- IF POSTS CEMENTED Down From Grade
- TOP OF FENCE Straight Across
- BOTTOM OF FENCE Hold Up Hold up 2 inches
- FABRIC PLACEMENT Out Other _____
- WOOD PANEL PLACEMENT Inside Other _____

	<input checked="" type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C
<p><u>DIRT / SPOILS</u></p> <p>Customer MUST choose One of the Three options:</p>	<p>Customer takes care of dirt / spoils</p>	<p>Move but stays on site</p> <p>Location:</p> <p>Add \$ _____</p>	<p>Haul off site</p> <p>Add \$ _____</p>

- GATE POSITION Tight to Ground
- GATE SWING DIRECTION In
- GATE HINGE Right Other _____
- SELF CLOSURE SPRING NEEDED No

Job Notes:

CUSTOMER SIGNATURE: _____ DATE: _____

List of Witnesses

Peter Saba, Stagnaro Saba & Patterson

Alan Zahumensky, President, Pinnacle Paving

Joe Alan, Engineer, Development Planning, Inc.



Sean S. Suder, Esq.
Partner
ssuder@calfee.com
+1.513.693.4883 Direct

Calfee, Halter & Griswold LLP
Attorneys at Law

2800 First Financial Center
255 East Fifth Street
Cincinnati, Ohio 45202-4728
513.693.4880 Phone
calfee.com

June 13, 2018

VIA E-MAIL (zhe@cincinnati-oh.gov)

Hon. Kevin Tidd
Zoning Hearing Examiner
c/o City of Cincinnati Department of Law
801 Plum Street, Room 214
Cincinnati, Ohio 45202

Re: Case No. ZH20180090

Dear Mr. Tidd:

My firm represents Scott Hassell and Julia Anixt, residents and owners of the property located at 3434 Zumstein Avenue in the Hyde Park neighborhood of Cincinnati. I am writing regarding the May 2, 2018, applications by DML Realty, Ltd. (“DML”) for permission to demolish a detached garage and to construct a surface parking lot (individually, an “Application,” and, collectively, the “Applications”). This letter is in follow up and in supplement to my letter dated June 1, 2018, (copy to follow without attachments), which we respectfully request be included in the official record of the above referenced case.

In addition to the arguments for dismissing this case for lack of jurisdiction presented in my June 1 letter, my client respectfully requests that the Application for permission to demolish the detached garage at 2623 Erie Avenue in the “OL” – Office Limited zoning district be dismissed, or in the alternative, denied, for the reasons more fully stated herein.

The 2623 Erie Avenue property is located in Urban Design Overlay District (“UDOD”) #4 – Hyde Park Square Business District (See Zoning Code Schedule 1437-09). According to Zoning Code Section 1437-07(b), the Zoning Hearing Examiner has the authority to review permits for demolition in the UDOD. Section 1437-09 provides in part that “[d]evelopment within individual UD Overlay Districts **must** comply with the standards prescribed below that the ordinance that establishes the UD Overlay District declares applicable to that district.” (emphasis added). The phrase “standards prescribed below” refers to Schedule 1437-09. One of the standards prescribed for the UDOD #4 – Hyde Park Square Business District is “D1” “Demolition,” which is addressed in Section 1437-09(i) and provides as follows:

D1. Demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety and:

- The structure does not contribute to the architectural quality of the district;
 - The demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan;
 - The demolition is necessary to provide parking and/or other uses in a manner specified in the urban design plan;
 - The owner has endeavored in good faith to find a use for the structure and is unable to obtain a reasonable rate of return on the property; or
-
- Demolition has been ordered to remove blight.

(emphasis added).

DML has not alleged or provided any evidence, and my client is not aware of any evidence, that the detached garage has been ordered to be demolished by the Director of Buildings and Inspections for reasons of public health and safety. Because such an order is a threshold requirement for demolition in UDOD #4 – Hyde Park Square Business District, because the Applicant has provided no evidence to satisfy and, to my client’s knowledge, cannot so satisfy this requirement, and because this requirement **must** be satisfied under Section 1437-09 for the requested demolition permission to be granted, DML’s application for demolition on the 2623 Erie Avenue property must be denied as a matter of law.

Additionally, the zoning staff reports issued for both Applications are entirely deficient and should not be taken into account or relied upon because they fail to address any of the required standards for review in Zoning Code Section 1437. Zoning staff reports correctly reflect that the Applications are made under Section 1437 – Urban Design Overlay Review (see Staff Reports at p. 1 and Applications at Section 4); however, staff’s analyses are made under Sections 1445-13, 1445-15, and Chapter 1443 (See Applications at p. 6, 7, respectively). Section 1445-13 provides standards relative to variances, conditional use, and special exceptions, and Section 1445-15 provide standards for variances. Only Section 1437-09 governs standards for development permission in Urban Design Overlay Districts. The staff reports fail to include any review or analysis under Chapter 1437 and fail to include any reference to Chapter 1437 in the list of “Applicable Zoning Code Sections.” Because the staff reports are in error, they must be dismissed in their entirety.

Calfee, Halter & Griswold LLP

Not only are the Applications not ripe for review because any extension of the legislative variance granted in the Notwithstanding Ordinance must be heard by the City Planning Commission and City Council, but there has been no attempt made at addressing or satisfying the compulsory development requirements of Section 1437-09. Therefore, the Applications must be dismissed, or in the alternative, denied.

Respectfully submitted,



Sean S. Suder

c: Scott Hassell and Julia Anixt
Marion E. Haynes III, Esq.

Sean S. Suder, Esq.
Partner
ssuder@calfee.com
+1.513.693.4883 Direct

Calfee, Halter & Griswold LLP
Attorneys at Law

2800 First Financial Center
255 East Fifth Street
Cincinnati, Ohio 45202-4728
513.693.4880 Phone
513.842.7028 Fax
www.calfee.com

June 1, 2018

VIA E-MAIL (marion.haynes@cincinnati-oh.gov)

Marion E. Haynes III, Esq.
Chief Counsel for Land Use and Planning
City of Cincinnati Department of Law
801 Plum Street, Room 214
Cincinnati, Ohio 45202

Re: 3443 Zumstein Avenue and 2623 Erie Avenue

Dear Marion,

My firm represents Scott Hassell and Julia Anixt, residents and owners of the property located at 3434 Zumstein Avenue in the Hyde Park neighborhood of Cincinnati. I am writing regarding the May 2, 2018, application by DML Realty, Ltd. ("DML") for permission to demolish demolition a detached garage and to construct a surface parking lot ("Application") (copy attached).

DML is the owner of the property located at 2623 Erie Avenue, which contains an office building (the "Office Building Property") for the law firm of Stagnaro, Saba and Patterson Co., L.P.A. ("SSP"), and 3443 Zumstein Avenue, which contains a three-family residential building (the "Three-Family Building Property") (the Office Building Property and the Three-Family Building Property are hereinafter, collectively, referred to as the "DML Properties"). The Three-Family Building Property is currently being used by SSP for office uses pursuant to the limited rights granted by Notwithstanding Ordinance No. 1-2016 ("NWO") (copy attached). The DML Properties are in the Hyde Park Urban Design Overlay District ("UDOD").

On May 2, 2018, DML made application to the Zoning Hearing Examiner for permission to demolish an existing detached garage to make way for the construction of a driveway and surface parking lot to provide access to nine additional off-street parking spaces to serve the office uses of the DML Properties. I understand that the Zoning Hearing Examiner is scheduled to hear the Application on June 13, 2018 ("ZHE Hearing"). For the reasons more fully set forth below, my clients respectfully request that the Application be dismissed as a matter of law and the ZHE Hearing cancelled.

First, the Zoning Hearing Examiner does not have jurisdiction over this matter at this time. Please recall that the NWO was passed at the suggestion of the City administration in recognition that rezoning the Three-Family Building Property from SF-6 Single-family residential zoning to an "OL" Office Limited zone would be contrary to the interests of the Zumstein residents and the City's interest in maintaining Zumstein Avenue as a residential street. The NWO was carefully worded so that the limited rights granted therein are specific to DML and SSP and do not run with the land. While it does not preclude further administrative relief from the requirements of the SF-6 Single-family zoning district, the NWO does not grant any other rights in addition to those of the SF-6 Single-family residential zoning district, including any rights related to parking for the limited office uses allowed on the Three-Family Building Property.

Because the limited rights related to the office uses on the Three-Family Building Property are exclusively granted by the NWO as a legislative variance, only the City Planning Commission and City Council have jurisdiction to modify or enlarge them. While the Zoning Hearing Examiner may review the demolition of the garage and the construction of the surface parking lot for consistency with the applicable Urban Design Overlay District standards, the Zoning Hearing Examiner does not have the right to permit alterations in support of the enlargement of land use rights granted by the NWO. The Zoning Hearing Examiner can only undertake such a review if City Council passes additional legislation to expand the rights granted by the NWO. Therefore, the Application is not ripe, and the ZHE Hearing must be cancelled. Allowing the Zoning Hearing Examiner to amend the NWO, in addition to being *ultra vires* and contrary to law, would deprive the very bodies who so carefully granted these rights the opportunity to hear from the residents of Zumstein Avenue and the greater Hyde Park community on DML's proposal to further expand its office campus and commercialize one of Hyde Park's iconic residential streets.

Additionally, the application must be dismissed as a matter of law because the construction of a shared off-site parking lot in the SF-6 Single-family residential district is expressly prohibited by the Zoning Ordinance of the City of Cincinnati ("Zoning Code"). Zoning Code Section 1425-25(c) expressly prohibits off-site parking in single-family districts. No matter how DML characterizes the proposed driveway and surface parking lot, it is without question that the new parking will serve both DML Properties. Even if DML were to represent that only those vehicles associated with SSP's offices in the three-family building will park on the surface parking lot proposed on the Three-Family Building Property, there is no way for the City or the Zumstein residents to police or effectively enforce any such representation. The fact that the two parking lots are connected necessarily invites off-site parking in a single-family zoning district contrary to applicable law.

Because the proposal is for the construction of off-site parking in the SF-6 Single-family zoning district, it must be dismissed as a matter of law. Coupled with the fact that the Application is not ripe for review by the Zoning Hearing Examiner, the City should void the Application as a matter of law and immediately cancel the ZHE Hearing.

We appreciate your consideration and prompt action on this jurisdictional matter.

Respectfully submitted,

/s/ Sean S. Suder

Sean S. Suder

c: Scott Hassell and Julia Anixt



June 12, 2018

Mr. Kevin Tidd
Zoning Hearing Examiner
Cincinnati, Ohio 45202

Re: Zoning Hearing – 2623 Erie Avenue (ZH20180091)

Dear Mr. Tidd:

The Zoning Committee of the Hyde Park Neighborhood Council (HPNC) has reviewed documents describing the demolition of a garage and construction of a parking lot at the rear yard of the subject property. The applicant also proposes to build an access drive to new parking at the rear of 3443 Zumstein. The applicant did not submit a professional land survey and/or a fully dimensioned site plan but it appears approximately one half of the access drive to the new parking would be located on the Erie property and one half on the Zumstein property.

Zumstein Avenue is a residential cul-de-sac zoned SF-6. There are no commercial uses except for the SSP law offices permitted by Not Withstanding Ordinance at 3443 Zumstien. All of the structures have residential appearance. The Zoning Committee is opposed to the demolition of the garage because the larger parking lot and access drive will increase the commercial appearance of Zumstien Avenue. Additionally the garage partially obscures views of the parking lot in the rear yard of the adjacent property 2619 Erie. We think the garage is a critical buffer between the commercial and residential uses.

If the garage is demolished and substantial improvement to parking lot is approved, we believe the Type A buffer yard (10 feet wide between OL and SF) required by Schedule 1423-13-A must be implemented. As stated in §1423-11, the buffer yard standards apply to redevelopment or expansion of existing site ground coverage, which includes buildings, accessory uses or structures, parking and outdoor storage areas by more than 30 percent. It appears that the entire parking lot is being reconfigured and an access drive is being added. The number of parking spaces increases from three (see CAGIS overhead) to six (see proposed site drawing). The parking alone doubles the intensity of use. The Type A buffer yard requirement would not permit construction of the access drive and possibly eliminate one parking space.

Hyde Park Neighborhood Council, P. O. Box 8064, Cincinnati, Ohio 45208
Web Site: HydeParkCincinnati.org

At its regular meeting on June 12, the Trustees of the HPNC passed a motion “opposing the demolition of the garage and if the garage is demolished, requesting the implementation of a Type A buffer yard at 3443 Zumstein.”

Should you or anyone with the City have any questions, please call me on 513-243-8719/513-608-3342.

Yours truly,



Gary Wollenweber, Chair
HPNC Zoning Committee

cc: President HPNC
HPNC Zoning Committee
Trustees of HPNC

MSD has no objection to the proposed demolition. See response to ZH20180090 for further comments.

Rob Kern
Engineering Technical Supervisor
Metropolitan Sewer District of Greater Cincinnati
513-244-5588



From: mail@cagisdocs.hamilton-co.org [<mailto:mail@cagisdocs.hamilton-co.org>]
Sent: Friday, May 04, 2018 10:39 AM
To: Kern, Rob <Rob.Kern@cincinnati-oh.gov>
Subject: ProjectDox Invitation for ZH20180091

Shelia Sherman
Exhibit 1



Shelie Sherman
Exhibit 2



Shelia Sherman
Exhibit 3



June 13th @ 2:30 pm

3443 ZUMSTEIN AVENUE - ZH20180090
2623 ERIE AVENUE - ZH20180091



Hearing Examiner: Kevin Tidd

Office of the Zoning Hearing Examiner
805 Central Avenue, Suite 500
Cincinnati, OH 45202

(Please print clearly so copies are legible)

Name	Organization	Email
Peter SABA	SSP	PS@SSP.ORG
Jerr Nye	SSP	JMN@SSP.ORG
Scott Hassell	Self	Scott_Hassell@hotmail.com
Sean Suder	Calfee	ssuder@calfee.com
Alicia Rivmann	Self	AliciaR@comcast.com
Gary Wollenweber	HPNE	wollenweber@fuse.net
Carl Weibacker	HPNE	cweiback@yandoo.com

Frank Sullivan	Self	Frank, Sullivan, Superfanmer @g-mail. com
Joe Allen	Development Planning Inc	dpie@cinci.rr.com
Paul Stet	SSI	PTS@sspfirm.com
Alan Zukumensky	Pinnacle Paving	
JOE STAGNARO	SSP	jsse@sspfirm.com
PAI VETH	SSP	PRV@SSPFIRM.COM
William Patterson	SSP	WSP@SSPFIRM.COM
Cooper Gardiner	HPNC	cgardiner@cinci.rr.com
Janet Blevins	HPNC	hpncpresident2011@gmail.com

**APPLICATION FOR WRITTEN ADMINISTRATIVE DECISION
ZONING HEARING EXAMINER PUBLIC HEARING
STAFF REPORT**

APPLICATION #: **ZH20180091**
APPLICANT: DLM Realty Ltd.
OWNER: DLM Realty Ltd.
ADDRESS: **2623 Erie**
PARCEL: 041-0004-0103
ZONING: OL (office) and Hyde Park Square Urban Design Overlay
COMMUNITY: Hyde Park
REPORT DATE: 5.11.18
HEARING DATE: 6.13.18
STAFF REVIEW: Weston Munzel, Zoning Plan Examiner

Details of Zoning Relief Required:

1. **Sec. 1437- Urban Design Overlay Review** – The proposed detached garage demolition and parking lot construction in the rear of the structure require an urban design review due to their location in the Hyde Park Square Urban Design Overlay.

Existing Conditions:

The subject property is one of two contiguous lots owned by the applicant and that are both proceeding through the urban design review process. The 2623 Erie Avenue lot is a 50'x 132' (6,600 SF) parcel on the edge of the Hyde Park Square business district. The site contains a two-story building that contains an office use. The site has a small parking lot in the rear that can hold approximately three cars. There is also a two-car detached garage in the rear.

The Hyde Park Square area is primarily zoned CN-P (commercial neighborhood pedestrian) with an urban design overlay. However, OL office zoning exists to the north across Erie and to the west. The areas to the east of the subject property are zoned CN-P (commercial) and to the south is zoned SF-6 single family. The site to the south is also owned by the applicant and has a "Notwithstanding" ordinance allowing an office use.

It should be noted that the office use allowed currently applies only to the current SSP law firm use. Should the law firm cease occupancy of the building, the office use would cease. Please see the following aerial and street view images that show the existing conditions and locational context. The subject property is outlined in red.



Aerial view of the subject and the two separate parcels (outlined in red). Each parcel has its own case number and report, but both sites are incorporated into coordinated site design. Erie Avenue is on the top of the image. Residential uses abut the subject property partially to the west and south.



The Erie Avenue site as viewed from Erie Avenue looking south.

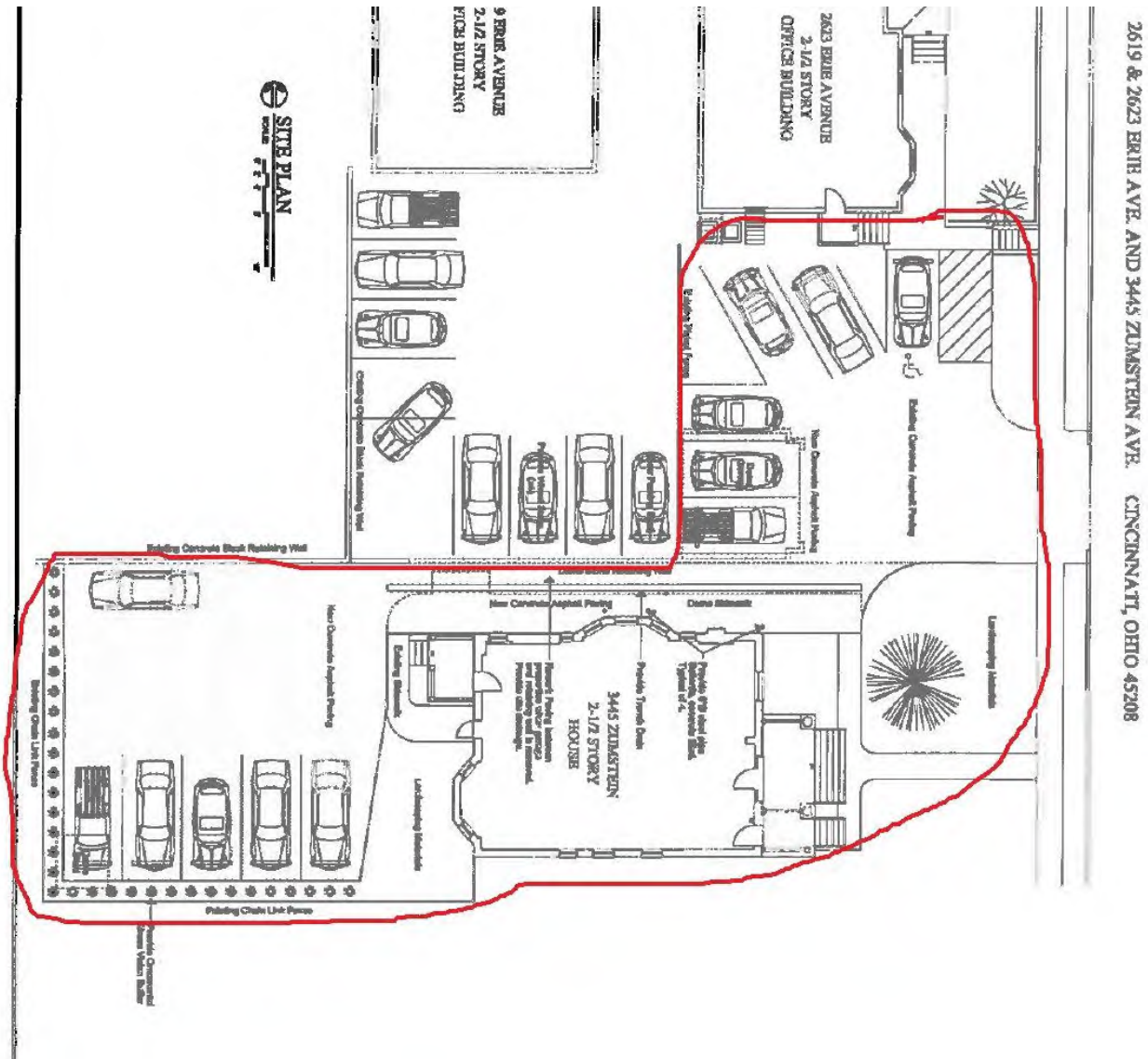


Image showing the detached garage that is proposed to be demolished on the left; and parking lot coordinated with new driveway on parcel to the south. New driveway proposed where re-cycling containers are located.

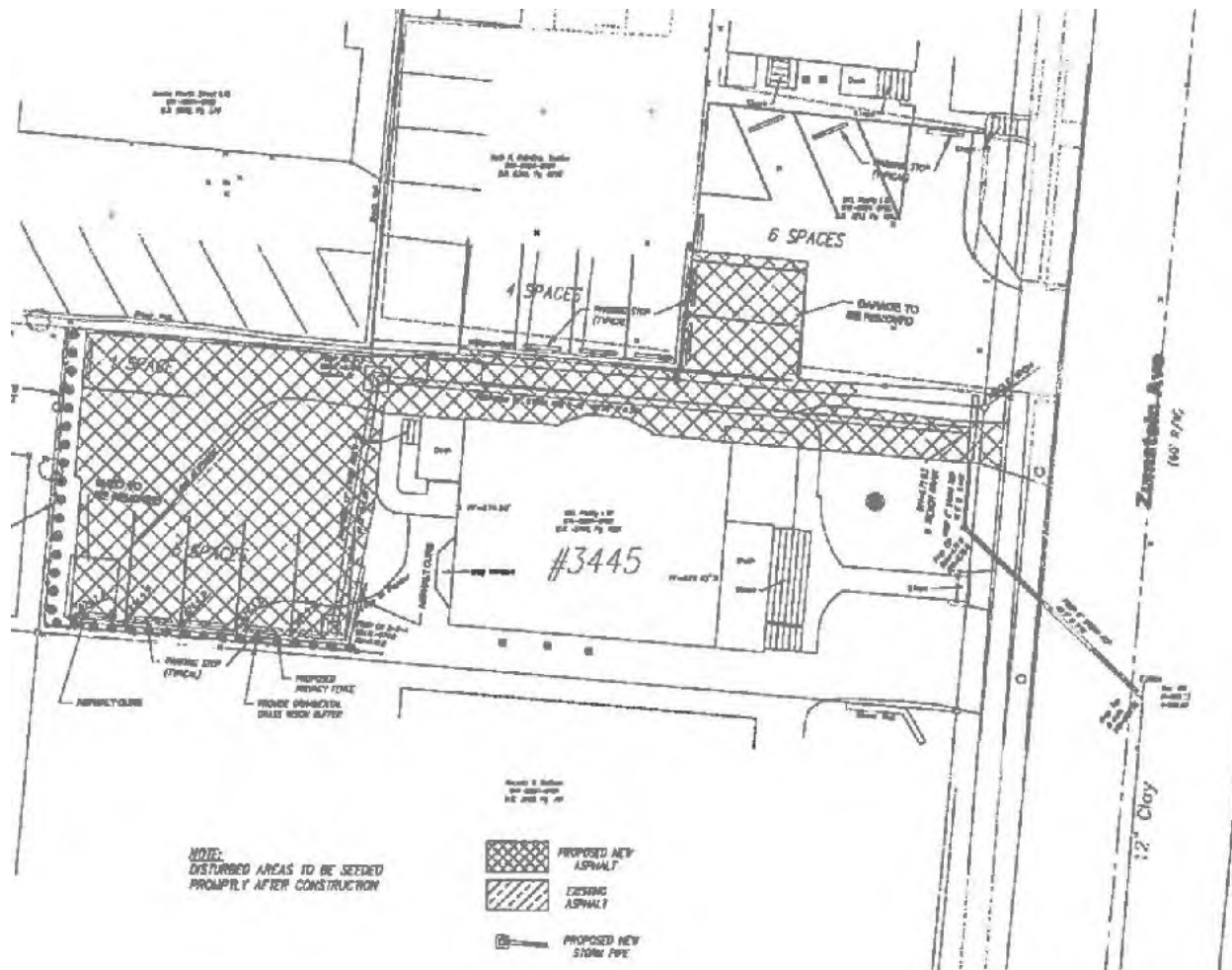
Proposed Conditions:

The applicant has requested an urban design review for the demolition of the existing detached garage and proposed parking lot revisions. Per Section 1437 of the zoning code, an urban design review and approval is required for the proposed garage demolition and parking lot.

The proposed parking lot has six spaces in the rear of the site. Removal of the garage allows for a more efficient parking lot design. Please see the following images that outline the proposed parking lot.



Site plan showing proposed parking lot highlighted in red. Landscaping is not required on the Erie Avenue lot since it abuts commercial/office zoned land to the west.



Site plan showing new pavement in hashed area.

Urban Design Review

- Urban Design Review is part of the review process for demolition of the detached garage and new parking lot in an urban design overlay.
- The parking lot is appropriately designed. Screening is not required due to the zoning district of abutting property being office zoning.
- Zoning staff worked with the applicant to develop the site plan based on zoning code requirements as well as coordinating stormwater drainage from both sites.
- The new parking lot is more efficient and is able to handle six vehicles compared to the current three (plus garage).
- The demolition of the garage is considered a reasonable request since it is not a historic structure.
- The demolition of the garage would not have an adverse impact on surrounding properties.
- The proposed parking lot would not have an adverse impact on surrounding properties.

Applicable Zoning Code Sections:

1445-15, 13: Standards for Variances; General Standards, Public Interest
1443: Zoning Hearing Examiner Procedures

Based on a review of the zoning code, the information provided by the applicant and the existing conditions; it appears that an urban design approval for the proposed garage demolition and parking lot construction is reasonable.

Additionally, applications should demonstrate some degree of value to the public interest, potentially utilizing at least one of the factors provided within Section 1445-13 – General Standards. This proposal is of value to the public interest, as it enhances:

- **(A) Zoning**, the proposal conforms to the underlying zoning district regulations and is in harmony with the general purposes and intent of the Cincinnati Zoning Code.
- **(D) Traffic**, due to the combination of expected staff and customer visits, and the subject's location embedded in a viable street grid, traffic impacts are expected to be accommodated by the existing street network and will not overload the existing adjacent streets.
- **(H) Neighborhood Compatibility**, the proposal is generally compatible with the predominant mixed-use/commercial development patterns of the surrounding neighborhood and will not have a material net cumulative adverse impact on the neighborhood; and
- **(J) Adverse Effects**, the proposal does not appear to have any adverse effect on the access to the property by fire, police, or other public services; access to light and air from adjoining properties; traffic conditions; or the development, usefulness or value of neighboring land and buildings.
- **(L) Economic Benefits**, the proposal indicates that this will make the overall office operation more attractive to customers and will help contribute to the viability of the office use.
- **(O) Private Benefits**, the applicant's investment would yield an improvement to an existing building and a viable parking for their growing business.
- **(P) Public Benefits**, the public benefits realized would be adequate parking provided off-street rather than using public on-street parking for staff.

Conversely, in reviewing for concerns with this proposal

- **(J) Adverse Effects**, the applicant's proposal will not have a material net cumulative adverse impact on the neighborhood, because the proposal is compatible with the neighborhood.

Consistency with Approved Plans:

Plan Cincinnati (2012). The proposed work would be consistent with the policy principle to retain and expand existing businesses.

Recommendation:

1. Section 1437 – Urban Design Review- **APPROVE** - The proposed garage demolition and parking lot construction conforms to the relevant urban design parameters outlined in the zoning code.

Findings:

- The subject parking lot is an appropriate use for a small office use.
- Demolition of the garage and construction of a parking lot will not negatively impact the surrounding properties.

URBAN DESIGN REVIEW

JUNE 13, 2018

CASE NO. ZH20180090/ZH20180091

Barlow Reporting & Video Service, LLC

620 Washington Street
Covington, Kentucky 41011
(859)261-8440

1 MR. TIDD: Now, this is June 13, 2018
2 session of the Zoning Hearing Examiner Docket.
3 My name is Kevin Tidd. I am the zoning
4 hearing examiner for the City of Cincinnati
5 and I'll preside over the hearing. The cases
6 before us today are Case No. ZH021800090,
7 property at 3443 Zumstein Avenue, and 2623
8 Erie Avenue, Case No. ZH20180091. We're going
9 to hear both cases together because they
10 contain similar issues of facts of law. The
11 purpose of this hearing is to allow applicants
12 and opposing parties to testify and to offer
13 any evidence in testimony. This hearing will
14 follow the rules, follow the zoning code and
15 supplemental rules of the zoning hearing
16 examiner. All testimony and evidence that the
17 applicant or any opposing party wish to offer
18 must be presented at this hearing.

19 The hearing will proceed as follows: The
20 applicant, the applicant's attorney or the
21 applicant's agent will first present the
22 applicant's case. The public will have an
23 opportunity to speak after the applicant has
24 presented its case. If there's more than one
25 person opposing the application, those persons

1 should decide among themselves a length of time
2 each would like to speak. If an opposition
3 group's in attendance, I may request a
4 spokesperson to be chosen to speak on behalf of
5 the group. If the applicant is represented by
6 an attorney, the applicant's attorney may
7 cross-examine any person who's testified at the
8 hearing. If the party of record is represented
9 by an attorney, the attorney for the party of
10 record may present witnesses after the
11 applicant has presented its case and may
12 cross-examine the person who is testifying at
13 the hearing.

14 In the event that any party testifies or
15 is (inaudible) opposition to the application,
16 the applicant shall have an opportunity to
17 rebut the testimony in order (inaudible).
18 After the applicant has been given an
19 opportunity to rebut any testimony and
20 (inaudible) opposition, any attorney for a
21 party of record will not (inaudible) closing
22 statement.

23 Finally, the applicant will have an
24 opportunity to make a closing statement. After
25 all presentations have been made, I'll close

1 the hearing and a decision will be expected
2 within two weeks. I may limit or exclude any
3 testimony that I deem irrelevant or outside the
4 scope of the application being considered. I
5 may (inaudible) the speaker to ask questions,
6 make any comments. I may also to refuse to
7 consider hearsay testimony or documents. This
8 means if you have (inaudible) want to produce
9 such a statement made by a person who is not
10 present at this hearing or a document that
11 includes a certain person who is not at the
12 hearing. A sign-in sheet is located on the
13 table. Please be sure to sign in. All persons
14 who might be testifying will be sworn now. So
15 I will swear everybody in except for the
16 attorneys in the room.

17 (AT THIS TIME, MR. TIDD ADMINISTERED OATH)

18 MR. TIDD: And lastly, I should suggest.
19 This is a little of a peculiar situation, Mr.
20 Saba.

21 MR. SABA: Right.

22 MR. TIDD: Are you going to make legal
23 arguments? Are you going to present as a
24 witness, both?

25 MR. SABA: I would be presenting both.

1 So I'm going to present some of the
2 applicants, just in terms of explanation, but
3 I also make some legal arguments as well, so.
4 I know it's sort of a hybrid issue.

5 MR. TIDD: It is hybrid. Mr. Suder, what
6 are your thoughts on this?

7 MR. SUDER: Maybe just swear in for
8 purposes of the evidence you're providing
9 and --

10 MR. TIDD: That's what I was thinking.

11 MR. SABA: I did raise my hand --

12 MR. TIDD: I saw that you did. What if I
13 allow you, you know, open to
14 cross-examination, you know, limit it to the
15 facts?

16 MR. SABA: Yeah, that's fine.

17 MR. TIDD: Okay. That's agreeable to
18 everybody here? Okay. Who's going to start
19 off for us today? Would you guys both mind
20 identifying yourselves?

21 MR. SABA: Sure. Peter Saba.

22 MR. NYE: Jeff Nye.

23 MR. TIDD: We do have one other attorney
24 in the room. Mr. Suder, could you identify
25 your name?

1 MR. SUDER: Oh, I'm sorry. Sean Suder on
2 behalf of Scott Hassell and Julia Anixt.

3 MR. TIDD: Okay. I do want to let you
4 both know because both sides are represented
5 by attorneys, you do have the ability to
6 cross-examine any witnesses. So, just keep
7 that in mind as we go forward. I will allow
8 the applicant to present its case and then I
9 will allow Mr. Suder cross-examination of the
10 other witnesses. Mr. Suder will present his
11 case. At that point I'll open it up to the
12 public. If anyone has any comment, again, the
13 applicant and any attorneys have the right to
14 cross-examine any witnesses. You both have an
15 opportunity to -- well, the applicant has an
16 opportunity to rebut and then you also have an
17 opportunity to close later. You can do -- if
18 you would like, you can give Mr. Suder the
19 opportunity to close and you can rebut and
20 close at the same time. I'll give you that
21 option. It's up to you. You don't have to
22 tell me now. You can wait until we get to
23 that portion of the hearing. I just wanted to
24 make sure it was clear so everybody knew the
25 situation we have, all right? The applicant?

1 MR. SABA: We're here today on an
2 application that is twofold, as you pointed
3 out. One is the application for the
4 demolition of a garage at 2623 Erie Avenue and
5 expansion of the existing parking that is
6 there right now. The second application is
7 for the addition of a driveway and parking in
8 the rear of 3443 Zumstein Avenue. With
9 respect to those two applications, the big
10 reason we're doing that is because a
11 long-standing problem that's existed in Hyde
12 Park. It has been long-recognized that
13 there's a desperate need for additional
14 parking in the Hyde Park Square area. In
15 December 1984, the Hyde Park Square
16 Conservation Plan was issued and specifically
17 noted that parking is a major concern of the
18 businesses in Hyde Park Square. Parking
19 conditions, as they now exist, are a
20 substantial irritant to not only the shoppers
21 and businesses, but to the residents living
22 immediately adjacent to the square.
23 (Inaudible) recommended a number of parking
24 spaces in relation to the (inaudible) area of
25 the business district. There's a current

1 shortage of spaces. Investigation revealed a
2 number of facets to the problem. The major
3 ones being, and these are some of the ones
4 that were listed, few companies furnished
5 parking areas and bumper-to-bumper parking on
6 both sides of the street in front of
7 residences on Zumstein and Edwards. The goals
8 and objectives that were identified way back
9 in 1984 were to improve parking conditions by
10 increasing the number of off-street parking
11 spaces. And that problem still exists today.
12 We provided an e-mail from Lou George that was
13 dated October 8, 2015. And he is the owner of
14 the property at 3446 Mooney. In that e-mail
15 he specifically indicates and refers to that
16 we would be heroes if we could assist with the
17 problems that -- the parking problems that
18 they are having on Mooney. It's indicative of
19 the fact that the parking problems in the Hyde
20 Park Square area still exist today and need
21 help being alleviated. The plans that were --
22 I believe we provided a number of photos that
23 show the garage at issue that are included in
24 our packet.

25 The plans that we had proposed with

1 respect to 2623 Erie, although the garage is
2 currently there, it occupies the space, it
3 takes up approximately three parking spaces, it
4 actually only holds one vehicle. And because
5 of the odd configuration of a parking area
6 created by the garage, from a practical
7 standpoint, usually only three cars are parked
8 there, in part because of blockage of the
9 garage or apprehension of blockage of the
10 garage, and so the garage generally goes
11 unused. And so because of that, with the
12 removal of the garage itself, we are able to
13 add three additional spaces to that lot and
14 expand it to six cars that could be used.

15 Additionally, if the garage is removed,
16 the adjacent property at 2620 Erie Avenue --
17 and if you look at -- there's photos there that
18 show the back of the garage. And if you look
19 at the photos in the back of the garage, you
20 can see that there's one space that goes unused
21 because the garage actually encroaches right on
22 the property line. If the garage were
23 demolished, it actually would be an additional
24 space that could be used in that lot as well.
25 So it would also add some off-street parking to

1 that neighboring lot.

2 MR. TIDD: Mr. Saba, how many parking
3 spaces are there in that area right now?

4 MR. SABA: In the area, in that existing
5 lot?

6 MR. TIDD: Yeah.

7 MR. SABA: I think they have seven and it
8 would go to eight. I'm sorry, eight and it
9 would go to nine, excuse me.

10 MR. TIDD: Okay.

11 MR. SABA: So with respect to that, the
12 intention is to go ahead and have that garage
13 demolished. Demolition of the garage does
14 comply with the zoning code. We are here
15 today on the UDOD hearing. I believe
16 Mr. Suder, I just happened to receive his
17 objection that he wrote and filed today. It
18 raises the issue of whether or not we comply
19 with 14307-09. Our position is we do comply
20 with 14307-09. With respect to the basis for
21 demolition, he proposes a rather restrictive
22 and unreasonable reading of that section of
23 the ordinance, which is D1 under 14307-09,
24 which our position is it's completely
25 incorrect. But a proper reading of that

1 ordinance would indicate we generally comply
2 with at least two provisions of that. The
3 structure does not contribute to the
4 architectural quality of the district. It is
5 not -- it offers no architectural value. It
6 is not something that provides any value in
7 terms of a historical building in any form
8 whatsoever. And also on the third bullet
9 point of that provision, demolition is
10 necessary to provide parking under other uses
11 in a manner specified in the Urban Design
12 Plan, which as we indicated, this is
13 additional parking long-standing consistent to
14 provide additional off-street parking with
15 that plan.

16 Two, since we are on the issues of the
17 demolition and value, I think there was an
18 issue raised, which I think there is, you know,
19 basis for that would outweigh the additional
20 value of additional parking spaces. I think
21 the residents argued and Mr. Hassell
22 specifically that, well, we need that building
23 there because it blocks the other parking areas
24 and we don't want to look at parking areas.
25 And so they said it's a screen, which I think

1 is an unreasonable indication that that's a
2 reason why to keep it there. The -- I believe
3 he raised the issue, well, we never want to
4 look at 14 parking spaces, nobody ever would.
5 The fact of the matter is -- and we provided a
6 photograph of the file today that shows the
7 aerial view of the property immediately
8 adjacent to the Erie property. And you can see
9 across the street from that is a 14-space
10 parking lot. It's been there for well over 40
11 years. The majority of these residents moved
12 there after that parking lot was put in place.
13 It obviously didn't deter their interest into
14 moving into the area. It didn't deter any of
15 the economic values that were created for their
16 properties. It did not create any problems
17 whatsoever, nor would the removal of this
18 garage or the suggestion that somebody would
19 see 14 cars there in one lot somehow detract
20 from either the neighborhood itself, the value
21 of the buildings in that fashion whatsoever.
22 So the argument that it's necessary for some
23 screen is unfounded in that situation.

24 The plan as we've submitted it also would
25 provide adequate -- it complies with all the

1 zoning requirements that are necessary for that
2 property. I believe Mr. Hassell in his letter
3 that he filed tries to raise some additional
4 issues which, quite frankly, rely on a bit
5 distorted position -- distorted interpretation
6 of the zoning code. He first suggests that
7 somehow we are in violation of the
8 notwithstanding ordinance and/or in violation
9 of the requirements of SF-6 in terms of -- I'm
10 sorry, I take that back. That was not his
11 objection. His objection on the demolition,
12 his formal objection, dealt with the issue of
13 he felt that under 1423-11 that we were
14 required to have a buffer yard that's a larger
15 type of buffering yard. His interpretation
16 relies on a misreading of that ordinance. He
17 specifically refers to more than 30 percent of
18 the property under Section D and that the
19 increasing in parking spots constitutes a
20 change in use. Both of those rely upon a
21 misread of that ordinance. What 1423-11
22 specifically refers to under Section B, and
23 I'll read that into the record, it refers to
24 redevelopment. Redevelopment or expansion of
25 an existing site ground coverage (inaudible)

1 uses or structures, parking and outdoor storage
2 areas by more than 30 percent, not including
3 single-family dwellings. It's talking about an
4 increase in existing site ground coverage.

5 With respect to the demolition of the
6 garage and the replacement of that with
7 asphalt, that is not an increase or any change
8 whatsoever in existing site ground coverage.
9 It would be a zero percent change. So that
10 section is inapplicable to the demolition on
11 2623 Erie Avenue.

12 The second provision he refers to is
13 change in use. He suggests that the expansion
14 of three parking spaces to potentially six
15 parking spaces is somehow a change in use for
16 that property under that statute section.
17 That's incorrect. Under 1423-11C it
18 specifically defines what's included in the
19 concept of a change in use. And it refers to a
20 change in use from a residential use to a
21 commercial use, from a commercial use to a
22 manufacturing use, and in some cases from a
23 manufacturing use to a commercial use. The
24 increase in parking spaces from three to six
25 does not fall under a change in use under that

1 section. So the argument that we would be
2 required to install an additional buffer zone
3 is incorrect. It relies upon a distorted
4 interpretation of that statute (inaudible).

5 So with respect to that, I think referring
6 back to the analysis made by the zoning
7 administrator, they did acknowledge that the
8 design is appropriate and complies with the
9 terms of the zoning code. The demolition of
10 garage considered (inaudible) request since
11 it's not a historical structure. The
12 demolition of the garage would not have an
13 adverse impact on surrounding properties and
14 the proposed parking lot would not have an
15 adverse impact on surrounding properties. And
16 for that reason, they did support approval of
17 the demolition of the garage. It was also
18 supported by MSD with respect to that
19 demolition as well.

20 With respect to the parking lot on
21 Zumstein, the plan is also -- that is property
22 that through the notwithstanding ordinance that
23 was issued by the city, we have the right to
24 use that for office purposes. It is originally
25 a three-family building, and it was a

1 three-family existing already within SF-6. And
2 it will always be a three-family if ever we
3 would stop using it for an office. So its
4 continued use in existence as a three-family,
5 three units, and that's SF-6, continues to be
6 there.

7 The parking that's proposed fully complies
8 with (inaudible). The intention is that there
9 would be a driveway that is separately on the
10 Zumstein property and continues back on the
11 Zumstein property and would include six parking
12 spaces in the rear of the Zumstein property.
13 To make it clear, there would be an adequate
14 buffer, as required by zoning, on all
15 perimeters of the property that is adjacent to
16 residential properties. Additionally, there
17 would also be a six-foot privacy fence that
18 runs around the perimeter of the parking
19 adjacent to any residential properties to
20 properly screen it from their view.

21 With respect to the plans themselves, as I
22 indicated, it does fully comply with the zoning
23 requirements. The argument that was made, and
24 I believe Mr. Hassell made this argument, that
25 we are not permitted to put in parking because

1 the notwithstanding ordinance indicated that we
2 otherwise have to comply with SF-6 zoning
3 requirements. And the fact of the matter is,
4 the placement of the six parking spaces in the
5 rear of the building is not only compliant with
6 SF-6 zoning, it would also be consistent with
7 the mandate of the SF-6 parking requirements.
8 Under 1425-19, Section A, SF-6 zoning is
9 required to have two parking spaces for every
10 unit. In that situation, we have a three-unit
11 apartment building. It would have six spaces
12 total, compliant with what's mandated by
13 1425-19A. So the argument that SF-6 somehow
14 doesn't permit parking is completely misplaced.

15 He does make some sort of construed
16 argument that, well, if you're parking to go
17 into an office, that's not parking to go into a
18 residence. SF-6 doesn't distinguish between
19 that type of parking. It allows for parking,
20 two spaces per unit. The only restriction that
21 you see in SF-6 really deals if you're going to
22 park commercial vehicles. We have no intention
23 of parking commercial vehicles in that space.
24 It's defined by a statute as something that has
25 either a commercial license or it's otherwise

1 used for the handling of freight, what we know
2 to be construction trucks or otherwise. That
3 is not our intention except as otherwise
4 provided by SF-6, which allows you to do that
5 if you're doing work on the property or other
6 construction. But that's not the intended use.
7 So the parking that we're placing there is not
8 only compliant with SF-6, it's mandated by
9 SF-6. And so we're compliant with the terms of
10 the notwithstanding ordinance.

11 The suggestion -- his second objection is
12 based upon the fact that we have a driveway.
13 He suggests that under 1425-35, that we're not
14 permitted to have that driveway and, again,
15 tries to rely upon the argument that parking is
16 not permitted under SF-6. And the reality is,
17 yes, parking is permitted and our driveway will
18 be used for that purpose. And that's why the
19 intention of putting this parking lot in there
20 is still consistent with the plan of SF-6 and
21 what we're trying to achieve there.

22 So the position is consistent with what
23 the zoning administrator found, is that it
24 complies with all the zoning requirements. It
25 has all the buffering that's needed. It has

1 the screening that's required for that parking
2 lot. So there is no justifiable basis for not
3 allowing that parking to be installed. It is
4 something that's in desperate need in the Hyde
5 Park area.

6 A -- there was, and we filed a response to
7 that objection that was filed by Mr. George.
8 He was concerned about additional lighting, and
9 he also expressed a concern about noise. And
10 the reality is in terms of additional lighting,
11 we're not adding any lighting to this
12 construction. There's no additional lighting
13 that's being placed in this parking, nor would
14 there be any fear of additional lighting or
15 noise. The reality is because we use it as an
16 office, the building is essentially vacant by
17 6:00 p.m. every evening, and rarely is somebody
18 ever there on weekends. So you have very
19 little issue of noise, particularly in the
20 evening, very little issue of even headlights
21 adding to any additional lighting because for
22 the most part, people are gone by dusk or
23 before dawn. So there is no legitimate basis
24 for any of those concerns. And yet,
25 coincidentally and ironically, it actually

1 addresses Mr. George's biggest concern about
2 can you help us with the parking on Mooney,
3 which is what this is designed to do, is to
4 remove our employees or other people from
5 having to park on Mooney so that they could go
6 ahead and park in this building and alleviate a
7 long-recognized problem which exists today.

8 The other issue that was raised -- one
9 second. I think in terms of -- there were some
10 comments made about is it consistent with the
11 plan of the city. Certainly it's consistent
12 with the Hyde Park Square Conservation Plan
13 that's identified in a document of 1984. And
14 it's also consistent with Plan Cincinnati 2012.
15 As we look at page 77, (inaudible) under Plan
16 Cincinnati 2012, it talks about we need a
17 broader approach to include strategies to
18 revitalize our neighborhood business districts
19 in helping our existing businesses grow and
20 succeed.

21 Also as indicated on pages 102 to 104,
22 retention and expansion of Cincinnati's
23 existing businesses will be our primary focus,
24 to expand the (inaudible) will nurture our
25 small and medium-sized businesses to help them

1 expand and make Cincinnati their permanent
2 home. And that's the goal here. And that's
3 why it's consistent with the Plan Cincinnati
4 2012, is what we're exactly trying to do, is to
5 maintain our ability to have our presence in
6 Hyde Park Square for our small business to
7 continue to grow. For all those reasons, we'd
8 ask for both applications to be approved.
9 Obviously, we'll reserve comment for a later
10 time on rebuttal or otherwise. Thank you.

11 MR. TIDD: Thank you, sir. Mr. Suder, do
12 you have any Cross based on any facts that
13 were --

14 MR. SUDER: Yeah.

15 MR. SABA: And actually, I do have two
16 witnesses to call. So that's just my --

17 MR. TIDD: Oh, I'm sorry. I thought you
18 were done with your presentation.

19 MR. SABA: No. No. No. I'm sorry.

20 MR. TIDD: At this point, yeah, you can
21 present your witnesses.

22 MR. SABA: Okay. I would like to present
23 Joe Allen.

24 Joe, could you go ahead and state your
25 name for the record, please?

1 MR. ALLEN: Joseph M. Allen.

2 MR. SABA: And could you explain your
3 background, training, experience and
4 education?

5 MR. ALLEN: I'm with Development
6 Planning, Incorporated. I'm a civil engineer,
7 professional engineer, professional land
8 surveyor in doing site development type of
9 work concerning drainage, parking, paving for
10 over 30 years in the Greater Cincinnati area.

11 MR. SABA: And you were retained by the
12 owners of the property at 3443 Zumstein and
13 2623 Erie to do a study in the design to make
14 sure that surface water is adequately
15 handled --

16 MR. ALLEN: That's correct.

17 MR. SABA: -- on those properties; is
18 that correct?

19 MR. ALLEN: Yes.

20 MR. SABA: And can you just explain the
21 process that you went through and what you did
22 in order to do that?

23 MR. ALLEN: Yes. We had -- after
24 determining what work was going to be done, we
25 designed a storm system that would pick up the

1 water from the parking areas and run it out to
2 the sewer system on Zumstein Road.

3 MR. SABA: And is it your understanding
4 that the design that you developed adequately
5 complies with MSD requirements?

6 MR. ALLEN: Yes, it's in accordance with
7 MSD's requirements.

8 MR. SABA: Did you work with them to
9 urbanly develop that plan?

10 MR. ALLEN: Yes.

11 MR. SABA: And so with respect to any
12 concerns anybody would have about accounting
13 for any surface water that would come under
14 those respective properties, even after
15 construction and development, all those
16 concerns would be addressed by the respective
17 plan you developed; is that correct?

18 MR. ALLEN: That's correct.

19 MR. SABA: That's all the questions I
20 have.

21 MR. TIDD: Mr. Suder, do you have any
22 Cross?

23 MR. SUDER: No, Your Honor.

24 MR. TIDD: Mr. Saba?

25 MR. SABA: I would call Allen Zahumensky.

1 Allen, would you go ahead and state your
2 name for the record?

3 MR. ZAHUMENSKY: Allen Zahumensky,
4 Pinnacle Paving & Sealing.

5 MR. SABA: Okay. And were you contacted
6 with respect to assisting with creating this
7 and performing this project that's being
8 proposed here today?

9 MR. ZAHUMENSKY: Yes.

10 MR. SABA: And can you explain the
11 intentions of you, as the contractor, with
12 respect to both the approval process and
13 the -- how this project would be performed?

14 MR. ZAHUMENSKY: We -- we came down here
15 to apply for a permit multiple times with
16 different sets of drawings and then -- or
17 attempting to be hired to perform the work to
18 install the parking lot. I have 25 years
19 experience here in Cincinnati, Cincinnati guy
20 my whole life, and we build and maintain
21 parking lots.

22 MR. SABA: And is the intention that this
23 facility would be installed in a workmanlike
24 manner, in compliance with all the permits
25 that were issued or hopefully will be issued

1 with respect to this property?

2 MR. ZAHUMENSKY: Yes, it will be
3 installed per the drawings, per the inspection
4 of, I guess, the permits, so demolition of the
5 garage and installation of the parking lot.
6 We're also going to install the drain. We're
7 not going to do the actual tap. I believe
8 that's going to be done by a plumber.

9 MR. SABA: That's all the questions I
10 have.

11 MR. TIDD: Mr. Suder, any Cross?

12 MR. SUDER: No, Your Honor.

13 MR. TIDD: Thank you, sir.

14 MR. SABA: Actually, I have one more
15 question, if I can call Mr. Zahumensky back
16 up?

17 With respect to -- just to clarify one
18 issue in the installation of the parking lot
19 being put in at both Zumstein and Erie, is
20 there any difference between what you would be
21 doing and how you would be installing it if it
22 were residential or if it were commercial?

23 MR. ZAHUMENSKY: No. I mean, we're
24 basically going to be digging up ground,
25 subgrade, grassy area, installing gravel and

1 blacktop. Same as we would if we were doing a
2 driveway or an expansion on a driveway. I
3 mean, it's going to be the same process.

4 MR. SABA: Okay. Thank you. That's all
5 I have.

6 MR. TIDD: Mr. Suder?

7 MR. SUDER: I just had one question about
8 the installation for Mr. Zahumensky; is that
9 right?

10 MR. ZAHUMENSKY: Yes, sir.

11 MR. SUDER: Hi, I'm Sean Suder on behalf
12 of Scott Hassell and Julie Anixt who live on
13 Zumstein. They had asked me to be here on
14 their behalf today. My question is, is the
15 plan -- are you aware if the plan includes
16 joining the two parking lots with pavement or
17 is there going to be a separation between the
18 two parking lots?

19 MR. ZAHUMENSKY: I believe they're going
20 to join at one point where the existing rock
21 wall is because there's a height variation
22 there. So I believe there's removal of the
23 rock wall and it's going to connect in that
24 area of the parking lot from Erie to the
25 driveway to Zumstein.

1 MR. SUDER: So you will do some grading
2 to --

3 MR. ZAHUMENSKY: Yes.

4 MR. SUDER: -- flatten that out so that
5 you can drive between the two lots?

6 MR. ZAHUMENSKY: Yes. And it's all going
7 to be on the drawing, the drawings that
8 eventually are approved or not. We're going
9 to put it in per the engineer drawing.

10 MR. SUDER: Great. Okay.

11 MR. SABA: I have a follow-up question.

12 MR. TIDD: Wait. Hold on. Mr. Suder?

13 MR. SUDER: That's all I have. Thank
14 you.

15 MR. SABA: Just to clarify, I think
16 Mr. Suder asked you so that people could drive
17 between those two lots. There's actually
18 parking blocks that will block those spots
19 where you're talking about where the rock wall
20 will be removed, correct?

21 MR. ZAHUMENSKY: Yes.

22 MR. SABA: So people will not be able to
23 drive through the parking lot. So there will
24 be parking spaces that preserve that driveway
25 back to Zumstein, correct?

1 MR. ZAHUMENSKY: Correct.

2 MR. SABA: That's all I have.

3 MR. TIDD: Thank you, sir. Mr. Saba, do
4 you have any additional witnesses?

5 MR. SABA: No, that's all the evidence I
6 have.

7 MR. TIDD: Okay. At this point, I'm
8 going to allow Mr. Suder to present his case.

9 MR. SUDER: I just have some questions
10 for Mr. Saba.

11 MR. TIDD: Sure.

12 MR. SUDER: Good afternoon. On the
13 parking lot, let's start with the parking lot.

14 MR. SABA: Sure.

15 MR. SUDER: Do you intend -- is it your
16 intent to use the parking lot on Zumstein for
17 the offices -- to serve the offices on Erie
18 Avenue?

19 MR. SABA: It will primarily be for the
20 office on Zumstein in that area that people
21 will work in that building. That will be the
22 primary intention.

23 MR. SUDER: But from time to time,
24 someone working in the other building may park
25 over on Zumstein?

1 MR. SABA: It there a chance of that?
2 It's possible. It's possible that somebody
3 random comes and parks there, you know. I
4 don't know. I know from time to time when
5 we're not there on weekends, people will show
6 up and park there.

7 MR. SUDER: So what's your plan for
8 policing that so we don't have folks parking
9 there who are not entitled to park there as
10 employees of SSP?

11 MR. SABA: You're saying to restrict it
12 to SSP employees and clients only?

13 MR. SUDER: Correct. Yes.

14 MR. SABA: We would anticipate that there
15 would at least be a (inaudible) sign that
16 might be up and placed on there in conforming
17 with zoning requirements and that is
18 (inaudible). So that would be the primary
19 method for policing that, making sure that
20 it's not (inaudible). I think to an extent,
21 you can comply with some of the businesses in
22 the past or some events in the past that they
23 needed some additional parking (inaudible).
24 So I think it depends on the circumstance.

25 MR. SUDER: But your intent is not to

1 build the Zumstein parking lot to provide
2 off-site parking to the Erie Avenue office
3 building?

4 MR. SABA: No. Our real intent is
5 (inaudible) put the second driveway in. We
6 want that to be a separate parking lot in and
7 of itself. We recognize that to be a separate
8 building. Our long-term investment is that
9 that building is separate from itself. The
10 Erie building is separate from itself. So
11 that's why the -- there was a plan at one
12 point to try and combine that. That's why we
13 tried to work with zoning and work with them
14 to make sure we could fit that driveway in
15 separately. So the intention is making sure
16 it has its own separate driveway and its own
17 separate parking.

18 MR. SUDER: So why are you removing the
19 rock wall and joining the pavement between the
20 two parking lots then?

21 MR. SABA: So that's joining because
22 that -- one, it's with respect to a water
23 issue and the other is making sure we have
24 adequate -- the property line runs into that
25 rock wall, is my understanding. And so part

1 of the Zumstein property has that rock wall.
2 And to make sure we've adequately (inaudible)
3 a driveway around back, the rock wall would be
4 removed. And so it allows the cars to pass
5 through the (inaudible) and then that driveway
6 would be preserved by the parking blocks and
7 replaced in that other property (inaudible).

8 MR. SUDER: And are the parking blocks
9 currently affixed to the pavement or could
10 they be moved?

11 MR. SABA: Well, our intention is to
12 permanently affix them to preserve those
13 parking spaces and to preserve the driveway
14 itself. If somebody would park too far
15 forward, it'd block the driveway. So we don't
16 want that to happen.

17 MR. SUDER: Okay. You said the purpose
18 of this project is to allow for growth?

19 MR. SABA: Uh-huh.

20 MR. SUDER: For growth for your firm in
21 Hyde Park, right?

22 MR. SABA: Right.

23 MR. SUDER: So if you're planning on
24 growing, are you planning on filling up these
25 spots and then adding more employees and more

1 cars to the public right-of-way? Wouldn't
2 that be logical, that if you're going to grow,
3 these spots will be filled and you'll continue
4 to overcrowd Mooney and Zumstein, so that this
5 really won't impact anything in the plans to
6 grow, right?

7 MR. SABA: I think it's to grow
8 consistent with the parking and space that we
9 have. So we would grow, be able to provide
10 for that. We would provide more parking than
11 what we currently have right now and grow into
12 that.

13 MR. SUDER: But would the additional
14 parking be filled up on a regular basis now by
15 your current employees and clients?

16 MR. SABA: The amount we're bringing?
17 No, it wouldn't.

18 MR. SUDER: It would not?

19 MR. SABA: It would not be based on the
20 number of people we currently have
21 (inaudible).

22 MR. SUDER: So you don't really need it
23 at this point?

24 MR. SABA: No, we do need it for the
25 growth that we're doing. And we do -- is it

1 filled from time to time? Yeah, it's filled
2 from time to time. So we would grow into
3 that, correct. So we have clients, a lot of
4 clients that park in the street. We have a
5 lot of employees -- that's where our employees
6 park, on the street. So from that standpoint,
7 we would be able to alleviate some of that.

8 MR. SUDER: And how many cars do you
9 think? It's not going to be full all the
10 time. It's not necessary to meet your current
11 needs. It's only necessary for future needs.
12 How many cars are you really pulling off the
13 streets then, in your estimation?

14 MR. SABA: I would say at least seven or
15 so.

16 MR. SUDER: How many people are working
17 in the Erie building currently?

18 MR. SABA: How many people are working in
19 the Erie building currently?

20 MR. SUDER: Yeah. Do you have an idea?

21 MR. SABA: Eight people working there.

22 MR. SUDER: How many parking spots are on
23 that property --

24 MR. SABA: Six.

25 MR. SUDER: It would go to six.

1 Currently there are three; is that right?

2 MR. SABA: Three, that's right.

3 MR. SUDER: So three to six. And then on
4 the Zumstein property, how many people work in
5 that building?

6 MR. SABA: Four.

7 MR. SUDER: Four. Okay. And you would
8 have six spots there. (Inaudible) now?

9 MR. SABA: Zero.

10 MR. SUDER: Zero. Now, on the garage,
11 did either of your applications seek a
12 variance from any provision of the zoning
13 code?

14 MR. SABA: Neither one seek a variance
15 from a provision of the zoning code. No, I
16 don't believe we did. I don't think we were
17 required any variance from the zoning code.

18 MR. SUDER: You specifically requested
19 permission of the UDOD?

20 MR. SABA: UDOD, that's correct.

21 MR. SUDER: And you would agree the
22 property is located in Urban Design Overlay
23 District No. 4 --

24 MR. SABA: That's correct.

25 MR. SUDER: -- Hyde Park -- what's it

1 called, Hyde Park Square Business District,
2 right?

3 MR. SABA: Correct.

4 MR. SUDER: And you read from the staff
5 report earlier about the recommendation that
6 they made. But they didn't recommend -- I'm
7 sorry, they didn't review based upon what you
8 read there, they didn't review any of the
9 Urban Design Overlay District standards in
10 making that recommendation, did they?

11 MR. SABA: Well, they specifically
12 referenced that they did. And it's consistent
13 with 1437, so it should be approved. So I
14 think to say that they didn't would be
15 incorrect.

16 MR. SUDER: But they -- look at the staff
17 report. Do you want to pull that out? Do you
18 have a copy of it?

19 MR. SABA: Yeah.

20 MR. SUDER: I believe it's page 6.

21 MR. SABA: Which one are you on?

22 MR. SUDER: On the Zumstein -- 3443
23 Zumstein, page 6 of that one and then 7 of the
24 other one. You'll agree that it says
25 applicable zoning code sections on page 6 of

1 Zumstein's staff report and on page 7 of the
2 Erie Avenue staff report? (Inaudible).

3 MR. SABA: Yeah, I do see that.

4 MR. SUDER: And underneath that it lists
5 1445-15, 13, and then 1443, correct?

6 MR. SABA: Correct. That's what it says.

7 MR. SUDER: And those provisions, are
8 parts of the zoning code that relate to
9 variances --

10 MR. SABA: Correct.

11 MR. SUDER: -- is that correct?

12 MR. SABA: Correct.

13 MR. SUDER: So the staff report did not
14 consider 1437 as an applicable zoning code
15 section to this case; is that how you read
16 that?

17 MR. SABA: No, I don't read it, because
18 if you (inaudible) it talks about the
19 recommendation. (Inaudible) Section 1437. So
20 it's suggested that he didn't consider it or
21 didn't review it because they didn't repeat it
22 in detail in the report (inaudible).

23 MR. SUDER: So they didn't actually
24 include in the report an analysis of any of
25 the standards under 1437; am I right?

1 MR. SABA: There's not here that they
2 specifically listed separate portions of 1437.
3 They do indicate that they recommend approval
4 pursuant to (inaudible).

5 MR. SUDER: And on 14307-09, I have a
6 copy of that statute 1437-09. That talks
7 about the development standards in the UD
8 Overlay District. You agree that your
9 property is located in UD No. 4?

10 MR. SABA: Correct.

11 MR. SUDER: And under schedule 14307-09,
12 UD No. 4 has -- there's this chart that has D1
13 at the bottom?

14 MR. SABA: Uh-huh.

15 MR. SUDER: And D1 is X'd which means, I
16 guess -- I presume here it means that it
17 applies, right? Would you agree with that?

18 MR. SABA: Correct.

19 MR. SUDER: To the UD4?

20 MR. SABA: Yes.

21 MR. SUDER: And then if you go down to
22 D1, which is entitled demolition, correct?

23 MR. SABA: Correct.

24 MR. SUDER: It reads, demolition has been
25 ordered by the director of buildings and

1 inspections for reasons of public health and
2 safety, and then it goes on to list five
3 additional factors. Have -- can you tell the
4 hearing examiner or testify whether demolition
5 has been ordered by the director of buildings
6 and inspections for reasons of public health
7 and safety for that garage?

8 MR. SABA: I don't understand that it has
9 been, but I don't think it's required. I
10 think you're applying a misreading of the
11 statute, particularly if you compare it to
12 different sections under that same ordinance.

13 MR. SUDER: So you agree, though, it
14 says -- we're in UDO No. 4, D1 as --

15 MR. SABA: Correct.

16 MR. SUDER: -- one of the development
17 standards. And this is the category for
18 demolition. So it doesn't --

19 MR. SABA: Right.

20 MR. SUDER: -- distinguish between
21 demolition of a garage or a house or anything,
22 right?

23 MR. SABA: That's correct.

24 MR. SUDER: It doesn't distinguish,
25 right?

1 MR. SABA: That's correct.

2 MR. SUDER: But it does say D1,
3 demolition has been ordered by the director of
4 buildings and inspections for reasons of
5 public health and safety and, and can be
6 conjunctive, right?

7 MR. SABA: And could be or and or could
8 be and, yes. So under statute construction,
9 whether you're reading an ordinance or
10 otherwise, not specified to the contrary, and
11 can be read as or and or can be read as and.
12 There's no mandatory -- there's no shall. If
13 you look at the other sections, prior to that
14 in that ordinance, it includes the mandatory
15 language of shall, that they shall do this and
16 they shall do that. That's not required.
17 They talk about as a series or list of
18 events --

19 MR. TIDD: I think this Cross-exam is a
20 little bit beyond just the facts. You guys
21 are arguing the law at this point.

22 MR. SUDER: We tend to do that as
23 lawyers, but we can -- I can make that
24 argument --

25 MR. TIDD: I thought Mr. Saba might

1 object. I think he was enjoying himself.

2 MR. SUDER: Well, for the record, I
3 disagree with Mr. Saba's reading and
4 interpretation, but we can make that argument.
5 And as far as questions go on the facts,
6 that's all I have. So, thank you.

7 MR. TIDD: You can now present your case.

8 MR. SUDER: All right. Well, thank you,
9 Mr. Tidd. I appreciate your time today. Here
10 on behalf of Scott Hassell and Julie Anixt who
11 are residents of Zumstein Avenue and they are
12 residents and owners of the property at 3434
13 Zumstein Avenue in Hyde Park. And along with
14 us, and I'm not representing, but along with
15 the group who's opposing, as you can see from
16 Hyde Park Neighborhood Council and other
17 residents who will be speaking following
18 Mr. Hassell.

19 MR. TIDD: Will you be presenting them as
20 witnesses?

21 MR. SUDER: I will not, no. The only
22 party I represent here are the Hassell and
23 Anixt family. Essentially my arguments are
24 going to be focused on the law. You've seen
25 my letter that I sent over this morning dated

1 June 13th. I also added a copy for the record
2 on the June 1, 2018 letter. That was a
3 jurisdictional objection made on June 1st.
4 Essentially that argument is that because the
5 rights to use the Zumstein three-family were
6 granted by legislative variance, very specific
7 (inaudible) use it for an office or the SSP
8 Law Firm, that any additional rights or
9 expansion of those rights, which we believe
10 this is, would require a legislative act, an
11 amendment, if you will, to the notwithstanding
12 ordinance. So we believe that the proper
13 venue for this review and consideration is at
14 the planning commission and city council.
15 That was submitted to the city. The city did
16 not agree with that. Here we are today. But
17 we do just want to put that on the record and
18 maintain that objection. And that's why I
19 want to make sure that that letter made it
20 into the record.

21 Additionally, as we were just -- Mr. Saba
22 and I were just discussing, we have objections
23 to their application for the demolition of the
24 garage based on we believe is a very clear -- I
25 don't think there's any reasonable or

1 unreasonable way to read 1437-09I, demolition,
2 to be that in order for anything to be
3 demolished within the UDOD 4, that is the Hyde
4 Park Square Business District, that demolition
5 had to have been ordered by the director of
6 buildings and inspections for reasons of public
7 health and safety.

8 MR. TIDD: Mr. Suder, do you think that's
9 a typo? Do you think it was meant to be or?

10 MR. SUDER: No, I don't, in fact, because
11 I looked at the ordinance, which is emergency
12 ordinance No. 141-2105. And I didn't bring a
13 copy, but you can take notice of it --

14 MR. TIDD: Because that would make it
15 more restricted than the historic district.

16 MR. SUDER: And, look, I can't get into
17 the head of the city council when they passed
18 this in 2015. Who knows what was going on,
19 right? I know that Hyde Park is uber
20 protected because it is one of the great
21 neighborhoods of the city and it's got
22 wonderful residents who fight for it. So --
23 but I did look at -- I was curious about that,
24 actually. I looked at emergency ordinance No.
25 141-2015, I'd like you to do the same,

1 effective July 1, 2015 and was added. I
2 think, I don't know for sure, but I think it
3 was silent before and and is added. And I
4 know and is added because it's underlined in
5 the ordinance. The ordinance is a whole
6 laundry list of amendments to the zoning code
7 at the time. So I believe and was very
8 intentional, and I believe that that's the
9 threshold requirement. Look, it has to have
10 been declared in order -- unsafe, if you will,
11 by public health and safety standards for
12 demolition. And that's not enough. That's
13 not enough. It has to have one of these other
14 things, one or more of these other things,
15 because there's an order down there on the
16 fourth bullet point. So you would read
17 that -- how I was taught to read statutes, you
18 would read that as, look, there's the
19 threshold requirement and here are the
20 additional standards and you can meet more or
21 one of those, and then demolition in the UDOD
22 No. 4 could be approved by the zoning hearing
23 examiner. That's the correct reading. I
24 don't think there's a reasonable or
25 unreasonable way. I think it's pretty plain.

1 And I think that was the intent, based on my
2 reading of the ordinance, however I invite
3 your review of that.

4 So as far as the application for
5 demolition, there has been no assertion that
6 there has been any sort of order to tear this
7 garage down. Mr. Saba just testified that he's
8 not aware of one and that simply they can't
9 meet D1, you know. The demolition category in
10 the UDOD No. 4, they simply have not satisfied
11 that development requirement and development
12 standard and, therefore, there's no relief here
13 on that garage. If someday maybe they do get
14 such an order, then they can come back to you
15 and prove one of these other things in addition
16 to that and try to get the garage demolished.
17 But as of now, they have no right to demolish
18 the garage under the law. So we believe that
19 the -- their application for demolition must be
20 denied as a matter of law.

21 I did want to address the zoning staff
22 reports. This is concerning to me because, you
23 know, I know the zoning staff reviewed this.
24 They came to a conclusion that all of this was
25 reasonable and that the zoning hearing examiner

1 should approve, that there are some
2 entitlements to parking. Everybody's entitled
3 to parking.

4 MR. TIDD: Staff reports (inaudible).

5 MR. SUDER: They are, but they are on the
6 record and they are -- obviously Mr. Saba
7 referred to it and read out of it in his
8 presentation, so it is germane to this
9 hearing. And it was disturbing that the staff
10 reports both cited only variance statutes,
11 variance sections of the zoning code for
12 applicable zoning code sections. We all know
13 14307-09 is the applicable section. There are
14 standards that should have been reviewed and
15 should have been opined upon if they were
16 giving their opinion on those. They were
17 completely left out. In fact, they used the
18 wrong standards. And so I think that the
19 staff reports should be disregarded in this
20 matter because they simply do not analyze the
21 correct sections of the zoning code that are
22 applicable to this matter.

23 Those are my legal arguments. For all
24 those reasons and the reasons you'll hear from
25 Mr. Hassell, as a property owner, and other

1 residents and people that care greatly about
2 Hyde Park, we believe that these applications
3 need to be denied. And we thank you for your
4 time.

5 MR. TIDD: Thank you, Mr. Suder. So are
6 you going to present -- are you going to
7 present them as witnesses or are you going to
8 allow them to speak to the public portion,
9 your clients?

10 MR. SUDER: My clients I'm happy to
11 present as witnesses. I don't have a lot of
12 Direct Examination or anything. Scott is
13 simply going to present the letter that he
14 submitted in his arguments.

15 MR. TIDD: Sure. Thank you.

16 MR. SUDER: If you could introduce
17 yourself for the record and your address?

18 MR. HASSELL: Scott Hassell. I live at
19 3434 Zumstein and I own the house with my wife
20 Julie Anixt who is not able to be with us
21 today. As we referenced, I had submitted a
22 letter yesterday, which I know you've
23 received. Actually, I'll highlight a few of
24 the points from it instead to go through it
25 all because I know we have some timing targets

1 to be focused on. But in addition to the
2 points that our attorney made, I wanted to
3 call attention to several arguments from that
4 letter. First, the notwithstanding ordinance
5 that we've talked about allowed the existing
6 (inaudible) to be used for office purposes.
7 We went through 14 months of meetings. It was
8 about 10 public hearings, including several
9 with council, where people were quite clear
10 they wanted to protect the neighborhood, and
11 so that we were creating a very limited
12 exception for them to use the existing
13 building for office purposes, and then
14 everything else should be treated subject to
15 SF-6 zoning and for SF-6 uses. There have
16 been apartments up in the top -- there was
17 someone living in the third floor of this
18 apartment, of this three-family. And so I
19 think -- at the time that we went through
20 these discussions, and so I think to the
21 extent that anyone envisioned there could be
22 parking at this property, it would be for that
23 residential purpose. So using it for
24 commercial purposes I don't think -- I mean,
25 that's not an office (inaudible).

1 Second, the proposed driveway, as I laid
2 out, is not allowed under Section 1425-35
3 because the proposed use is not permitted.
4 It's allowed to be used for residential
5 purposes. If they're intending to have
6 employees and customers, clients park there, I
7 would say that would not be permitted.

8 Third, on your 1423-11, B and C, if they
9 demolish the garage, by my reading of those
10 standards, that would require a type A buffer
11 between 2623 Erie and 3443. So if you were to
12 put that kind of a buffer there, that would
13 certainly make it difficult to accomplish their
14 requirements, of their goals.

15 And then finally, Section 1437, about the
16 UDOD, the entire purpose of that is to protect
17 and enhance the physical character and improve
18 and stimulate the social character of the area.
19 That's how they set that section up. And
20 expanding the commercial parking on this
21 residential street from three spaces to 12 is
22 going to undermine the physical and social
23 character of the neighborhood. And so too will
24 demolishing the visual barrier to the cars that
25 are parked at 2619 Erie.

1 And contrary to the applicant's claim,
2 their existing garage does contribute to the
3 architectural quality of the neighborhood. It
4 is a residential garage. It's been there as
5 part of the entire neighborhood and it helps
6 create the appearance for the entire
7 neighborhood, which the UDOD is there to
8 protect. And demolishing it to bring it to a
9 larger asphalt parking lot where you can see 14
10 cars instead of the current three to four --
11 even if there may be a large 14-car parking lot
12 across the street, just because you have one
13 doesn't mean that adding a second one doesn't
14 affect the visual aesthetics and certainly
15 doesn't improve the physical and social
16 character of the area.

17 So for these and other reasons, which is
18 in my letter from June 12th and the
19 communications from our attorney, I ask that
20 you reject the applications for the zoning.

21 MR. SUDER: I do have just a couple of
22 questions on Direct, if that's okay. Mr. Saba
23 has stated that there's a parking problem on
24 Zumstein and Erie. Is that your experience?
25 Is there a parking problem? Is it

1 overcrowded?

2 MR. HASSELL: You know, certain areas are
3 busy at certain times and they're not busy at
4 other times. Living on the streets and being
5 there at all hours of the day at different --
6 being there at any given hour on any given
7 day, yes, sometimes it's busy, sometimes it's
8 not. That's not different from other areas.
9 So I think the way to approach this is not to
10 say that we had a single problem that we must
11 devote all resources to solving to saying we
12 have a lot of things that we're trying to keep
13 in balance here. And balance is what's
14 important. And we have selective readings of
15 the Hyde Park Plan from 1984 and Plan
16 Cincinnati and focus on the one that benefits
17 you and neglect the bigger picture. So I
18 would say in total, we are okay with parking.
19 We don't need to have them convert residential
20 property into commercial space to meet that
21 aspect. We need to look at the big picture
22 (inaudible).

23 MR. SUDER: How long have you lived on
24 Zumstein in that house?

25 MR. HASSELL: We have lived in that house

1 for eight years, I believe.

2 MR. SUDER: And you said earlier that
3 it's going to undermine the neighborhood to
4 put in, what did you say, 12 parking spaces.
5 Can you expand upon that? How is that going
6 to undermine the neighborhood? Mr. Saba said
7 it's going to help the neighborhood. But why
8 as a resident do you think it's going to
9 undermine it?

10 MR. HASSELL: When you think about Hyde
11 Park and what makes it an attractive
12 neighborhood to people, it's the beautiful
13 balance of a nice compact downtown -- nice
14 compact urban square surrounded by beautiful
15 residential streets. And part of what makes
16 that so special is that you've got this very
17 distinct boundary between the two, and that
18 helps keep investment focused in each area and
19 helps preserve the property rights on each
20 side of that boundary. And so if you start
21 hacking away at individual properties and
22 blurring the boundary between what's
23 residential and what's commercial, you start
24 to undermine what makes it all so special.
25 And so no one wants to move to Hyde Park

1 because they'll be next -- no resident wants
2 to move to Hyde Park because they want to be
3 next to a parking lot that holds six cars or
4 12 cars or because they can see 14 cars near
5 the end of their street. There may be one at
6 the current property that preceded the zoning
7 code, current zoning code, but that doesn't
8 mean that people want another one. So that's
9 what's going to undermine, is you're hacking
10 away at that boundary that creates such a
11 wonderful neighborhood and that's why this is
12 a mistake.

13 MR. SUDER: And how does it more
14 (inaudible) nature what their plan, in your
15 opinion, than residential? You testified
16 earlier that three-family residents that could
17 have parking behind it. So how does what
18 their planning make it feel more commercial to
19 you as a resident?

20 MR. HASSELL: What they're planning makes
21 it feel more commercial because they will be
22 creating -- well, first of all, something that
23 I would be interested in hearing more about is
24 where the driveway would actually be located.
25 From the documents that were submitted, it was

1 not clear that the entire driveway could be on
2 3443 Zumstein. Perhaps it is, but that
3 doesn't come across as clear from the
4 documents. And so I think if you were to --
5 if the driveway can't be put solely on the
6 Zumstein property, linking the two with a
7 driveway brings parking into the back that may
8 not otherwise be possible if this was still
9 just being used for residential purposes. So
10 anyway, so bringing additional parking back
11 there for commercial purposes can further link
12 these properties and further hack away at that
13 boundary between the residential and the
14 commercial areas. So that's where I think --
15 this parking lot can combine those and can
16 further undermine the boundary that's needed
17 to protect the neighborhood.

18 MR. SUDER: I don't have anything
19 further. Thank you.

20 MR. TIDD: Thank you, sir. Mr. Saba, do
21 you have any Cross?

22 MR. SABA: I do.

23 Mr. Hassell, you said no one would ever
24 want to move to an area where there's a lot of
25 pavement, parking; is that right?

1 MR. HASSELL: I said people do not want
2 to move to Hyde Park to be next to a parking
3 lot that's got 14 cars visible in the street
4 or if you -- just because you may have one
5 already, people don't want to have a second
6 parking lot where you can see 14 cars. That's
7 not what Hyde Park's reputation is. That's
8 not why people choose to move to Hyde Park to
9 be next to multiple 14-car parking lots.

10 MR. SABA: Well -- and, first of all, you
11 agree it's not -- we referred earlier to the
12 parking lot at the Smith-Carnes Building. It
13 was there before you moved in; is that right?

14 MR. HASSELL: Yes. And as I said, that
15 just because there's one, doesn't mean that
16 people would want a second parking lot like
17 that.

18 MR. SABA: But it was not a deterrent at
19 all for you, correct, or any of the people on
20 Zumstein, right? It didn't prevent you from
21 buying your house, correct?

22 MR. HASSELL: Just because -- one is
23 different than two.

24 MR. SABA: So if your house would
25 otherwise have been surrounded by parking, you

1 wouldn't have purchased it, correct?

2 MR. HASSELL: I mean, I don't -- people
3 don't move to Hyde Park to live in the middle
4 of --

5 MR. SABA: Well, you'd agree that where
6 your house is situated, the amount of parking
7 that it's surrounded by was not a deterrent
8 from you buying your house, correct?

9 MR. HASSELL: The --

10 MR. SABA: Yes or no? You bought your
11 house and yet it's completely surrounded by
12 parking. It was not a deterrent for that,
13 correct?

14 MR. HASSELL: I would not characterize my
15 house as completely surrounded by parking. I
16 have a residence on each side of my house.

17 MR. SABA: You live at 3434 Zumstein; is
18 that right?

19 MR. HASSELL: That's correct.

20 MR. SABA: Okay. And this is an aerial
21 picture of where your house sits; is that
22 right?

23 MR. HASSELL: Yes.

24 MR. SABA: And so you --

25 MR. HASSELL: I believe you got -- yeah.

1 MR. SABA: I got it right. So there's a
2 large parking garage right behind your house,
3 correct?

4 MR. HASSELL: It's a retail establishment
5 that has parking above it.

6 MR. SABA: Yeah. So that's -- and you
7 had no -- that didn't deter you from moving in
8 there, correct?

9 MR. HASSELL: No, that's correct.

10 MR. SABA: Okay. And then you also have
11 the Hyde Park school parking lot which is one
12 more down; is that correct?

13 MR. HASSELL: Yeah, there's one house in
14 between us and the Hyde Park school. And that
15 is a school, not a commercial operation.

16 MR. SABA: Well, a school's a commercial
17 operation. People go there. It's a business.
18 People come in and out of the business,
19 correct?

20 MR. HASSELL: I -- no, I disagree. A
21 school is different than a commercial
22 operation. A school is part and parcel of the
23 community. It's part of what makes Hyde Park
24 attractive, is a place for young families to
25 move. It's a civic institution, so I would

1 not describe a civic institution as a
2 business.

3 MR. SABA: And the cars that park in the
4 civil institution, they're no different from
5 the cars that would park at our lot; is that
6 correct?

7 MR. HASSELL: I -- if you -- I know you
8 spend a lot of time on Zumstein. You'll note
9 that there are a lot of children who attend
10 that school during the school year and who are
11 in that parking lot. This is not a parking
12 lot that's full of vehicles all of the time.

13 MR. SABA: That wasn't my question. The
14 type of cars that park at that school are the
15 same as the type of cars that we park at our
16 business, correct?

17 MR. HASSELL: Yes, for the number of cars
18 that are actually there. I think, you know,
19 just because something is -- this is an urban
20 school. And so the fact that they have part
21 of their area for children, it's asphalt and
22 serves multiple purposes, I don't think this
23 is a reasonable comparison.

24 MR. SABA: In this picture alone, there's
25 14 cars parked there; is that correct?

1 MR. HASSELL: I'm not counting the number
2 of cars. But as you know, closer to Edwards
3 is where they use that space for parking, more
4 intensive use of parking. The other areas
5 closer to where we live are very rarely --
6 very rarely have cars on them. When the Hyde
7 Park Blast happens, you'll have cycling teams
8 that will fill that parking lot, but that is
9 not a regularly used parking area.

10 MR. SABA: And the fact that that area --
11 it's all paved. It's a large paved area.
12 That was not a deterrent to you buying your
13 home; is that correct?

14 MR. HASSELL: Because it's part of a
15 school. It's part of civic institution.
16 People like to live in neighborhoods that have
17 schools so that their children can go to
18 school in a neighborhood and have playgrounds
19 and I think's correlated with this. It's not
20 a parking lot in the sense of what you are
21 proposing --

22 MR. SABA: And the asphalt that would be
23 used there, it's no different than the asphalt
24 we would use at our property, correct?

25 MR. HASSELL: You know, if you think that

1 you're -- it would be the same type of
2 asphalt, if that's the argument you're trying
3 to make. Yeah, I presume that the chemical
4 composition of the asphalt would be the same.

5 MR. SABA: And with respect to the
6 driveway that we are planning for Zumstein,
7 that's no different than any other driveway
8 that you would have at your house or somebody
9 else would have at their house on Zumstein,
10 correct?

11 MR. HASSELL: My driveway is on my single
12 parcel. And one of the questions I have is,
13 is that driveway exclusively on 3434 Zumstein?

14 MR. SABA: As we indicated today, the
15 intention is that that driveway would --

16 MR. TIDD: Mr. Saba, you really can't
17 answer his question.

18 (TALKING OVER EACH OTHER)

19 MR. SABA: I agree. I'm going to preface
20 the question. Our intention is that that
21 driveway -- assume that the driveway will be
22 placed solely on Zumstein. That is no
23 different than any driveway of anybody else on
24 Zumstein; isn't that right?

25 MR. HASSELL: I haven't seen detailed

1 enough plans. I would assume that your
2 driveway would be similar to the other
3 driveways. It would access a larger parking
4 lot. There are no other residences on
5 Zumstein that have space for six -- that would
6 plan to put six cars either now or in the
7 future due to growth --

8 MR. SABA: But they may have the majority
9 of their backyard paved over with porches and
10 otherwise, correct?

11 MR. HASSELL: With porches?

12 MR. SABA: Yeah.

13 MR. HASSELL: I guess I don't think of a
14 porch as paving, but, you know, people can --
15 people may have it in the backyard, yeah,
16 sure.

17 MR. SABA: In fact, the house two houses
18 down from ours on Zumstein has a large paved
19 area in the rear; isn't that right?

20 MR. HASSELL: I'm not sure.

21 MR. SABA: Okay. Well, this is a picture
22 and here's our property on Zumstein. Do you
23 see where the house two houses down has a
24 large paved area in the rear?

25 MR. HASSELL: Okay.

1 MR. SABA: Okay.

2 MR. HASSELL: I haven't been back there.

3 MR. SABA: All right. So how would that
4 be different from the paved area that we would
5 have at the rear of our property on Zumstein?

6 MR. HASSELL: That is -- those are the
7 residential occupants living in a residential
8 street. Parking there is part of being
9 residents in a neighborhood that they occupy,
10 that they're there as residents.

11 MR. SABA: And how is it a resident --
12 are the cars that they park there any
13 different than the cars that we park at our
14 office building?

15 MR. HASSELL: I would doubt it. I don't
16 know.

17 MR. SABA: Okay. So how is our parking
18 at our office building any different from
19 their parking at that residence?

20 MR. HASSELL: I'm glad you asked.
21 Because the notwithstanding ordinance was
22 intended to let you use the existing building
23 as office space and that was it. Council
24 desired to protect the neighborhood from
25 further commercial expansion, including having

1 parking in -- on that property.

2 MR. SABA: And then otherwise pursuant to
3 the regulations provided by SF-6; is that
4 right?

5 MR. HASSELL: I believe that's correct.

6 MR. SABA: Okay. And SF-6 does allow for
7 parking on the property, correct?

8 MR. HASSELL: I -- for residential
9 purposes, is my understanding.

10 MR. SABA: Is that what it says, only for
11 residential purposes?

12 MR. HASSELL: It's my understanding that
13 council's intention was that parking on this
14 would be for residential purposes.

15 MR. SABA: That wasn't my question. My
16 question was, you said SF-6 only allows
17 parking for residential purposes --

18 MR. TIDD: Mr. Saba, he's not an
19 attorney. I think we can move on from this.

20 MR. SABA: Okay. That's all the
21 questions I have.

22 MR. TIDD: Thank you, sir. Are you going
23 to present another witness or --

24 MR. SUDER: No, I think we're --

25 MR. TIDD: That's fine. I just wanted to

1 make sure. All right. So at this point I'm
2 going to open it up to the public. I did see
3 that a couple of people snuck in that weren't
4 sworn in. Some of them who I know, some of
5 them I don't. So I think the easiest way to
6 do this and just the safest way is just swear
7 everybody in and the public will begin.

8 (AT THIS TIME, MR. TIDD ADMINISTERED OATH)

9 MR. TIDD: Can I have a show of hands who
10 would like to speak today? Okay. I always go
11 right to left. I'm not really sure why, I
12 just do.

13 Sir, what is your name for the record?

14 MR. NYE: My name is Jeff Nye. I'm a
15 lawyer at SSP, but I want to speak as a member
16 of the public. I don't live in Hyde Park. I
17 come to work in Hyde Park because I like
18 working in Hyde Park. I've been there nine
19 years. For roughly seven of those years I've
20 had to park on Mooney, one street over,
21 because there isn't enough parking either on
22 Erie or on Zumstein or in our very small lot
23 there behind 2623 Erie. I would love being
24 able to park off the street, so I don't have
25 to get dirty looks from the people on Mooney

1 when I have to park in front of their house
2 every day.

3 Also, if there's a lot behind the Zumstein
4 building, it's not off-site parking for people
5 who work at Erie. I spend most of my time in
6 the Erie building there, but I work in Zumstein
7 too. I also work in our Anderson Township
8 office. It's not off-site parking. I've heard
9 a lot today about the idea that Hyde Park is a
10 community and they want to keep it a certain
11 type of community. Well, I consider myself a
12 member of that community. I've worked it every
13 day again for nine years. I like working
14 there. I like the character of the
15 neighborhood. This isn't going to change it.
16 We're talking about putting in a similar small
17 parking lot behind the building, the neighbors
18 of which have similar small parking lots that
19 are not really visible from the street.
20 There's landscaping around to shield it. You
21 know, from the end of Zumstein where I think
22 Mr. Hassell is, because of the existing trees
23 in the tree lawn and the existing landscaping,
24 including at 3434 Zumstein, you can't even
25 really see the garage. I think if you took it

1 out, you would have no idea what was behind it
2 because of the existing landscaping. And I
3 think, you know, all this is a little
4 overwrought for no obvious reason to me. We're
5 trying to get people off the street into
6 secluded parking behind the building so we're
7 out of the way. You know, that's my view as a
8 member of the community who enjoys working in
9 Hyde Park.

10 MR. TIDD: Mr. Saba, do you have any
11 questions for Mr. Nye?

12 MR. SABA: No.

13 MR. TIDD: Mr. Suder?

14 MR. SUDER: (Inaudible).

15 MR. TIDD: I was just going to say, do
16 you want to come back in case you do --

17 MR. SUDER: I don't either, have a Cross
18 right now.

19 MALE SPEAKER: No, I don't have any
20 questions.

21 MR. TIDD: Thank you, Mr. Nye. I believe
22 everybody on this side has already spoken that
23 wanted to speak, so now we'll move to this
24 side. Why don't we start in the front row.

25 FEMALE SPEAKER: (Inaudible).

1 MR. WOLLENWEBER: Good afternoon. I get
2 to actually see you in person, Mr. Tidd. I
3 communicate with you regularly --

4 MR. TIDD: Quite regularly.

5 MR. WOLLENWEBER: -- through my job as
6 the chairman of the Hyde Park --

7 MR. TIDD: Did you come to the hearings
8 (inaudible) at all?

9 MR. WOLLENWEBER: It's been a while.
10 It's reconfigured outside since I was here the
11 last time, so it's been a while. My name is
12 Gary Wollenweber and I reside on Edwards Road
13 in Hyde Park. I would like to expand a little
14 bit first --

15 MR. TIDD: Just to clarify, are you
16 speaking on behalf of yourself and the Hyde
17 Park Neighborhood Council?

18 MR. WOLLENWEBER: I am speaking on behalf
19 of the Hyde Park Neighborhood Council as the
20 chairman of the zoning committee, and I would
21 like to expand a little bit about the
22 communication -- on the communication that I
23 sent to you --

24 MR. TIDD: Sure.

25 MR. WOLLENWEBER: -- last night. I wish

1 I had brought a few extra copies, but I will
2 submit them to you and you can make them a
3 part of the record. Actually, the --

4 MR. TIDD: It's already a part of the
5 record.

6 MR. WOLLENWEBER: And the -- well, the
7 photos I'm holding in my hand are not part of
8 the record except the first one is from page 2
9 of the staff report. And what it shows, it's
10 an aerial view. I believe this was a 2017
11 KAGAS photo. It looks identical to the one
12 that's on KAGAS. And it shows the existing
13 garage and one car parked in the 2623 Zumstein
14 parking lot. And what I've drawn on here are
15 arrows that would show how the garage would
16 park -- would block views of the three -- up
17 to three parked cars that are in the Erie
18 parking lot from people that are in the front
19 yard of the west side of Zumstein Avenue. The
20 garage also (inaudible) blocks the view of
21 parked cars at the rear of 2619 Erie. I think
22 the attorney to my left here called that 2620
23 Erie at one point. It's across the street and
24 I believe it's the funeral home.

25 MR. TIDD: Mr. Wollenweber, would you

1 mind showing that picture to both Mr. Suder
2 and Mr. Saba? You don't have to necessarily
3 explain, just show it. Got it.

4 MR. WOLLENWEBER: And essentially I've
5 drawn arrows on here --

6 MALE SPEAKER: (Inaudible).

7 MR. WOLLENWEBER: -- the legend on there
8 showing how the garage would block the view of
9 those parked cars. Exhibit 2 is essentially
10 the same thing. It's a 2010 KAGAS aerial. It
11 shows two cars in the rear of the Erie
12 property, and there's space there for a third
13 car. So what is clear from this is the
14 current configuration of the parking lot can
15 accommodate up to three cars, plus the garage
16 where all three cars that are parked outside
17 the garage can come and go without being
18 blocked by another vehicle. If there were
19 three cars there, those cars would be blocked
20 by the existing garage, much like those cars
21 would be blocked by a buffer yard, a type A
22 buffer yard, with a fence obscuring that view.
23 So, as we have spoken before, this property is
24 zoned office limited. Adjacent to the south,
25 it's SF-6. And if this property 2623 Erie

1 were to be constructed anew, it would indeed
2 require a buffer yard.

3 It's (inaudible) been ands and buts and
4 fors in the calculation of whether tearing down
5 a garage and expanding the parking lot to cover
6 the footprint of the garage is whether that's
7 an expansion to garage or would it be taken as
8 a total area for all of the uses there
9 including the landscaping and everything else.
10 That's for you to figure out. That should make
11 your decision. But I would like to offer and
12 we will disagree on this that that's
13 100 percent increase in surface area that goes
14 with the parking lot because the proposed
15 configuration, which I'm going to submit to you
16 as Exhibit 3, shows six cars --

17 MR. TIDD: Mr. Wollenweber, will you show
18 Exhibit 2 to both Mr. Suder and --

19 MR. WOLLENWEBER: Yes, I will. I'll be
20 glad to. Exhibit 3 is from page 4 of the
21 staff report. It's the proposed site plan for
22 both properties, and the garage is missing.
23 There are now six cars in the back. And those
24 six cars, at least four of those six cars are
25 clearly visible from the front yards of the

1 west side of Zumstein Avenue, all the
2 residential properties to the south. And then
3 if you go across the street and stand looking
4 west through the 2623 parking lot into the
5 2619 parking lot to the west, you can see all
6 14 cars clearly visible. All is one large
7 parking (inaudible), but that's not the
8 current situation if that garage was there.
9 So I offer that they do not have a buffer
10 yard, but they have a garage that functions
11 very effectively as a buffer yard would
12 function. And so I think that removing the
13 garage without replacing it with buffer yard
14 seriously changes the environmental impact of
15 the street negatively and in contrary to what
16 the zoning code incorporated in 2003 when it
17 was adopted requiring buffer yards. So I hope
18 that when you make your decision, you will
19 take that into account.

20 Also, I was very disturbed by the site
21 plans that were submitted because the site plan
22 on page 4 clearly shows --

23 MR. TIDD: Mr. Wollenweber, would you
24 mind showing Exhibit 3 --

25 MR. WOLLENWEBER: Yes, clearly shows the

1 driveway from 3443 Zumstein entering into the
2 side yard of 2623 Erie so that you could not
3 use parking lot 34 -- at the rear of 3443
4 without going through the parking lot and
5 access driveway of 2623 Erie. Now, whether
6 that's what is actually proposed or not --
7 because it appears that I've heard testimony
8 today that is something different, that the
9 driveway would be entirely on the 3443
10 Zumstein property, which that means a new curb
11 cut at the front of the property, which will
12 also increase -- or negatively impact the
13 environmental view because now there's more
14 pavement and less green space in the front
15 yard. So that's not the direction that we
16 want to go. So that covers what I want to
17 talk about for 2623.

18 What I want to talk about now is the new
19 parking at the rear of 3443 Zumstein. I
20 participated extensively in the discussions
21 that took place throughout 2015 and I believe
22 2016 as the notwithstanding ordinance was put
23 together. And there was extensive comments and
24 statements by the law firm that they were going
25 to make no changes to the exterior. And

1 whether they -- whether that was written into
2 the notwithstanding ordinance or not, again,
3 that's a point of contention of the (inaudible)
4 statements made at that time. And an agreement
5 or consensus or withdraw of objections to the
6 notwithstanding ordinance, a lot of what took
7 place in that time period was because of the
8 belief by the neighbors that there would be no
9 changes to the exterior. That's quite the
10 difference now. And one only wants to start
11 speculating about what's going to be the next
12 change that's going to take place until you
13 have the entire panel under the tent. So not
14 what we were expecting.

15 Finally -- I guess not finally, but I know
16 of no other situation in Hyde Park where you
17 have office parking or commercial parking
18 permitted on single -- in an SF-6 or any
19 single-family residential property. The
20 numbers -- numerous attempts to do that where
21 the adjacent property owner has proposed
22 leasing parking spaces to the rear of their
23 yard or nearby consolidate commercial or office
24 use in Hyde Park Square and every one of those,
25 as previously pointed out that that was not

1 permitted, has been enforced by the zoning
2 department and has not been approved. This is
3 an unusual situation because the applicant owns
4 both properties. So he's not really renting it
5 from another owner or leasing the space or
6 leasing the parking spaces from another owner.
7 He's purely, as the owner of both properties,
8 giving privileges to occupants of both
9 buildings to use either (inaudible) I assume
10 the way that it would work, regardless of what
11 statements was made when someone enters the
12 parking lot, it's a client or an employee of
13 the building, they're going to go into the
14 first parking lot that is available to them
15 that's marked that they could use, regardless
16 of which building they're going to go to.

17 Finally, with respect to this property, I
18 see one -- I think one of the (inaudible), at
19 least I like to offer that one of your job
20 responsibilities is not to create more problems
21 in the future. The notwithstanding --

22 MR. TIDD: I try not to create more
23 problems.

24 MR. WOLLENWEBER: The notwithstanding
25 ordinance clearly says that if SSP's

1 (inaudible) to use the Zumstein property, it
2 will refer to single-family or it's now used
3 as multi-family recently, resort to
4 residential uses. It makes no claim as to
5 whether the residential use would be
6 maintained by the same ownership or whether
7 the property would be put up for sale.
8 Perhaps at some point in the future SSP may
9 cease to exist or choose to move to Anderson
10 or some other location and they may decide to
11 dispense with both properties for whatever
12 reason. I think you want to make it clear
13 that whatever decision you make, that the
14 properties are separable in the future so that
15 some -- if the parking lot is configured, as
16 shown on page 4 of the staff report, you might
17 have a parking lot at the rear of 3443
18 Zumstein but it can't be accessed without
19 going over the property next-door, 2623 Erie.
20 And I see nothing in writing about an easement
21 being granted to use that property. So a lot
22 of it depends on exactly specifically what is
23 the proposed configuration of the parking
24 lots.

25 And we heard testimony from a client of

1 SSP that he was a professional surveyor. And I
2 see nothing on the plan that was submitted
3 showing any dimensions. And I would expect
4 that as a professional surveyor, and I think he
5 also perhaps said civil engineer, planning
6 exactly what this parking is going to look
7 like, there would be certain dimensions as to
8 the width of the driveway, the setbacks. I see
9 landscaping shown around the perimeter. I am
10 quite sure that the landscaping buffer is not
11 10 feet in width because it does not scale
12 correctly here. So it's very vague of exactly
13 what's going to be constructed, where it's
14 going to be, and how it fits on the property.

15 Finally, I'd like to say one thing to
16 answer a question that was put to Mr. Hassell
17 earlier. There can be no -- there would be --
18 schools cannot be a commercial use because if
19 it was a commercial use, it would not be
20 permitted on the property because it's zoned
21 SF-6. And as a commercial business, it's not
22 even a conditional use for SF-6. A school is a
23 non --

24 MR. TIDD: Mr. Wollenweber, I do
25 understand that (inaudible). I know that

1 it's -- that's fine. I knew the difference --

2 MR. WOLLENWEBER: And there have been a
3 number of efforts to lease the school
4 property, rent the school parking lot for
5 different things. And essentially there have
6 been -- it's been denied every time and --
7 because we want to maintain that as an SF-6
8 property. Granted there are users that use it
9 unofficially, like the Blast and other people
10 for the Hyde Park Market, but there is no
11 leasing and no legal arrangement to officially
12 allow the uses by people that are off-site
13 renting commercial parking spaces. Thank you.

14 MR. TIDD: Thank you, sir. Mr. Saba, do
15 you have any questions?

16 MR. SABA: I do. Mr. Wollenweber, you'd
17 agree that the 3443 Zumstein residential uses
18 have required off-street parking that would be
19 satisfied by the proposed rear yard parking;
20 is that correct?

21 MR. WOLLENWEBER: That's correct.

22 MR. SABA: Okay. It would be consistent
23 with that in terms of having a driveway that
24 would be on the Zumstein property itself,
25 right?

1 MR. WOLLENWEBER: I do not see that as a
2 part of your proposal.

3 MR. SABA: Okay. So you're not --

4 MR. WOLLENWEBER: It's not in your
5 documents.

6 MR. SABA: And that wasn't my question.
7 My question was more --

8 MR. WOLLENWEBER: It sounded like a
9 question.

10 MR. SABA: No, I asked you a question,
11 sir, that you would agree that having a
12 driveway on the Zumstein property itself would
13 also be consistent with that?

14 MR. WOLLENWEBER: Yes.

15 MR. SABA: Okay. And your issue is you
16 didn't see that in our plan?

17 MR. WOLLENWEBER: But also that same
18 parking, that same parking that you just
19 proposed, driveway and parking, would not be
20 permitted to be used by the business
21 next-door.

22 MR. SABA: And that wasn't my question.

23 MR. WOLLENWEBER: Okay. What is your
24 question?

25 MR. SABA: With respect to -- you'd agree

1 that the SF-6 does allow parking, correct?

2 MR. WOLLENWEBER: Yes. It requires a
3 parking space either in a garage or in a
4 parking space at the side or rear yard of the
5 property.

6 MR. SABA: Okay. And this would be in
7 the rear yard, correct?

8 MR. WOLLENWEBER: That part of the
9 drawing I can agree with.

10 MR. SABA: And have the driveway run up
11 in the front (inaudible).

12 MR. WOLLENWEBER: That's correct.

13 MR. SABA: All right. With respect to
14 Section 1423-13A -- excuse me, 1423-11, you'd
15 agree that that does not require a buffer yard
16 with respect to the demolition of the garage
17 at 2623 Erie, correct?

18 MR. WOLLENWEBER: I got lost in your
19 numbers. You have to slow down a bit.

20 MR. SABA: Sure. Section 1423-11?

21 MR. WOLLENWEBER: Okay. I don't know
22 what that -- okay. Yes. Okay.

23 MR. SABA: That that would not require a
24 buffer yard in association with the demolition
25 of the garage at 2623 --

1 MR. WOLLENWEBER: I don't necessarily
2 agree with that. There's a lot of ands or ors
3 and commas in there. It depends on how you
4 determine those outside areas. It doesn't say
5 the word some above the areas anywhere in
6 that. So whether it's parceled or you divide
7 it up by the uses, because certainly it talks
8 about structures, parking, outdoor storage
9 areas, and outdoor parking and outdoor storage
10 areas and garage might be determined as
11 separate uses.

12 MR. SABA: You'd agree that the existing
13 site ground coverage is not going to change
14 with the demolition of the garage --

15 MR. WOLLENWEBER: The site --

16 MR. SABA: -- and replacing it with
17 pavement?

18 MR. WOLLENWEBER: The site coverage, the
19 outdoor parking does change with demolition of
20 the garage. It doubles in size.

21 MR. SABA: My question is coverage of the
22 ground. The ground is currently covered by
23 the garage, correct?

24 MR. WOLLENWEBER: Part of the ground is
25 covered by the garage. Part of the ground is

1 covered by the outdoor parking. I tell you,
2 we're going to disagree on this. You're not
3 going to get me to agree that -- there's
4 nowhere, nothing about the some of the area in
5 this paragraph.

6 MR. SABA: And in terms of -- the one
7 thing I want you to agree with, sir, you agree
8 that the ground is covered by the garage and
9 that pavement will be covering that same area,
10 correct, based upon our plan?

11 MR. WOLLENWEBER: The pavement that is
12 going to be placed where the garage used to
13 be, yes. And that, with the addition of that
14 outdoor pavement, doubles the outdoor parking
15 area.

16 MR. SABA: Okay. That's all the
17 questions I have.

18 MR. TIDD: Mr. Suder?

19 MR. SUDER: No questions.

20 MR. TIDD: Thank you, Mr. Wollenweber.

21 MR. WOLLENWEBER: Thank you.

22 MR. TIDD: And what is your name for the
23 record?

24 MS. BUENING: My name is Janet Buening.

25 I'm the resident of 3520 Mooney Avenue, which

1 is three houses up from Erie. And to the
2 gentleman that thinks that the people on
3 Mooney give him dirty looks when he parks
4 there, you can park on our street anytime you
5 want, just don't block my driveway. We expect
6 that. We know we live in an urban area and
7 we're perfectly happy to let other people use
8 our street for parking during the day. Much
9 prefer that to see a neighborhood diminished.
10 So having said that, sorry --

11 MR. TIDD: Ms. Buening, are you part of
12 the Hyde Park Neighborhood Council --

13 MS. BUENING: Yes.

14 MR. TIDD: -- or is it just yourself?

15 MS. BUENING: Yes, both. I speak as a
16 neighbor, a resident of Mooney for 44 years.
17 But at our meeting last night, the Hyde Park
18 Neighborhood Council did pass a motion in
19 support of the zoning committee's
20 recommendation, which Gary just explained to
21 you. So this does have the things that we as
22 members of the neighborhood council say does
23 have the official weight, if you will, of a
24 vote behind it. This is the will of our
25 council, as well as our individual ideas. So

1 anything else?

2 MR. TIDD: No.

3 MS. BUENING: Okay. So what I was going
4 to say, I didn't really prepare a lot to come
5 here except I want (inaudible) before because
6 I had the TV on this morning and I saw yet
7 again the Good Feet commercial where the nice
8 young lady comes out and says -- shows you all
9 her inserts and first thing --

10 MR. TIDD: I hate to cut you off, but
11 Mr. Wollenweber, can I have those photos?

12 MR. WOLLENWEBER: Yeah, I was going to
13 give them to you.

14 MR. TIDD: I just didn't want --

15 MR. WOLLENWEBER: I was going to wait
16 until Janet stopped speaking to --

17 MR. TIDD: I hate to interrupt you.

18 MS. BUENING: I didn't know what was
19 going on.

20 MR. TIDD: When I saw Ms. Buening's large
21 pile of papers, it reminded me.

22 MS. BUENING: You know, all courtesy of
23 the city. What can I say. So anyway, the
24 commercial, the nice young lady, comes out,
25 talks about, you know, how she -- first she

1 built this and then she built this and then
2 she added this, and I would have just been
3 better off in the first place if I'd just gone
4 to the Good Feet Store. And I thought that's
5 how I feel about coming here again today.
6 This has been going on since, what, 2014, you
7 know. And first we all said this and then we
8 all wrote this and then these were all the
9 letters we sent to city council and this is
10 all the stuff that neighborhood council and
11 everybody else did. And at the end of it,
12 we're here again and we just would have been
13 better off in the first place if the city
14 would have not voted to oppose the zone change
15 and not even put the NWO in place. We could
16 have all saved a lot of time and our
17 community, would, I believe, be better off in
18 the first place.

19 I'd like to -- I didn't write a new
20 presentation today because I looked at my old
21 one and I thought, wow, I already wrote what I
22 need to say today. So this is from a letter I
23 wrote to city council. This was written as a
24 resident, not as a representative of the
25 neighborhood council, but my personal

1 statement. And in that I said -- this was on
2 November 29, 2015, just before they took the
3 vote on approving the NWO for your property.
4 And I wrote, however, having received and
5 carefully reviewed the ordinance that was set
6 (inaudible) November 25th, I have come to the
7 conclusion that the NWO is not good for the
8 3400 block of Zumstein. While I deeply
9 appreciate the efforts of the neighborhood's
10 committee to try to satisfy the needs and
11 desires of all affected parties, the additions
12 and deletions made to the first draft convinced
13 me that an NWO will not bring closure on this
14 issue to the Zumstein residents or protect the
15 residential quality of the street. It is
16 simply the next step in a process that has
17 already gone on for nearly a year and surely
18 will be followed quickly by a request for a
19 variance or a special exception as Section 7 of
20 the NWO allows to make 3443 Zumstein more
21 suitable for office use. Given that SSP was
22 soliciting letters to support for the time
23 change is really -- is November 2015, but did
24 not close on the purchase of the property until
25 December 4, 2014, I would not be surprised if

1 the request for an exception has not already
2 been planned or written in this (inaudible)
3 file. So I knew on November 29th of 2015 that
4 we would all be here sooner or later. And here
5 we are. So what I want to say is it is
6 different to have the kind of parking that the
7 law firm is proposing. It is far more visible
8 than backyard parking because it flows
9 contiguously into the property on Erie
10 property. It makes -- it's a larger mass. It
11 is completely visible and sets up -- it's not
12 the same as parking in somebody's backyard that
13 might accommodate two cars. It's a matter of
14 scale and mass and visibility. But the worst
15 thing, what it does is it allows commercial
16 creep into our residential neighborhood. And,
17 yes, which really frightens me, as a person
18 who's been to way too many of these hearings,
19 is directly across the street is a
20 grandfathered-in parking lot that everybody
21 wishes wasn't there but it is. And that's one
22 thing. And you kind of used that as your
23 precedent to do what you wanted to do on the
24 other side of Zumstein. So once we know how
25 much -- I'm not a lawyer. I have no legal

1 training, but we know that the law loves
2 precedence. So once you've got a parking lot
3 here, parking lot here, tell me how the city is
4 going to be able to keep saying no to people
5 who come and ask for zone changes and want to
6 continue until the entire cul-de-sac of
7 Zumstein has turned into an office park.

8 So I do want to say that as a 46-year
9 resident of Hyde Park, 44 of those years on
10 Mooney, 42 years as an active member of the
11 Hyde Park Neighborhood Council who has been to
12 too many hearings like this, asking the hearing
13 examiner to please consider the unified
14 opposition of the residents of the street, the
15 good arguments made by the lawyer, by Gary
16 Wollenweber, our zoning committee, and to deny
17 this request, these two requests, which are not
18 in the spirit of the UDOD or the NWO. And,
19 again, I'm not a lawyer, but they even don't
20 seem to be in the letter of the law of those
21 things. So I would hope that it stops here.
22 And if we say no to this one, maybe we don't
23 have to come back again. So thank you for
24 listening.

25 MR. TIDD: Thank you, ma'am. Mr. Saba,

1 do you have any questions?

2 MR. SABA: Yes.

3 Ms. Buening, you'd agree with
4 Mr. Wollenweber's statement that the 3443
5 Zumstein residential uses have required
6 off-street parking that would be satisfied by
7 the proposed yard -- rear yard parking that
8 we're submitting?

9 MS. BUENING: The uses of the building as
10 it was before or the building the way you're
11 using it now?

12 MR. SABA: As a three-family residence,
13 that the placement of that parking would be
14 consistent with that?

15 MS. BUENING: I honestly do not know the
16 zoning code as well as Gary does. I know that
17 I live next to a four-unit building that does
18 not have more than three spaces in the
19 backyard. So I really don't know how to
20 answer your question. I don't have the zoning
21 code memorized.

22 MR. SABA: You don't disagree with
23 Mr. Wollenweber, though. You trust his
24 knowledge of the zoning code, correct?

25 MS. BUENING: I trust Gary on many

1 things, but I'm a cynical person. I don't
2 trust anything. I have to verify it. So I
3 can't say that I do.

4 MR. SABA: You have no reason to dispute
5 what he said, correct?

6 MS. BUENING: I --

7 MR. TIDD: Mr. Saba, she already said she
8 didn't know.

9 MS. BUENING: I (inaudible) dispute nor
10 necessarily agree with what Gary said except
11 that we as a council have said we'd stand
12 against this request.

13 MR. SABA: That's all the questions I
14 have. Thank you.

15 MR. TIDD: Mr. Suder?

16 MR. SUDER: No questions.

17 MS. BUENING: Thank you.

18 MR. TIDD: Do we have somebody else in
19 the first row?

20 MS. SHERMANN: Thank you, Todd. My name
21 is Sheila Shermann. My name is Sheila
22 Shermann. I live at 3433 Zumstein and I've
23 lived there about 35 years, and here we are
24 again. I guess the demolition of the garage
25 is the gateway to the parking lot behind the

1 residential property. That 3443 is zoned as a
2 two-family, but had been used as a
3 three-family by the family that owned it many,
4 many, many years ago, so I suppose it's
5 grandfathered. It has never had any
6 off-street parking. There appears to be no
7 room. What I don't understand is -- I have
8 pictures as well and I've looked at what they
9 presented. The lot is 50 across by 150. I
10 don't understand how you could put a driveway
11 totally on 3443 Zumstein by looking at the
12 pictures, and I've walked by it many times and
13 drive by it many times during the day.

14 So my big concern is that if this is
15 creating an easement driveway between the Erie
16 property of SSP and the residential property,
17 what happens if they decide not to have their
18 office anymore or when the day comes they wish
19 to sell it. Or down the road as we're
20 continuing to chip away at what we worked so
21 hard for, that it would be, well, gee, now we
22 have this driveway, that it comes on both
23 properties, we can't let that go, so we really
24 need to change the zoning.

25 And the single-family property next to the

1 Smith-Carnes parking lot -- I'm a real estate
2 broker and I have been for 38 years and I've
3 sold that house several times over the years.
4 And it's a tough sell next to that ugly fence
5 and the parking lot. And then, of course,
6 there is the parking garage that affronts
7 Edwards that was built some time ago. So that
8 is hard to sell. Those people have been there
9 a long time, such as I have.

10 But I just -- I've not heard anybody talk
11 about an easement driveway. And, I mean, I
12 have pictures too and I see it. I live three
13 doors down. Where is the driveway going to be?
14 There's no -- I don't see any room on the
15 residential property. And back when we were
16 objecting to the -- changing the zoning, you
17 know, parking was just so sidestepped that the
18 Erie property, I guess, was grandfathered and
19 didn't have to have all of the parking that
20 would normally occur in an office setting. And
21 also, the residential property, Zumstein,
22 being, I believe, 4,100 square feet, would
23 require six parking places. So that indeed is
24 true for that residential property. My concern
25 is how do you get there? What if somebody else

1 owns the Erie property? I don't know and I
2 just don't see that this driveway is going to
3 sit solely on the Zumstein property. I don't
4 know how it could with 50 feet across. I mean,
5 I haven't measured it. But having a parking
6 lot back there, I'm not looking forward to it.

7 But like I said, my biggest concern, and
8 no one's used the word easement, what is going
9 on with that driveway and is it going to be on
10 the Zumstein property? Are they going to take
11 a piece of the building off? And the
12 elevation, I have pictures, too, between their
13 stone wall and their driveway, I don't -- you
14 know, I'm not a contractor. I don't know how
15 that's all going to work because it drops down.
16 I mean, I've walked there. But you can see
17 here there, there just -- there isn't a lot of
18 room here. I don't know where -- when they
19 take down the garage, certainly there'll be a
20 wider space to create a wider driveway. But it
21 appears that it will not be totally located on
22 the Zumstein property.

23 MR. TIDD: Can you show both those
24 pictures to Mr. Suder and Mr. Saba?

25 MS. SHERMANN: Yeah. I think you already

1 have those. (Inaudible).

2 MALE SPEAKER: (Inaudible).

3 MS. SHERMANN: So I don't know why
4 we're -- I don't know either why we're here at
5 the zoning hearing. I just think down the
6 road, as Janet said, it's just chipping away
7 from the residential use of the property.

8 And, you know, I got an e-mail from
9 someone at the SSP office. I did not get a
10 notification of this hearing. I don't know why
11 I didn't get anything, but I did get an e-mail
12 from the SSP office saying that they wanted to
13 apply to demo the garage and the garage was
14 delapidated. Well, you know, they've owned the
15 garage for many, many years. If it's
16 delapidated, it's because they didn't take care
17 of it, but that it would help alleviate some of
18 the parking on Zumstein. Well, I got to tell
19 you, Zumstein is -- probably Mooney too, it's
20 like a bowl of sand. If you take a scoop out,
21 it will quickly fill back up. It's not going
22 to alleviate anything. People from the
23 businesses, people that shop and have lunch, as
24 we discussed forever in our zoning hearings --
25 or our hearings before, it's not going to

1 alleviate -- it's not going to make a big deal.
2 But, yes, there is parking. We all have
3 parking. Most of us have parking. There are
4 some houses in the neighborhood that have no
5 off-street parking, and 3443 Zumstein was one
6 of them.

7 But I don't know. If somebody can answer
8 me, if that driveway is going to be totally on
9 Zumstein, I don't think so. So everything else
10 has been covered. I won't go through all of
11 that, but that's all I have.

12 MR. TIDD: Do you want to introduce those
13 photos? Do you want me to keep those?

14 MS. SHERMANN: Yeah. Did I take them --
15 sure.

16 MR. TIDD: Mr. Saba, do you have any
17 questions?

18 MR. SABA: I do.

19 Sheila, I'm just trying to understand
20 because you talked about your biggest concern
21 of whether or not the driveway fits there and,
22 you know, whether or not there's an easement.
23 I guess I'm trying to understand in terms of
24 just your biggest concern, making sure that
25 that's a separate contiguous structure,

1 separate parking, that no matter what happens,
2 assume we stop using that building, then we
3 would sell it, it goes back to being a
4 three-family, that it would be able to continue
5 to operate as a three-family with parking in
6 the back?

7 MS. SHERMANN: Yes, I think that would be
8 good if it wasn't an easement driveway. Is it
9 an easement driveway?

10 MR. SABA: No, the plans we currently
11 have are that they can fit the driveway on
12 there as it fits --

13 MR. TIDD: Remember, Mr. Saba, you can't
14 answer her questions. You have to ask her
15 questions.

16 MR. SABA: All right. Sheila, I'll try
17 and ask the next question. I'm just trying to
18 understand your concern, your concern being,
19 again, going back to that question, is just
20 trying to make sure that whatever happens down
21 the road, if we would discontinue use, that it
22 wouldn't affect -- that that parking somehow
23 was affected or the ability to use it as a
24 (inaudible). Am I understanding that
25 correctly?

1 MS. SHERMANN: Are you asking me if
2 that's my concern?

3 MR. SABA: Yeah. I realize you may have
4 more than one concern. It was just based on
5 your explanation and your concern about
6 whether or not it fits there?

7 MS. SHERMANN: Yes, that is my concern
8 that -- yes.

9 MR. SABA: And that's more what I'm
10 trying to understand. Would it alleviate your
11 concern if they are able to go ahead and fit
12 the driveway there such that it is permanently
13 set, it's part of the Zumstein property or
14 that, otherwise, if for some reason they were
15 not able to, there's a permanent easement of
16 record or covenant of record that allows them
17 to always use that driveway just for the
18 Zumstein property?

19 MS. SHERMANN: What's your question?

20 MR. SABA: I'll rephrase my question. So
21 with respect to that, we talked about your
22 concern, would your concern be alleviated then
23 if that driveway is placed there either solely
24 on the Zumstein property and/or with a
25 permanent covenant of record that if for some

1 reason it would stretch onto the Erie
2 property, which it does, or that there'll be a
3 permanent easement or covenant of record that
4 would allow the continued use of that
5 driveway?

6 MS. SHERMANN: I would still be
7 concerned.

8 MR. SABA: Okay. What would be your
9 concern then?

10 MS. SHERMANN: That there would be an
11 easement driveway between a residential
12 property and an office zoned property.

13 MR. SABA: And why would you be concerned
14 about that?

15 MS. SHERMANN: And I don't know all the
16 zoning, but if you have different owners, you
17 have -- I mean, you know, I'm a Realtor. I
18 mean, I'm just thinking if I go to try to sell
19 your three-family and, oh, by the way there's
20 an easement driveway over here with this
21 office on the corner, I just -- that's not a
22 good mix. So I would still be concerned. And
23 my concern is that it's not going to fit, but,
24 yes, I'd still be concerned because you have
25 two different zoned properties sharing -- you

1 have an easement driveway.

2 MR. SABA: Well, they wouldn't be
3 sharing. It would just be for the use of
4 Zumstein ingress and egress. So how would
5 that be different in your mind from -- if it
6 was an easement over a residential property?

7 MS. SHERMANN: It would be different
8 because it's zoned office. And if it would be
9 partially on the Erie property, can't you
10 imagine it would lead to a lot of problems
11 with parking and egress and ingress with a
12 business and a residential and tenants parking
13 in the -- I just think it's a can of worms.
14 But, no, I would not -- it wouldn't alleviate
15 my problems.

16 MR. SABA: That's all I have.

17 MR. TIDD: Mr. Suder, any questions?

18 MR. SUDER: No, Your Honor.

19 MR. TIDD: Can I have those photos?

20 MS. SHERMANN: Yes, I (inaudible) right
21 to you.

22 MR. TIDD: Thank you. Sir, are you next?

23 MR. GARDINER: Yes.

24 MR. TIDD: What is your name for the
25 record?

1 MR. GARDINER: Cooper Gardiner. I live
2 at 3547 Mooney. I'm a member of the zoning
3 committee of (inaudible). And I guess as I've
4 been listening, I particularly appreciate the
5 preliminary nature of this process so that
6 facts can come out (inaudible). There are
7 facts about the proposal (inaudible) just from
8 common sense of the zoning code that I think
9 should trouble the city and their appealings
10 for our neighbors facing negative changes to
11 the character of the residential variant now
12 and their concern for the future of their
13 homes. As an architect, I would expect
14 professional documentation at this point,
15 particularly with the two parcels. And
16 there's been ample discussion of the vagueness
17 and the confusion that has caused them and at
18 least opined, frankly, for all of us. But the
19 evidence omits, the record omits clear civil
20 engineering and landscape architect's drawings
21 for the neighbors to examine. As a neighbor
22 for, you know, these three decades, I care
23 about every encroachment of office commercial
24 activity beyond what the neighborhood has
25 agreed. The fact is that the parking garage

1 (inaudible) use of parking and maintains the
2 residential scale and look of this highly
3 desirable Hyde Park Square. And even as I
4 walked to the Square yesterday on Erie, I
5 noted the garage there and blocking the view
6 at the end of the driveway. That short
7 residential length of view like this is one of
8 the qualities that this proposal would change
9 and it would be for the worse.

10 MR. TIDD: Thank you. Mr. Saba, do you
11 have any questions?

12 MR. SABA: No.

13 MR. TIDD: Mr. Suder?

14 MR. SUDER: No, Your Honor.

15 MR. TIDD: Thanks. I think I saw one
16 more hand, correct?

17 MR. UBELACKER: Good afternoon, Mr. Tidd.
18 For the record, I am Carl Ubelacker. I'm a
19 long-time member -- in fact, I'm a member of
20 the Hyde Park Neighborhood Council, seems like
21 I was born on the zoning committee of the Hyde
22 Park Neighborhood Council. I'm still active
23 on the Hyde Park Neighborhood Council's zoning
24 committee. I was involved a year and a half
25 or two ago with the original proposal. I

1 think there's three different aspects to this
2 application that I would like you to think
3 about. One is the garage removal. It's my
4 opinion that it does not meet the requirements
5 in the UDOD because it is a structure that
6 contributes to the architectural quality of
7 the district by its function of a screen for
8 parking areas by commercial users.
9 Essentially, it fails to meet the code for
10 demolition approval.

11 Another aspect of this is the new driveway
12 and parking lot. Frankly, that's an
13 unconscionable invasion of the residential
14 environment for commercial purposes, which was
15 a big situation of when this came up in the
16 very first place. It will not improve the
17 parking situation on Zumstein. Nothing short
18 of the abolition of motor vehicles will improve
19 that.

20 So I've been a resident of Hyde Park for
21 well over 47 years and that street used to be
22 almost solely dedicated to postal employees.
23 They had 30-some carriers that worked out of
24 the post office. That's where they parked.
25 Came in at 7:00 in the morning and were there

1 all day. They moved the carriers over to
2 Marietta. But guess what? As it was
3 described, you take some sand, a scoop of sand
4 out of the beach, it just fills itself back in.
5 That's exactly what happens. Moving or
6 creating these few parking spaces in the
7 residential environment, it's an SF-6, will not
8 improve the parking situation on Zumstein.

9 The third aspect to this that I bring up
10 here is essentially this application is a
11 repudiation of the negotiated agreement of two
12 plus years ago when they originally asked for a
13 zone change because they don't have room to
14 expand, their business is going to move out of
15 the city. They already had an office, of
16 course, out in Anderson Township, but that was
17 immaterial. This application is nothing more
18 than a direct attempt to negate the agreements
19 that were written in the notwithstanding
20 ordinance and is a backdoor attempt to change
21 the zoning without approval of the planning
22 commission and city council, which both had to
23 approve the notwithstanding ordinance in the
24 first place. I urge you to deny this
25 application.

1 MR. TIDD: Thank you, sir. Mr. Saba, do
2 you have any questions?

3 MR. SABA: No, I don't.

4 MR. TIDD: Mr. Suder?

5 MR. SUDER: No, Your Honor.

6 MR. TIDD: Thank you. I believe that was
7 everybody from the public. At this point,
8 Mr. Saba, I am going to give you an option.
9 Would you like to rebut anything that's said
10 now or would you rather address rebuttal on
11 closing after Mr. Suder?

12 MR. SABA: I'll address rebuttal
13 questions after Mr. Suder.

14 MR. TIDD: Okay. Mr. Suder?

15 MR. SUDER: Thank you. Well, now you've
16 heard from the applicant as to why -- what
17 they want to do and why they want to do it.
18 And it's understandable why they want to do
19 what they want to do. You've heard from my
20 client (inaudible) resident, Zumstein, a lot
21 of members of Hyde Park Neighborhood Council
22 and other Hyde Park residents that lived there
23 a long time, you've heard their concerns and
24 why they're opposed to it, and those are
25 reasonable concerns for citizens to have. But

1 this isn't a variance. I want to be very
2 clear about that. They're not here, despite
3 what the staff reports say, this is not a
4 variance. It's a different type of inquiry.
5 It isn't a balancing of the equities.
6 Business wants parking lots, reasonable
7 neighbors don't want it for some reason, let's
8 just balance this, unbalanced, you know, it
9 could come out either way. No, this is an
10 inquiry under UDOD, Urban Design Overlay
11 District. It's very specific to certain parts
12 of the city, right? It's very specific to a
13 number of neighborhoods that the city council
14 at some point in time, the planning commission
15 and the city council determined deserved
16 greater protections than the rest of the city.
17 And Hyde Park Square Business District is one
18 of those 13 areas of the city that the city
19 council and elected citizens of the City of
20 Cincinnati determined needed special
21 protections. And what that means is, it's a
22 different inquiry, it's not a, well, this
23 person wants this (inaudible) is it
24 reasonable? No. It's four specific things
25 that you may want to do in this district, and

1 that list includes signs, awnings, mechanical
2 equipment and utilities, replacement windows,
3 replace windows (inaudible) exterior
4 renovation and alterations of existing
5 structures, eating and drinking
6 establishments, franchise establishments, any
7 new construction that takes place and
8 demolition, any demolition that takes place.

9 All of those items, if you want to do any of
10 that, those things within the Urban Design
11 Overlay District, in this case No. 4, Hyde
12 Park, you have to go to 1437 and you have to
13 go to 14307-09 and you go under the category
14 and you have to meet those development
15 standards. The statute says must, must.

16 14307-09 says development within
17 individual UD Overlay Districts must comply
18 with the standards described below in that
19 table that the ordinance that establishes the
20 UD Overlay District declares applicable to that
21 district. These are very specific. We can
22 argue and debate whether they're too strict.
23 They may be strict over the historic district,
24 but we don't get to make that decision. We're
25 not elected onto city council. There's a

1 reason that Hyde Park is not an historic
2 district. I don't think Hyde Park wanted to be
3 in the historic district, but they did want the
4 Urban Design Overlay protection. The Urban
5 Design Overlay protection includes protections
6 against demolitions. And very plainly, there's
7 no reason or unreasonable reading of the
8 statute, it's very plain. You go to D1. And
9 it says, demolition has been ordered by the
10 director of buildings and inspections for
11 reasons of public health and safety and, it's
12 not a typo, it's very specific in that
13 ordinance, if you look up that ordinance, that
14 changes in 2015, just a few years ago, and.
15 And so the threshold is that, look, this thing
16 has to be unsafe, having been declared unsafe
17 and ordered demolished by the city and on top
18 of that, one or more of these other things have
19 to be -- you can look at the statute. It's
20 got -- the first, D1, demolition has been
21 ordered sentence, and then it has these bullet
22 points after it. They were not intended to be
23 equal. There's no typo here. It's very clear
24 that the first provision has to be satisfied
25 before you even get to any other factors.

1 That's strict. It sure is. But it's strict
2 because we're protecting a place like Hyde Park
3 Square. This is all very intentional. And
4 it's without question that the applicant hasn't
5 satisfied this development standard. I mean,
6 he testified that he hasn't. He can't because
7 there's not been any demolition that's been
8 ordered of this garage. Therefore, there's
9 simply nothing that we can do, you can do or
10 anyone else can do to demolish this garage at
11 this point in time. There's no demolition
12 allowed of this garage under the statute, very
13 plain reading of the statute. So, therefore,
14 that application must be denied. That's pretty
15 clear. It's plain and simple.

16 As far as the new construction goes of the
17 new parking lot, Mr. Saba and the applicant
18 have hung their hat on vested rights. It seems
19 to be they keep going back to, well, this is in
20 the SF-2 and why couldn't we put parking back
21 there in the SF-2, it's allowed in the SF-2.
22 Well, because it's not an allowed use under the
23 SF-2. This is a legal nonconforming
24 three-family building. There's no right --
25 this is not a single-family house or a

1 two-family that's permitted in the SF-6 that
2 you could say, well, these rights existed and
3 you can -- you now have to allow me the same
4 rights as any other property in the SF-6.
5 These rights never existed. They don't exist.
6 There's no driveway. There's no parking.

7 You heard testimony that this property has
8 never had off-street parking. It was used as a
9 grandfathered three-family with no off-street
10 parking. So those rights, you can't hang your
11 hat on those rights. The applicant can't hang
12 their hat on rights that don't exist and say,
13 well, we're allowed to do it, so we should be
14 allowed to do it for an office as well. Not
15 true. They're not allowed to do it right now
16 as a three-family. You're not allowed to do it
17 as an office.

18 Under 14307-09, back to that again,
19 there's nothing that really specifically
20 addresses parking lots, but it does talk about
21 new construction. And it says, new buildings
22 shall be compatible with their surroundings,
23 architectural style, bulk, shape, mass and
24 scale and form of new buildings and the space
25 between and around buildings shall be

1 consistent with the area and it should be
2 (inaudible). Well, this is space in and
3 around -- between and around buildings. And
4 you've heard ample evidence today from multiple
5 people that this is inconsistent with the area
6 around it. Commercial parking lot, a
7 commercial office campus is inconsistent with
8 the residential character of Zumstein, one of
9 the great and most recognized residential
10 streets in all of Hyde Park.

11 So, again, we're confined in the UDOD.
12 We're confined to the standards there. If they
13 don't satisfy them, they don't get the
14 permission. That's how the law works in 1437.
15 And they have not satisfied those requirements
16 and, therefore, the applications must be
17 denied. Thank you.

18 MR. TIDD: Thank you. Mr. Saba?

19 MR. SABA: Thank you. Addressing first
20 Mr. Suder's interpretation of 14307-09.
21 The -- I think you have to read the entire
22 statute in totality to really understand how
23 it's written and the way that it's written.
24 With every other section under that UDOD
25 provision, they discussed about (inaudible)

1 limited shall meet the following standards.
2 New businesses should contribute. New
3 buildings shall be compatible. They set the
4 standards of mandatory language or
5 non-mandatory language. What he wants to try
6 and do, there is no mandatory language in that
7 section. They don't put in shall. They put a
8 series and list of events. He's trying to
9 focus on the word and, and trying to interpret
10 that as creating a double standard. It's an
11 unreasonable reading. Even using simple
12 logic, it's an unreasonable reading. Under
13 his reading, if a director of buildings and
14 inspections has ordered that a building be
15 demolished because of safety, because of
16 public health and safety, it can't be
17 demolished unless it satisfies these other
18 characteristics. So you can have an unsafe,
19 unhealthy building, something that threatens
20 safety and health, and under his reading, no,
21 you're not allowed to demolish that, you have
22 to meet one of the other standards. And so we
23 just have to have an unhealthy or an unsafe
24 building to the public that would sit there.
25 That is not a reasonable reading of the

1 statute. There's not shall or mandatory
2 language written there in that fashion. The
3 statute uses mandatory and non-mandatory
4 language. Clearly the reasonable reading of
5 the statute is those are various parameters
6 that justify demolition in certain
7 circumstances. And in this situation
8 demolition is justified, both in terms of
9 adding parking and because the lack of
10 architectural value provided by that building.
11 There is no screening that's required by this
12 development. It doesn't have to be in there.
13 It's not required by the zoning code. This
14 is -- we complied with the zoning code with
15 respect to this.

16 There's a distorted reading that they're
17 trying to place on 13 -- excuse me, 1423-11
18 when it talks about redevelopment or expansion
19 of existing site ground coverage. That's clear
20 what that means. How much coverage do you have
21 on the ground right now? Are you going to
22 change that ground coverage? We're not
23 changing the ground coverage. The garage is
24 removed, it's replaced with pavement.

25 The suggestion that, oh, it's so important

1 if I have to see 14 cars parked, it's
2 disingenuous in the light of the number of cars
3 parked that, well, we'll tolerate them if
4 they're parked at a school because that's
5 school parking, but somehow we can't tolerate
6 it if it's parked somewhere else. That makes
7 no sense whatsoever. That's completely an
8 unreasonable interpretation of the parameters
9 here and unjustified argument against it.

10 With respect to the parking itself, I
11 believe that -- you know, what Mr. Wollenweber
12 indicated was clear, when he acknowledges, the
13 parking we're proposing for the rear of
14 Zumstein is consistent with the residential use
15 of that building. It's consistent. It
16 complies with it. They're not opposed to it.
17 Mr. Suder suggested, no, you can't do that,
18 that's improper, or they suggested it's an
19 invasion of this neighborhood. No, it is
20 consistent both with SF-6 and the requirements
21 for that property. They concede that point.
22 They're opposed to it. And we realize they've
23 been opposed to a number of things we would do.
24 I'm not going to get into whether or not there
25 have been personal comments in the past, but

1 beyond that, you know, our position is, what
2 we're doing is reasonable. It's in the best
3 interest of the neighborhood. That's what
4 we're trying to achieve here.

5 As indicated both by the recommendations
6 and the reports that have been provided, we do
7 comply with all the zoning requirements.
8 Notwithstanding the confusion regarding the
9 Zumstein property, the attention is that that
10 driveway will be on that Zumstein property.
11 There's no future issue with respect to what
12 happens if we discontinue use of the property.
13 The suggestion -- and I believe that Mr. Suder
14 conceded this at the very beginning, that he
15 tried to suggest to the city that we're in the
16 wrong forum, that we shouldn't be here, that we
17 should be seeking an amendment at the NWO. As
18 he indicated, the city made it clear, no,
19 that's not the situation.

20 What we're seeking here is not a change to
21 the NWO. It's consistent with the rights that
22 were granted. It's consistent with the use of
23 that property. It's consistent with the SF-6
24 zoning that currently exists there. I believe
25 the evidence firmly supports that approval

1 should be granted with respect to this. It is
2 in the best interest of this neighborhood.
3 It's in the best interest of the long-standing
4 problem that they acknowledge there is a
5 problem with parking. And the recommendation
6 of the Hyde Park Square Conservation Plan years
7 ago, which hasn't changed, is we need more
8 off-street parking. That's how we address the
9 issue. It's not to ignore it. It's not to
10 turn a blind eye to it. It's to provide for
11 more off-street parking. So it's consistent
12 with that plan. It's consistent with the
13 expressed plan and the intention for that
14 neighborhood, and that's why we would ask that
15 you approve both applications with respect to
16 2623 Erie and 3443 Zumstein.

17 MR. TIDD: Thank you, Mr. Saba.

18 MR. SABA: Thank you.

19 MR. TIDD: At this time I will close the
20 hearing. We'll go off the record now.

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2 STATE OF OHIO)

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9 I, Mindy Davis, Notary Public in and

10 for the State of Ohio at Large, certify that the

11 audio recording was transcribed by me, and the

12 foregoing is a true record of said audio recording

13 transcribed to the best of my ability.

14

15

16 IN WITNESS WHEREOF, I have subscribed my name

17 and affixed my seal this 13th day of August, 2018.

18

19

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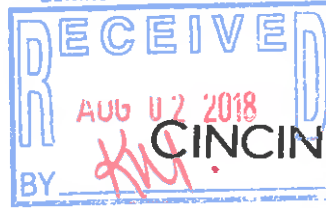
21

22 MINDY DAVIS

23 Notary Public

24 My Commission expires: 04/03/16

25



Application for Appeal to the Zoning Board of Appeals

II Centennial Plaza
805 Central Avenue, Suite 500
Cincinnati, Ohio 45202
Monday- Friday 7:30 am- 4 pm
513-352-1559

Section 1. SUBJECT PROPERTY

ADDRESS 2623 Erie Avenue COMMUNITY Hyde Park
PARCEL ID(S) ZH20180091
BASE ZONING CLASSIFICATION OL ZONING OVERLAY (if applicable) UDOD # 4

Section 2. APPLICANT

NAME DLM Realty, LTD CONTACT PERSON (if legal entity) Peter Saba, Esq.
ADDRESS 2623 Erie Avenue CITY Cincinnati STATE Ohio ZIP 45209
EMAIL PAS@sspfirm.com RELATIONSHIP TO OWNER (if not owner) _____
TELEPHONE (513) 533-2701

Section 3. OWNER

NAME DLM Realty, LTD CONTACT PERSON (if legal entity) Peter Saba, Esq.
ADDRESS 2623 Erie Avenue CITY Cincinnati STATE Ohio ZIP 45209
EMAIL PAS@sspfirm.com RELATIONSHIP TO OWNER (if not owner) _____
TELEPHONE (513) 533-2701

AUTHORITY OF APPEAL - Indicate the appropriate section of 1449-03 that qualifies you to make an appeal 1449-03(a)

NATURE OF APPEAL - I am appealing a decision/order of the (indicate case #): ZH20180091

Director of City Planning and Buildings (1449-13) _____

Zoning Hearing Examiner (1449-15) Decision July 6, 2018 denying application to demolish detached garage located at 2623 Erie Ave

Historic Conservation Board (1449-15) _____

JUSTIFICATION FOR APPEAL - Attach a separate sheet explaining in detail the basis of your appeal.

SUBMISSION REQUIREMENTS

1. The applicant is required by Section 1449-15(b) of the Zoning Code to file within 21 days of filing notice of appeal; a complete record of the proceeding along with a transcript of all testimony.

FEES: Residential -- 1, 2, & 3, Family and Multi-Family/Commercial -- \$750

2. Nine copies of the complete case file, including this application and a transcript of any public hearing if applicable. **No submittal will be accepted unless these materials are spiral bound or in a notebook, indexed and all pages numbered.**

Signature 

Date 8/2/2018



STAGNARO, SABA
& PATTERSON CO., L.P.A.

August 1, 2018

VIA HAND-DELIVERY

City of Cincinnati, Ohio
Zoning Board of Appeals
c/o Secretary of the Zoning Board of Appeals
II Centennial Plaza
805 Central Avenue, Suite 500
Cincinnati, Ohio 45202

Re: Appeal of Case No. ZH20180091
DMI Realty, Ltd. Owner
2623 Erie Avenue, Cincinnati, Ohio

Dear Zoning Board of Appeals:

DML Realty, LTD (“DML”) is appealing the Zoning Hearing Examiner’s July 6, 2018 denial of DML’s request to demolish the detached garage located on DML’s property at 2623 Erie Avenue (ZH20180091).¹

The property is located within the Hyde Park Urban Design Overlay District, and thus is subject to the development standards in CMC §1437-09. Division (i) of that section governs demolition. The ZHE concluded that in order to obtain a demolition permit under CMC §1437-09(i), an applicant must first “demonstrate that the demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety.” and then must also establish that one or more of five enumerated criteria are met.

The ZHE’s decision is wrong and should be reversed—and DML should be granted approval of its application to demolish the detached garage—for the following three reasons:

- 1. The ZHE’s interpretation of CMC §1437-09(i) is absurd on its face, and is inconsistent with the text and purpose of the zoning code.**

“It is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result.” *Misher v. Poland Bd. of Zoning Appeals*, 76 Ohio St.3d 238, 240 (1996).

¹ This case was consolidated by the Zoning Hearing Examiner with case ZH20180090, which related to a parking lot on a neighboring parcel. DML is NOT appealing the ZHE’s decision with respect to case ZH20180090.

City of Cincinnati, Ohio
Zoning Board of Appeals
Appeal of Case No. ZH20180091
August 1, 2018
Page 2

District, an Applicant must demonstrate that the demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety then [also] demonstrate certain prescribed conditions.” In other words, it was the express holding of the ZHE that an order of demolition by the Director of Buildings and Inspections for reasons of public health and safety *is not enough to obtain a demolition permit*.

That is absurd on its face, and the ZHE’s interpretation must be rejected for that reason alone.

That interpretation is also inconsistent with the text and purpose of the code. The “paramount concern” in interpreting and applying legislative enactments, including zoning codes, is giving effect to legislative intent. *State ex rel. Tam O’Shanter Co. v. Stark County*, 151 Ohio St.3d 134, 2017-Ohio-8167, ¶17. That requires reading the enactment in context—with the remainder of the section and the remainder of the code—and otherwise ascertaining the intent of the legislative body (here, City Council).

The current version of CMC §1437-09(i) has been in effect since the 2015 passage of Cincinnati Ordinance 141-2015. That Ordinance amended subdivision (i) of CMC §1437-09 by adding the word “and” before the first bullet point and by adding the word “or” before the final bullet point:

- D1. Demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety and:
- The structure does not contribute to the architectural quality of the district;
 - The demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan;
 - The demolition is necessary to provide parking and/or other uses in a manner specified in the urban design plan;
 - The owner has endeavored in good faith to find a use for the structure and is unable to obtain a reasonable rate of return on the property: or
 - Demolition has been ordered to remove blight.

The purpose of this amendment was explained within the ordinance itself:

WHEREAS, a committee of Council held a public hearing on the proposed amendments to the City’s zoning ordinances following due and proper notice pursuant to Cincinnati Municipal Code Section 111-1, and the committee approved the amendments, **finding them to be in the interest of the general public’s health, safety, and general welfare; and**

WHEREAS, this ordinance is in accordance with the “Compete” goal to **“build a streamlined and cohesive development process” as described on page 111 of the Plan Cincinnati (2012);**

Page 111 of Plan Cincinnati 2012² emphasizes the goal for City Council to:

Build a streamlined and cohesive development process.

To provide superior service, Cincinnati **will build a streamlined, cohesive economic development financing program and permitting process** that leverages our significant talent and organizational resources. Increasing coordination and simplifying procedures will result in **a smoother development process with faster and more positive outcomes. (emphasis added).**

Taken together, the text of Cincinnati Ordinance 141-2015, page 111 of Plan Cincinnati 2012, and the as-amended version of CMC §1437-09(i) establish that City Council’s twin purposes in amending the code were to promote the public’s health, safety, and general welfare, and to establish streamlined and cohesive development processes. The ZHE’s interpretation of CMC §1437-09(i) in this case is not consistent with either of these purposes.

Indeed, the ZHE’s interpretation is antithetical to the goal of promoting the public’s health, safety, and general welfare; as discussed above, it would preclude the demolition of structures *even if the Director of Buildings and Inspections had ordered demolition for reasons of public health and safety*. Under the ZHE’s interpretation, an order from the Director alone is not sufficient—the property owner must *also* establish one of the other five criteria before a demolition permit will issue. That is not and cannot be the law. Understandably, the CMC repeatedly recognizes that any structure is subject to being demolished whenever the structure has been determined to pose a threat to public health and safety. *See, e.g.,* CMC §1101-57.1; CMC §1101-63; CMC §1411-47; CMC §1435-09-05(c). The ZHE’s interpretation of CMC 1437-09(i) would frustrate the consistent interpretation of this basic safety rule, and is absurd when read in context with the remainder of the code.

The ZHE’s interpretation of CMC §1437-09(i) is also inconsistent with the purpose of establishing streamlined and cohesive development processes. Rather than *simplifying* the process for permit applications, the ZHE’s interpretation puts another barrier between property owners and a demolition permit (namely, the requirement of first obtaining an order from the Director of Buildings and Inspections that the building should be demolished for reasons of public health and safety). This would only serve to unnecessarily complicate and slow the permitting process: it would make the permitting process slower and less streamlined.

² Like the ordinances and laws adopted by the City of Cincinnati, Plan Cincinnati 2012 is a matter of public record and was adopted by the unanimous vote of City Council in November 2012 as the official document guiding future planning and development in the City of Cincinnati.

The ZHE's application of CMC §1437-09(i) would frustrate the City Council's express purpose for the 2015 amendments. It must be rejected.

2. **The ZHE's application of CMC §1437-09(i) to DML's request for demolition is arbitrary and capricious because it is inconsistent with the application of the same code section to all prior similar applications.**

Above and beyond being inconsistent with the text and purpose of the zoning code, the ZHE's application of CMC §1437-09(i) to DML is inconsistent with its application of the same ordinance to other similarly situated property owners seeking similar demolition permits. Its decision is therefore unlawfully arbitrary and capricious, and it must be reversed. *See Kisil v. Sandusky*, 12 Ohio St.3d 30, 33 (1984) (holding that denial of a permit to applicant while granting other similar applications from other similarly situated applicants was arbitrary and capricious).

More specifically, since the July 1, 2015 effective date of CMC §1437-09(i), the ZHE has consistently granted demolition permits on properties within UDODs without requiring the applicant to demonstrate that the Director of Buildings has ordered the demolition for reasons of public health and safety.

For instance, in case number ZH20150115³, the ZHE granted an application for a demolition permit at 2633 Erie Avenue—just two doors away from the subject property here, and also in the Hyde Park UDOD. In that decision the ZHE held that

Demolition of a building in an Urban Design Overlay District may only result from certain prescribed circumstances. The circumstances include: (a) the building does not contribute to the architectural quality of the district; (b) demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan; (c) the demolition is necessary to provide parking or other uses in a manner specified in the urban design plan; (d) the owner has endeavored in good faith to find a use for the building and is unable to obtain a reasonable rate of return on the property; or (e) demolition has been ordered to remove blight.

The applicant for the demolition permit at 2633 Erie Avenue was not required to demonstrate that the Director of Buildings had ordered the demolition for reasons of public health and safety.

Similarly, in the December 4, 2017 decision in case number ZH20170174 granting an application to demolish the building located at 3563 Columbia Parkway, the ZHE repeated the plain reading interpretation of CMC § 1473-09(i), and not the interpretation applied to DML.

³ As the BZA is aware the prior decisions of the ZHE are decisions of law which are part of the public record.

Demolition of a building in an Urban Design Overlay District may only result from certain prescribed circumstances. The circumstances include: (a) the building does not contribute to the architectural quality of the district; (b) demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan; (c) the demolition is necessary to provide parking or other uses in a manner specified in the urban design plan; (d) the owner has endeavored in good faith to find a use for the building and is unable to obtain a reasonable rate of return on the property; or (e) demolition has been ordered to remove blight.

Although the ZHE did note the poor condition of the building to be demolished, the applicant was not required to first demonstrate that the Director of Buildings had ordered the demolition for reasons of public health and safety.

In the January 8, 2018 decision in case number ZH20170201 granting the application to demolish the building located at 3133 Madison Road, the ZHE again repeated the plain reading interpretation of CMC § 1473-09(i).

Demolition of a building in an Urban Design Overlay District may only result from certain prescribed circumstances. The circumstances include: (a) the building does not contribute to the architectural quality of the district; (b) demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan; (c) the demolition is necessary to provide parking or other uses in a manner specified in the urban design plan; (d) the owner has endeavored in good faith to find a use for the building and is unable to obtain a reasonable rate of return on the property; or (e) demolition has been ordered to remove blight.

Once again, the applicant for the demolition of 3133 Madison Road was not required to first demonstrate that the Director of Buildings had ordered the demolition for reasons of public health and safety in order to get a demolition permit.

Just 3 weeks before DML's hearing, in the May 24, 2018 decision in case number ZH20180072 granting the application to approve (retroactively) the demolition of a detached garage at 6087 Montgomery Road, the ZHE did not require the applicant to first obtain an order from the Director of Buildings indicating that the detached garage should be demolished for reasons of public health and safety. The ZHE again applied the same reading of CMC § 1473-09(i) that has been applied to every applicant other than DML.

Demolition of a building in an Urban Design Overlay District may only result from certain prescribed circumstances. The circumstances include: (a) the building does not contribute to the architectural quality of the district; (b) demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan; (c) the demolition is necessary to provide

parking or other uses in a manner specified in the urban design plan; (d) the owner has endeavored in good faith to find a use for the building and is unable to obtain a reasonable rate of return on the property; or (e) demolition has been ordered to remove blight.

The ZHE's requirement that DML must first show that the Director of Buildings had ordered the demolition of the detached garage located at 2623 Erie Avenue for reasons of public health and safety before demolition is approved, is contrary to all prior applications of the code section. It is therefore an arbitrary and capricious decision. It must be reversed and DML's application for a demolition permit should be granted.

3. DML fully complied with the requirements of CMC §1437-09(i), entitling DML to the approval of the application to demolish the detached garage.

Under the correct interpretation of CMC § 1437-09(i)— which is the interpretation that every prior applicant has been subjected to—DML need only have shown that demolition of the detached garage is consistent with at least one of the five circumstances provided for in the code section:

- The structure does not contribute to the architectural quality of the district;
- The demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan;
- The demolition is necessary to provide parking and/or other uses in a manner specified in the urban design plan;
- The owner has endeavored in good faith to find a use for the structure and is unable to obtain a reasonable rate of return on the property; or
- Demolition has been ordered to remove blight.

The evidence provided at the hearing confirms that the demolition of the detached garage is appropriate for at least two different reasons: (1) The structure does not contribute to the architectural quality of the district; and (2) The demolition is necessary to provide parking and/or other uses in a manner specified in the urban design plan.

The garage does not contribute to the architectural quality of the district. As indicated in the photographs and the application, the detached garage at issue is in poor condition and impractical for use. Despite efforts to control infestation, the garage has become a haven for rodents and squirrels. The Cincinnati Municipal Code generally recognizes as a matter of law that garages offer no architectural value. (Demolition permits are typically not required when garages of less than 800 square feet, such as this one, are being demolished for replacement. *See*

CMC § 1101-17.1(11). This garage is well under that threshold, being approximately 361 square feet.). No relevant evidence to the contrary was offered at the hearing. No evidence was presented, nor does such exist, which would show that the garage itself possesses some form of unique architectural quality. Although neighbors present at the hearing indicated that they feel the detached garage served as a screen for the "Erie property's rear yard parking lot,"⁴ such a statement is completely irrelevant. As indicated by the attorney for one of the neighbors, this is not a variance issue. Therefore, this is not a situation where there is a balancing of what the neighbors would prefer. Thus, whether the neighbors would prefer a view of a dilapidated garage versus the view of a rear yard parking lot has nothing to do with granting a demolition permit under CMC § 1437-09(i). Beyond the fact Ohio law does not recognize a party's right to preserve a particular view (much less the view of a detached garage), the term "architectural quality" refers to the specific design and materials of a structure, not what the structure would block from view. Accordingly, the evidence presented at the hearing confirms that DML's request complies with the requirement that the dilapidated, detached garage does not contribute to the architectural quality of the district.

The demolition is also necessary to provide parking and/or other uses in a manner specified in the urban design plan. Although the foot print of the garage covers almost three parking spaces, the garage only has capacity for one vehicle, and generally remains unused for parking because of the impracticality created by the car being frequently blocked into the garage. The position of the garage also does not lend itself to efficient use of the parking area behind 2623 Erie Avenue, which limits full use of the remaining area from a practical stand point. As indicated at the hearing, it has been long recognized that there is a desperate need for additional parking in the Hyde Park Square area. In December 1984, the *Hyde Park Square Conservation Plan* was issued and specifically noted that:

"C. Parking

Parking is a major concern of the business in Hyde Park Square. Parking Conditions as they now exist are a substantial irritant to not only the shoppers and businesses, but to the residents living immediately adjacent to the Square.

Based upon the recommended number of parking spaces in relation to the Gross Leasable Area of the business district, there is a current shortage of spaces. Investigation revealed a number of facets to the problem, the major ones being:

1. "... (e) few company furnished parking areas...

⁴ The ZHE's decision, at Finding of Fact 18, also states that the garage currently screens the parking lot at DML's property at 2623 Erie Avenue. That is not correct; because the garage is situated in the corner of the property farthest from the street, it cannot screen anything on the 2623 Erie property.

3. **Bumper to bumper parking on both sides of the street in front of residences on Zumstein, Edwards...**" (p.7)

"GOALS AND OBJECTIVES

...C. Improve parking conditions by increasing the number of off-street parking spaces." (p.15)

The parking issues still exist today. As noted from a neighbor's email dated October 8, 2015, which was read at the hearing "[DML] would be heros, if you could help alleviate the problems with parking on Mooney." (Mooney is a neighboring street.)

Thus, DML's application for demolition of the detached garage more than satisfies the requirements of CMC § 1437-09(i).

For all of the forgoing reasons, DML respectfully requests that the ZHE's decision be reversed and that DML's application for the demolition of the detached garage located at 2623 Erie Avenue be approved. Thank you for your consideration of this Appeal.

Sincerely,

STAGNARO, SABA
& PATTERSON CO., LPA



Peter A. Saba

PAS/kac

**DECISION
OFFICE OF THE ZONING HEARING EXAMINER
CITY OF CINCINNATI
DATE OF DECISION: JULY 6, 2018**

**APPLICANT: DLM REALTY, LTD
2623 ERIE AVENUE
CINCINNATI, OHIO 45209**

**OWNER: DLM REALTY, LTD
2623 ERIE AVENUE
CINCINNATI, OHIO 45209**

CASETYPE: URBAN DESIGN REVIEW

CASE NO.: ZH20180090/ ZH20180091

PROPERTY: 3443 ZUMSTEIN AVENUE/2623 ERIE AVENUE

SUMMARY OF REQUEST:

DLM Realty, Ltd. (the "Applicant") owns the properties commonly known 2623 Erie Avenue (the "Erie Property") and 3443 Zumstein Avenue (the "Zumstein Property") (collectively, the "Property"). The Applicant requests Urban Design Overlay approval to demolish an existing detached garage on 2623 Erie Avenue and approval to construct a surface parking lot in the rear yard of 3443 Zumstein Avenue.

SUMMARY OF DECISION:

The Applicant's request for Urban Design Overlay District permission to construct a parking lot in the rear yard of the Zumstein Property, ZH20180090, is hereby **APPROVED** subject to the conditions provided below.

The Applicant's request for Urban Design Overlay District permission to demolish the detached garage on the Erie Property, ZH20180091, is hereby **DENIED**.

PUBLIC HEARING:

After reviewing the application and materials submitted by Applicant and other concerned persons, and visiting the Property and surrounding area, Kevin M. Tidd, the Zoning Hearing Examiner, conducted a public hearing on the application, prior notice of the time and place of the hearing having been published in *The City Bulletin* and mailed to the Applicant and all abutting property owners and other interested parties.

The hearing was held on June 13, 2018 at 2:30 pm. A recording was made of the hearing and is available for review and transcription.

THE RECORD:

1. Application and Written Statement
2. Site Plan and Drawings
3. LDG Letter of Opposition
4. Letter from Attorney Sean Suder
5. Hassell 1 – Letter of Scott Hassell and Julia Anixt
6. Hassell 2 – Zumstein Neighbor Opposition Signatures
7. Hassell 3 – Witness – Opposing Neighbors
8. Applicant Exhibits 1-7
9. Applicant Response to Lou George Objection
10. GSW Exhibits 1-3
11. Shelia Sherman Exhibits 1-3
12. Letter from the Hyde Park Neighborhood Council
13. Testimony of Peter Saba
14. Testimony of Joe Allen
15. Testimony of Allen Zahumensky
16. Testimony of Scott Hassell
17. Testimony of Sheila Shermann
18. Testimony of Gary Wollenweber
19. Testimony of Jeff Nye
20. Testimony of Janet Buening
21. Testimony of Cooper Gardiner
22. Testimony of Carl Ubelacker
23. MSD Comment
24. Department of Buildings and Inspections Staff Report
25. Amended Department of Buildings and Inspections Staff Report
26. Hearing Sign-In Sheet
27. Recording of Hearing held on June 13, 2018

FINDINGS OF FACT:

1. The hearings for ZH20180060 and ZH20180061 were held together as they involved similar facts and issues of law.
2. The Erie Property is located in a OL (“Office Limited”) Zoning District and the Hyde Park Square Business District Urban Design Overlay District in the Hyde Park neighborhood.¹
3. The Zumstein Property is located in a SF-6 (“Single-Family”) Zoning District and the Hyde Park Square Business District Urban Design Overlay District in the Hyde Park neighborhood.² However, the Zumstein Property permits an office use for the benefit of the law firm Stagnaro, Saba and Patterson pursuant to a Nonwithstanding Ordinance passed by City Council in 2016.

¹ Cincinnati Municipal Code 1417-01 and 1400-17.

² Cincinnati Municipal Code 1417-01 and 1400-17.

4. The Erie Property and the Zumstein Property are contiguous lots. The Erie Property contains a two-story building with a two-car detached garage and a small rear yard surface parking lot, while the Zumstein Property contains a two-story building without off-street parking. The Property houses the Hyde Park office of the law firm Stagnaro, Saba and Patterson.
5. The areas to the north and west of the Property are zoned OL, while the area to the east towards Hyde Park Square is zoned CN-P (“Commercial Neighborhood-Pedestrian”). The area south of the Property along Zumstein Avenue is zoned SF-6 (“Single-Family”).
6. Development within the Hyde Park Square Business District Urban Design Overlay District must comply with certain prescribed standards that are intended to implement policies in the District’s urban design plan.³
7. The Applicant proposes to demolish the existing detached garage on the Erie Property to create three off-street parking spaces in its place and to facilitate the construction of an access drive from Zumstein Avenue that would connect to a new six space surface parking lot in the rear yard of the Zumstein Property.
8. The Applicant’s request to demolish the existing detached garage on the Erie Property requires Urban Design Overlay approval as does the proposal to construct a surface parking lot on the Zumstein Property.⁴
9. The Applicant’s representative, Peter Saba, stated during the hearing that the project is necessary to create additional off-street parking for the law firm. He further explained that the Zumstein Property does not have off-street parking, and although the detached garage on the Erie property is a two-car garage, it is only functional for one vehicle.
10. Mr. Saba maintained that the proposal is consistent with Plan Cincinnati, would make the Zumstein Property more compliant with the Code’s off-street parking requirements and help alleviate on-street parking issues in the neighborhood.
11. Mr. Saba argued that the demolition of the garage would not adversely affect the aesthetics of the neighborhood noting that there is a surface parking lot directly across the street from the Property along Zumstein Avenue that benefits an office building on Erie Avenue.
12. Mr. Saba stressed that the Applicant does not plan to install additional lighting in the parking lot area and that the parking lot would meet all applicable site standards including the construction of a six-foot privacy fence with appropriate landscaping along the western and southern edges of the site.

³ Cincinnati Municipal Code 1437.

⁴ Cincinnati Municipal Code 1437-07(b)(1) and (2).

13. Civil Engineer Joe Allen testified on behalf of the Applicant as to the stormwater drainage system. Mr. Allen explained that the drainage system is compliant with Metropolitan Sewer District ("MSD") requirements and is designed to funnel stormwater from the parking area into the existing storm water infrastructure on Zumstein Avenue.
14. Contractor Allen Zahumensky also testified for the Applicant and described the permitting process for the project and explained how the parking lot and access drive would be constructed.
15. Neighbors Scott Hassell and Julia Anixt oppose the project and were represented at the hearing by attorney Sean Suder. Mr. Suder maintained that the Applicant's demolition proposal should be denied, because it fails to meet the threshold requirement of Cincinnati Municipal Code Section 1437-09(i)(D1), which requires the demolition to have been ordered by the Cincinnati Director of Buildings and Inspections. Mr. Suder stressed that although this section is restrictive, Urban Design Overlay Districts are intended to give certain neighborhoods special protections.
16. Mr. Suder further argued that the parking lot is inconsistent with the residential character of Zumstein Avenue and inconsistent with the historical use of the property noting that it has never had an off-street parking area.
17. Several neighbors of the Property and Hyde Park Neighborhood Council representatives attended the hearing and voiced opposition to the proposal. They maintained that the parking lot does not fit the residential character of Zumstein Avenue and further represents commercial creep into the neighborhood.
18. In addition, they argued that the garage contributes to the district by serving as a screen for the Erie Property's rear yard parking lot and stressed that on-street parking has historically been difficult in the neighborhood and that it will remain difficult even if the new parking lot is constructed. Several neighbors also voiced concern about how such interdependent properties with a shared drive would be separated pursuant to the Notwithstanding Order if the law firm was to no longer operate at the Property.
19. The Department of Buildings and Inspections provided staff reports on the Applicant's applications for zoning relief and recommended approval of the applications.

CONCLUSIONS OF LAW:

Urban Design Overlay District Permission

1. To demolish a building in an Urban Design Overlay District, an Applicant must demonstrate that:

Demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety and then certain prescribed circumstances:

- The structure does not contribute to the architectural quality of the district;
 - The demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan;
 - The demolition is necessary to provide parking and/or other uses in a manner specified in the urban design plan;
 - The owner has endeavored in good faith to find a use for the structure and is unable to obtain a reasonable rate of return on the property; or
 - Demolition has been ordered to remove blight.
2. Additionally, new construction in an Urban Design Overlay District must satisfy certain conditions.⁵ These conditions include:
- New buildings shall be compatible with their surroundings. Architectural style, bulk, shape, massing, scale and form of new buildings, and the space between and around buildings shall be consistent with the area, and should be in harmony with neighboring buildings;
 - New buildings shall respond to the pattern of window placement in the district. The designs of new buildings shall avoid long unrelieved expanses of wall along the street by maintaining the rhythm of windows and structural bays in the district. The preferred pattern of ground floor windows is open show windows, with inset or recessed entryways; and landscaping, lighting and other amenities equivalent to those existing in the district; and
 - Buildings shall de-emphasize secondary rear or side door entrances to commercial space, unless the entrances are associated with public parking areas.

In considering whether the conditions are met, the Zoning Hearing Examiner must also review and consider applicable community plans to determine whether the new construction is consistent with the plans' goals, objectives, and guidelines.

3. Taking the Urban Design Overlay standards into consideration, the Applicant failed to demonstrate it is entitled to demolish the detached garage on the Erie Property.

To demolish a structure in an Urban Design Overlay District, an Applicant must demonstrate that the demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety then demonstrate certain

⁵ Cincinnati Municipal Code 1437-09(h).

prescribed conditions.⁶ Here, the Applicant has not alleged or provided evidence, that the detached garage has been ordered to be demolished by the Director of Buildings and Inspections for reasons of public health and safety. As such an order is a threshold requirement for the demolition of a structure in the Hyde Park Square Business District Urban Design Overlay District, the Applicant's application must fail.

4. Taking the Urban Design Overlay standards into consideration, the Applicant demonstrated it is entitled to construct the proposed parking lot in the rear of the Zumstein Property.

The Applicant's proposed parking lot appropriately balances the goals of the district guidelines with its business needs. A primary purpose of Urban Design Overlay Districts is to encourage private investment to improve and stimulate the economic vitality and social character of selected business districts.⁷ The Applicant's project is in line with this purpose and will add to the vitality of the district by allowing the Applicant to expand the law firm of Stagnaro, Saba and Patterson at its current location. The rear yard parking lot is also consistent with the character of the Hyde Park Business District where off-street parking areas are typically located in the rear yards of primary structures and reduces the off-street parking non-conformity of the office use at the Property

The ZHE acknowledges the concerns of neighboring property owners and the Hyde Park Neighborhood Council, but the parking lot will not create any new negative visual impacts or degrade the residential character of the street as it will be screened from Zumstein Avenue by the existing structure on the property and screened from side and rear yard residential properties by a six-foot privacy fence. Further, the project will benefit the neighborhood by creating an additional off-street parking lot in a district where on-street parking is at a premium.

DECISION:

1. The Applicant's request for Urban Design Overlay District permission to construct a parking lot in the rear yard of the Zumstein Property, ZH20180090, is hereby **APPROVED**.
2. The Applicant's request for Urban Design Overlay District permission to demolish the detached garage on the Erie Property, ZH20180091, is hereby **DENIED**.

SUBJECT TO THE FOLLOWING CONDITIONS:


The foregoing decision is subject to the following conditions which are found to be in the public interest and necessary to mitigate any harmful effects:

⁶ Cincinnati Municipal Code 1437-09(i).

⁷ Cincinnati Municipal Code 1437-01(c).

1. The Applicant must note the zoning hearing case number from this decision on any building permits concerning the project.
2. The project shall be constructed in accordance with the plans stamped FINAL APPROVED PLAN by the Zoning Hearing Examiner and forwarded to the Business Development and Permit Center.
3. All building permits necessary for the prosecution of work shall be obtained within two years from the date of this decision.
4. The project must meet all applicable codes and regulations of the City of Cincinnati.
5. Except as otherwise provided in this decision, the project shall be constructed, configured and operated consistent with the testimony, representations and stipulations of Applicant, Owner and any person acting on his behalf at the hearing on this matter.
6. If Applicant and Owner do not meet all of the conditions required by this decision within the timeframes provided, this decision shall have no further force or effect. If no timeframe is provided for meeting a condition, the condition must be met prior to the time that all building permits issued in connection with the development are closed.

ORDERED THIS 6th day of July 2018.



Kevin M. Tidd
Zoning Hearing Examiner

APPEALS:

This decision may be appealed to the Zoning Board of Appeals, pursuant to Chapter 1449 of the Zoning Code. Appeals must be filed within 30 days of the date of this decision.

TRANSMITTED this 6th day of July 2018, by certified mail to:

**DLM REALTY, LTD
2623 ERIE AVENUE
CINCINNATI, OHIO 45209**

**SEAN S. SUDER, ESQ.
CALFEE, HALTER & GRISWOLD, LLP
2800 FIRST FINANCIAL CENTER
255 EAST FIFTH STREET
CINCINNATI, OH 45202**

TRANSMITTED this 6th day of July 2018, by interdepartmental mail to Rodney Ringer at the Permit Center.

CITY OF CINCINNATI

Buildings and Inspections

R201813557

RECEIPT

CONTRACTOR: DLM REALTY LTD
2623 ERIE AVE
CINCINNATI OHIO
45209

Payment By Other (Applicant)

RE: PROPERTY LOCATED AT: 2623 ERIE AV CINC

PERMIT NUMBER: 2018P06756
TYPE: CBPCMFEE Misc Fees Receipt 2018
SUB TYPE: OTH OTHER

NOTATION:

TRANSACTION DATE: August 2, 2018
TOTAL PAYMENT: 750.00

TRANSACTION LIST

Type	Method	Description	Amount
Payment	Check	1602	750.00

ACCOUNT ITEM LIST

Item#	Description	Account Code	Tot Fee	Paid	Prev Pmts	Cur. Pmts
1139	Other Misc. Cha	050-211-2000-8761	750.00	750.00	.00	750.00

ISSUED BY: SSWIFT SAS
DATE: August 2, 2018 2:35 PM