

Mr. Simon stated he agreed with Mr. Rosen's comments and noted he had been unable to find anything extremely unusual in the applicant's circumstances. He noted if Mr. Anzek found a variance that existed for the previous theatre sign, that may change; however he didn't feel the applicant's current sign proposal had grounds for a variance.

Chairperson Verschueren questioned whether all the members understood the motion and the fact a new proposal may have to be re-advertised.

Mr. Anzek noted for the benefit of those in attendance that the October 9, 2000 meeting had been cancelled because no one had met the filing deadline. Mr. Anzek stated he did not believe the meeting could be reactivated at this point in time.

Complete Motion

MOTION by Cockey, seconded by Colling, in the matter of File No. 72-694, that the request for Item #1, a variance of 156 square feet from Table 4-17 of Chapter 4-17 of the Code of Ordinances, and Item #2, a variance of 10 feet in height from Table 4-17 of Chapter 4-17 of the Code of Ordinance, **BE POSTPONED** for further consideration until it is re-advertised consistent with the application and drawings currently submitted by the applicant, and/or the applicant submits a new proposal in the form of scaled and accurate drawings, for the wall mounted sign for the Bed, Bath and Beyond at 2155 Rochester Road, and to allow the staff time to furnish the Sign Board of Appeals with pictures of the other signs in the shopping center.

Roll Call Vote:

Ayes: Colling, Rosen, Cockey, Simon, Verschueren
 Nays: None
 Absent: Brennan, Robbins

MOTION CARRIED

Chairperson Verschueren clarified with the applicant the procedure for their appearance for the next scheduled meeting.

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(RECESS: 8:35 PM to 8:50 PM)

B. PUBLIC HEARING - FILE NO. 00-030

Location: **71 N. Livernois**, located on the west side of Livernois, north of Walton Boulevard, identified as Parcel No. 15-09-476-044, Zoned R-2, One Family Residential, and proposed as Avon Prairie House.

Request: A Use Variance, pursuant to Section 24.07 of Ordinance 200, to allow a professional office use within the R-2, One Family Residential zoning district.

Applicant: Avon Prairie House, LLC
 c/o 512 Madison Avenue
 Rochester, Michigan 48307

Mr. Sam Wardlaw, Member of the Avon Prairie House, and Mr. Mark Erickson, Member of the Avon Prairie House, representing the applicant, were present, came forward and identified themselves. The applicants acknowledged receipt of the staff report.

Mr. Erickson summarized their request, stating that at the last meeting of the Zoning Board of Appeals they presented their case for the need for the Use Variance. The applicant noted they felt they had amply demonstrated they met all the criteria for the Use Variance. The applicant noted the matter was tabled for two weeks to allow adequate time for the city staff to consult with the city attorney and with the planning consultant on possible language for conditions to be placed on the Use Variance. The applicant stated they had reviewed the findings and conditions that were prepared in draft form, and complimented the drafters for the fine job in preparing them. He stated he and his partners had reviewed them, and although they didn't like everything contained therein, they believed

it was a viable document that addressed all the issues that had been raised.

Mr. Anzek noted that per the direction of the Zoning Board of Appeals at the last meeting, they worked on a draft set of findings and conditions. He stated Mr. Robert Kagler participated and primarily prepared them. He stated also per the Board's request, he had invited Mr. John Staran, the City Attorney, to attend the meeting. He noted several Board Members had questions regarding some of the legal aspects of the Use Variance.

The Chairperson **declared the public hearing open**, calling for proponents and/or opponents who wished to speak. No telephone calls or letters were received by staff regarding this request. The Chairperson indicated all public discussion would be limited to three minutes apiece, noting the Vice-Chairperson would monitor the time.

Christine Hughes, 1408 New Life Lane, came forward and stated she lives on the property directly abutting 71 N. Livernois. She agreed the property is an eyesore, but she did not want people looking at her private home from a business. She noted she did not want to hold up the reconditioning of the building and stated she liked what the applicants intend to do. She noted it saddened her that the City had been unable to do anything over the past dozen years to make this house be the home it could be. She felt the City had shifted gears to make it happen this way and that no one had ever tried to make it happen the other way. She requested if the variance was granted, she wanted the Board to consider limiting the amount of footage that is allowed to be utilized by the current applicant and in the future by whoever else owns the property. She wanted restrictions in their neighborhood regarding the number of people occupying the home.

Dale Hughes, 1408 New Life Lane, came forward and asked the counselor whether he had reviewed the consultant's report from this current request for a variance and the previous request to change it to an office. He noted the consultant's report indicated the first time it definitely should not be changed, and this time it should be granted. He felt it was difficult to understand when there are no differences in the property. It was a historic house then and it is a historic house now. It had the same entrance onto Livernois then, but it was turned down. He questioned the procedure of whether an applicant goes directly to a variance before a request for a zoning change. He questioned the practice of an applicant not receiving a zoning request and then requesting a variance.

Mr. Hughes indicated he was glad something was being done about the eyesore, but noted they hadn't seen the drafted conditions as they were completed without resident representation. He stated he did not want to see the basement and garage allowed to be used for additional office space. He didn't want to live next to a place that is jamming as many people into a building as possible. He noted the home had two large floors and that should be adequate. He recommended the basement and attic be used for storage only, and the garage should be a garage. He did not agree with allowing the applicant a variance to maximize every square foot in the building. He noted the Board indicated it had been many years since they had granted a variance. He noted he liked the applicant and believed they would do a fine job; however, they are businessmen who want to maximize every square foot to lease and rent.

There being no further persons wishing to speak, the Chairperson **declared the public hearing closed**.

Mr. Cockey questioned as a procedural matter whether copies of the draft findings and conditions had been made available to the audience. Mr. Anzek noted they had not. Mr. Cockey requested copies be made available to the audience. The members discussed whether the staff report and package could also be provided to the audience, determining these documents were too lengthy and perhaps a copy could be circulated among the audience.

Mr. Cockey continued that he found the draft findings and conditions were quite good. He questioned Condition #8, Commercial Vehicles, on page 7, inquiring what was meant. He read aloud the first sentence through the word "properties" and indicated that part was clear. He felt the following clause caused a problem. He suggested that Condition #8 read "Parking of commercial vehicles on the subject site shall conform to the requirements of the City's Commercial Vehicle

Ordinance as it pertains to residential properties.”

Chairperson Verschueren stated he also questioned the end of that sentence, referencing the word “stored” which could be determined to mean overnight storage.

Mr. Cockey noted if the sentence stated they had to conform to the City’s Vehicle Ordinance and stopped after the word “properties”, then that statement indicates different types of commercial vehicles cannot be stored on the site. Mr. Cockey noted there have been difficulties in the City over this issue. Chairperson Verschueren noted if an individual didn’t know the Code, they could have a different perception of this condition.

Mr. Cockey noted it stated under Paragraph 2.a in the Commercial Vehicle Ordinance 200-103, “No person shall park or store any step vans, cube vans, buses, dump trucks, stake trucks, flat bed trucks, wreckers, semi trucks and trailers, tank trucks, commercial and construction equipment and trailers, and similar trucks and equipment in a residential district, except as allowed in Paragraph c.4 below”. Mr. Cockey noted Paragraph c.4 referred to the allowance of commercial vehicles being parked or stored if actually engaged in a business activity, i.e., during cutting grass on the site, they can have the truck and trailer parked while cutting the grass; however, they can’t have them parked there overnight. Mr. Cockey noted this was one item that would be prohibited under the Code. Basically, the Code says no commercial vehicles could be parked at the subject site that would be any different than what could be parked there if it was used as a private residence or any place else within the zoning. He stated he felt this was a reasonable way to handle the situation. Mr. Cockey reiterated the additional clause on Condition #8 appeared to be confusing.

Chairperson Verschueren noted the Conditions attached to the Motion could specify what they needed.

Mr. Simon requested some input from Mr. Anzek on this matter. Mr. Anzek deferred to Attorney Staran. Mr. Staran agreed with Mr. Cockey’s suggestion of ending the sentence after the word “properties” in the third line of Condition #8, and striking the balance, as that would accomplish what the Board wanted.

Mr. Cockey then brought up Condition #5, Signage. Mr. Cockey noted the first two sentences of the Condition appeared to be reasonable. Chairperson Verschueren noted this was what the applicant had proposed in the last meeting. Mr. Cockey then questioned the appropriateness of the next two sentences of Condition #5 which limit the wall sign. He inquired whether some small amount of signage by the front door, i.e., a plaque with the names of the occupants, possibly being no more than two square feet and containing the name only, might be appropriate

Chairperson Verschueren noted this matter would have to be addressed by the Historic Districts Commission, and they would advise the applicant how the sign had to look.

Mr. Cockey questioned whether granting the use variance with this requirement in the Conditions, in order to avoid problems at some future point, that perhaps additional wording should be added that no more than one or two square feet of signage, listing the occupants only, would be allowed adjacent to an entranceway. Chairperson Verschueren indicated they should check with the applicant.

The applicant stated the Condition was what they had proposed. They noted they didn’t feel they would use an outside sign, but would probably put up an inside directory because there would be so few occupants.

Mr. Simon questioned the number of entrances to the building. The applicant noted there was a rear entrance; however, the main entrance would be the front of the building. Mr. Simon noted there was an accessory structure which the applicant intended to allow someone to use for office space. He questioned whether customer’s would be able to easily locate that tenant. The applicant noted they hadn’t thought of that possibility, and agreed they would need a couple of square feet of sign on the outside of that building. The applicant noted it would be acceptable to them to limit that

signage to the accessory structure only.

Mr. Rosen indicated he had spent a fair amount of time reviewing the findings and conditions and commended the staff. He noted they followed very closely what the Board asked them to do and they appreciated it very much. Mr. Rosen addressed one of Mr. Hughes' comments about the process involved in this request. He stated this request had properly followed the process where first they asked for a zoning change, noting zoning changes had been requested on three separate occasions, indicating the most recent time it was turned down was in 1997. Then, and only then, was it appropriate to ask for a use variance. He noted that was requested and turned down this past June. He explained the underlying zoning change is requested first and if that is denied, then a use variance may be requested. He stated he understood that was state law or case law.

Mr. Staran noted that was the City's Ordinance. He stated there was no requirement for one to come before the other, but the City Council amended the Ordinance sometime within the last ten years, and it has been the preference on the City's part to look at a rezoning rather than a use variance. Mr. Staran noted when Mark Wyckoff gave his presentations, he noted this was unique to the City of Rochester Hills. Specifically, requiring the rezoning request before the use variance.

The applicant added that they did consult with the City very extensively in coming through this process. He noted they originally went to the Planning Commission and asked for their advice as to whether it would be more appropriate to have another application for rezoning. He noted while the Commission didn't specifically say, there seemed to be a strong feeling it would be a waste of everyone's time, since it had already been before the Planning Commission three times.

Mr. Rosen noted he had several suggestions and changes regarding the draft findings and conditions and inquired whether he should handle them as a motion, which might be the easiest way to both record them and to get them going. Chairperson Verschueren indicated he felt that was appropriate.

Mr. Cockey suggested before they got to a motion, he would request Mr. Staran's input regarding any comments, suggestions or revisions on the findings and conditions, or whether he had an opinion as to their worthiness.

Mr. Staran stated he had spoken to Mr. Anzek about them and was in the process of writing down his one last comment. He suggested with respect to the final condition, Condition #11, the following language be added at the end: "*The applicant shall prepare an appropriate written restrictive covenant, in recordable form satisfactory to the City Attorney, and that document shall be recorded setting forth the restrictions*". He noted once the document was recorded, it would not only be in the City files, but recorded in the chain of title. It would then be there for any future purchasers or tenants of the property.

The applicant indicated that was fine with him as that was his interpretation of Condition #11. He noted this provided further clarification of the matter.

Mr. Anzek added that should there be any requested changes in the future, they would be required to come before the Zoning Board of Appeals and modify that document, and have the new document filed. He noted that would only be accomplished with the Board's approval.

Chairperson Verschueren inquired whether the restrictive document containing all the findings and conditions would be signed by the applicant. Mr. Staran stated if the conditions are converted to a recorded Declaration of Restrictions or Declaration of Covenants, they would be signed by the applicant and they would be recorded at the County Register of Deeds.

Mr. Colling questioned Condition #2, Use Locations. He noted it appeared the applicant would be allowed to use the accessory structure and the first and second floors of the home; the attic would be used for storage, and the basement may be in use. He indicated at the last meeting some objections were made by one of the applicants about not wanting to be restricted to the number of employees that may or may not be on the premises. He questioned how the applicant felt about the

use locations. He wondered whether the applicant wanted to be limited to just three floors, versus specifically indicating the attic had to be used for storage. He noted the resident's concerns about maximizing the space, but noted he didn't think they could put a restriction in stating the basement had to be used for office and the attic used for storage, unless the applicant didn't have any objections to that restriction.

The applicant stated the attic wasn't viable for anything other than storage, therefore, that aspect of the condition is fine. The applicant noted as far as the basement was concerned, he indicated his reading of the language in the condition was such that it wouldn't prohibit them from using any portion of the basement that could be used for office as storage. He noted this would be a lesser included use and that use may exist if it is determined to be the optimal use of the space. The applicant noted they hadn't made that type of a determination at this point; however, if the Board wanted to tweak the language, it was fine with him.

Mr. Colling noted that was his reading of the Condition; however, he wanted to check whether the applicant had any objections to it or felt it was being overly restrictive in terms of what they could do with the building.

Chairperson Verschueren informed the Board he had met with the applicant earlier this evening and toured the house. He noted he was very surprised at the condition of the inside of the house. He noted the home had hardwood flooring throughout, there was no water damage, and there was no damage caused by the winter or freezing. He stated the home has cast iron radiators that were all in pretty good shape. Bedrooms had been built in the basement by a prior owner. He noted the basement was dry and in perfect shape.

Mr. Rosen indicated anyone having a copy of the draft findings and conditions could follow along as he was ready to present his changes.

MOTION by Rosen, seconded by Cockey, for File No. 00-030, that the request for a Use Variance pursuant to Section 24.07 of Ordinance 200, to permit the use of professional office use within the R-2, One Family Residential zoning district, **BE GRANTED** by the Rochester Hills Zoning Board of Appeals with the following findings and conditions for the Avon Prairie House, LLC, for Mr. Sam Wardlow and Mr. Mark Erickson, 512 Madison Avenue, Rochester, Michigan 48307.

Findings:

1. The request has properly followed the required procedures of the City of Rochester Hills to apply for a Use Variance. The City Council, at its meeting on July 23, 1997, rendered a final decision denying a rezoning of the property to an O-1, Office Business District, where the proposed professional office land use would be permitted under the Zoning Ordinance. The Building Department, in a letter dated June 29, 2000, issued a written determination that the proposed professional office land use is not permitted under the Zoning Ordinance in the current R-2 (One Family Residential) District, where the property is located.
2. The granting of this use variance request is consistent with the Planning Commission's 1999 Master Land Use Plan, Historic Preservation Policies, Number 3, Zoning and Land Use for Historic Properties (page 79), which states as follows:

“Creatively zone historic properties to assure ongoing use and maintenance of the resource. Ideally, the first choice for historic preservation would be to maintain the original use or uses of the property and structures. However, this may not always be practical. Flexibility in zoning and consideration of reusing historic resources based on the community's determined needs and modern market realities can allow for occupation and use of otherwise obsolete, vacant sites. Adaptive reuse of historic sites must be authorized according to procedures that will maximize retention of the historically significant aspects of the site and structures.”
3. The Historic Districts Commission, on August 10, 2000, adopted a motion stating that it “...

is in general agreement with the changes and renovations to the property identified as 71 N. Livernois as currently proposed by Avon Prairie House, LLC. The changes shown to the Commission, contained in the applicant's presentation package shown at the August 10, 2000 regular meeting, are in compliance with the Secretary of Interior Standards. The Commission is also in agreement with the proposed alternate use of the resource as an office as this use is compatible with the historic nature of the property." This action by the Historic Districts Commission has been communicated to the Zoning Board of Appeals consistent with Section 4-06.06(j), Zoning Variances, of the City's Historic Districts Ordinance, which states as follows:

"Where the Historic Districts Commission determines the granting of a requested zoning variance would, due to peculiar design or construction, aid or assist with the preservation or enhancement of the historic appearance (or a historic resource), the Commission may so advise the Zoning Board of Appeals."

4. Evidence before the Zoning Board of Appeals demonstrates the property in question does not appear to be able to be reasonably used and does not appear to be able to yield a reasonable return on a prudent investment if the property would be used only for purposes allowed within the current R-2 District. The subject site is bounded by existing non-residential uses to the east and south, is isolated from the existing residential neighborhood to the west and north by landscaping and topography, and has no direct access to Livernois Road except an adjacent nonresidential driveway to the south. It is highly unlikely that the subject site will ever yield a reasonable return on investment as a residential dwelling. The subject site has remained unoccupied for approximately three (3) years with its current zoning designation. No uses permitted within the R-2 District, with the exception of day care uses, have been represented as being possible uses for the site. It should be noted, however, that if a day care type use were to be proposed for the subject site, the existing site layout and surrounding conditions would hinder the site from complying with all of the required standards for approval.
5. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions. The subject site is very unique for several reasons, including extreme topography, surrounding nonresidential (retail commercial and automobile service) zoning and uses, and the historic significance of the existing structures and the subject site. The plight associated with the subject site is not a general neighborhood condition, nor is it common to other residentially zoned sites within the City.
6. The use to be authorized by the variance will not alter the essential character of the area or locality. The use variance requested would permit the location of professional offices within the existing historic house and accessory structure. The proposed use will not alter the existing structures other than renovation improvements, and the subject site will be altered only to the extent of providing required parking, landscaping, and related site improvements. The area will remain essentially the same. The essential character may well be improved by restoration of the site to active use in as close to its residential appearance as possible. This variance would permit and require such restoration prior to such use.
7. The problem is not self-created. There are no apparent self-created hardships associated with the subject site. The structure was constructed prior to many of the current surrounding land uses and prior to the expansion of Livernois Road. The existing topography and isolation of the subject site is not a self-created problem, but rather a result of actions taken by previous owners and by the Oakland County Road Commission with the widening of Livernois Road and the changes to the access to the property. Specifically, it appears that the Oakland County Road Commission implemented changes that had the effect of undermining the suitability of this property for residential use.
8. The spirit of the Ordinance will be observed, public safety and welfare secured, and substantial justice done. Uses permitted within the current R-2 District are "intended to promote a compatible arrangement of land uses for homes, with the intent to keep

- neighborhoods relatively quiet and free of unrelated traffic noises”. The proposed use variance will be compatible with the intent of the current R-2 District. The site will be accessed from an existing public access driveway to the south on Livernois Road and will be utilized during normal business hours, thereby relieving the surrounding neighborhood from noise and traffic impacts. The requested use variance will not create adverse impacts on the public safety and welfare of surrounding neighborhoods or the City as a whole. Furthermore, substantial justice will be done with the granting of the requested use variance, in that the historic structure will be renovated for a compatible and serviceable use to surrounding areas.
9. There is compliance with the standards set forth in Section 24.03.e of the Zoning Ordinance. The requested use variance will not impair an adequate supply of light and air to the adjacent properties, will not unreasonably increase the congestion in public streets, will not increase the danger of fire or endanger the public safety, will not unreasonably diminish or impair established property values within the surrounding area, and will not impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City. The requested use variance will improve public safety by restoring and reusing unoccupied structures, will increase the property values of the surrounding area, and will generally improve the comfort and welfare of the inhabitants of the City.
10. There is compliance with the standards for discretionary decisions as contained in Section 23.17.d of the Zoning Ordinance, as follows:
- a. The proposed professional office use will promote the intent and purpose of the Ordinance, in that it will not alter the existing character of the area, it will not increase traffic within the surrounding residential neighborhoods, and it is generally compatible with the Master Land Use Plan’s Policies for Historic Preservation.
 - b. The proposed office use will be compatible, harmonious, and appropriate in appearance with the existing character of the general vicinity. The existing structures are located within a historic district and will need to be renovated to conform to building code requirements, which will improve the interior and exterior appearance. It should be noted that any exterior modifications to the existing structures will require review and approval of the Historic Districts Commission, which will further insure future compatibility.
 - c. The proposed use variance will not have an adverse impact on the City’s essential public facilities or services.
 - d. The proposed use will not be detrimental, hazardous, or disturbing to the existing or future neighboring uses in any way. The proposed professional office use will have a positive impact on the existing and future neighboring uses in that it will provide for the renovation of unoccupied historic structures.
 - e. The proposed use variance will not create any additional requirements at public cost for public facilities and services.
11. Numerous individual existing conditions and factors combine to justify this use variance request and this decision is based upon the totality of all existing conditions and factors in this particular situation and on this particular site. No single existing condition or factor alone would necessarily justify approval of this request.
12. The attachment of conditions to this motion is consistent with the requirements of Public Act 207 of 1921, as amended, also known as the City and Village Zoning Act of the State of Michigan, specifically Sections 125.585(10) and 125.584c(2) as they relate to the purposes of conditions and the tests that conditions must meet.

Conditions:

1. **Use – General.** Permitted uses in the existing structures on the subject site shall be limited to professional office uses, including by example the offices of an attorney, architect, landscape architect, engineer, or other design professional, but not including medical, dental, or other healthcare related office uses. In addition, due to the particular nature and configuration of the subject site and the existing structures, as well as the anticipated layout of required site improvements, the permitted professional office uses shall be further limited to exclude any use which would generate excessive customer traffic. Examples of such excluded uses would include, but not be limited to, real estate sales, insurance, financial planning, and interior decorating office uses. Administrative approval by the Planning Director or his or her designee of any new tenant or occupant of the existing structures shall be required to ensure conformance to this condition. Appeals from the decision made by the Planning Director or his or her designee in this regard may be made to the Zoning Board of Appeals consistent with Zoning Ordinance requirements for appeals from administrative decisions.
2. **Use – Location.** The professional office use of the existing structures shall be limited to the basement level and first and second floors of the principal structure (house), as well as the ground level of the accessory structure (garage), with the attic level of the principal structure (house) and the attic level of the accessory structure (garage) permitted to be used for accessory storage purposes for the principal professional office use.
3. **Use – Operating Hours.** Use of the subject site and the existing structures shall be generally limited to normal daytime business hours (7:00 AM to 6:00 PM, Monday through Friday), with occasional late night or weekend use to be allowed, and with the intent of this Condition being to limit evening and weekend use and to prohibit 24-hour or other extensive use incompatible with adjacent residential areas.
4. **Concept Plan.** Proposed development of the subject site shall be generally consistent with the concept plan presented to the Zoning Board of Appeals at the public hearing preceding this action, except that there shall also be compliance with all requirements typically applicable to professional office development within the City, including but not limited to the Zoning Ordinance, Tree Conservation Ordinance, Wetlands and Watercourse Protection Ordinance, and the Historic Districts Ordinance, with all requirements to apply as if the subject site were zoned for the proposed professional office use.
5. **Signage.** Signage on the subject site shall be limited to one (1) freestanding sign, not larger than Twenty (20) square feet, located as allowed by the City’s Sign Ordinance. Information on the freestanding sign shall be limited to the name “Avon Prairie House”, or similar wording, the address of the subject site, and a graphic logo or other identifying symbol. The freestanding sign shall not be utilized to identify or advertise the names or occupations of tenants of the existing structures. No wall signs shall be permitted on the existing structures, and additional signage on the subject site shall be limited to directional signage and signage required for public safety purposes. Signage styles and locations shall further be compatible with the existing structures as determined by the Historic Districts Commission.
6. **Existing Berm.** The existing berm extending around the north and west sides of the subject site shall conform to any restrictions, as now existing or hereinafter amended, on the subject site regarding its location, height, vegetation, groundcover, and maintenance. Conformance to current restrictions shall not preclude additional plantings as may be required to conform to any other City requirements.
7. **Lighting.** All lighting on the subject site shall be low level, residential-style, down-directed, and shall be limited to the minimum necessary for public safety purposes as determined by the Planning Commission. Lighting fixture styles and locations shall further be compatible with the existing structures as determined by the Historic Districts Commission.
8. **Commercial Vehicles.** Parking of commercial vehicles on the subject site shall conform to the requirements of the City’s Commercial Vehicle Ordinance as it pertains to residential

properties.

9. **Continuance of Existing Structures.** This Variance is conditioned on the continued existence of the existing structures in such modified condition as may be permitted by the City. If, at any time in the future, either or both of the existing buildings on the subject site are demolished, destroyed, relocated, or removed, this Variance shall lapse and be no longer in force. Further approval by this Zoning Board of Appeals shall be required prior to reoccupancy or reuse, as may be applicable, of the subject site and any such structures remaining thereon.
10. **Receipt of City Approvals.** This Variance shall be contingent upon the receipt of all required City approvals for alterations to the subject site and the existing structures, and establishment of the proposed professional office use. If, for whatever reason, Historic Districts Commission, Planning Commission, or other required City approvals cannot be obtained, further approval by this Zoning Board of Appeals shall be required prior to reoccupancy or reuse of the subject site and/or any structures thereon.
11. **Conditions as Permanent Restrictions.** All conditions of this decision shall be recorded as permanent restrictions on the subject site, to be modified only following mutual agreement between the owner of the subject site and the Zoning Board of Appeals, their successors and assigns. The applicant shall prepare an appropriate written restrictive covenant, in recordable form satisfactory to the City Attorney, and the document shall be recorded setting forth the restrictions.

Discussion on the Motion:

Mr. Cockey questioned with respect to Condition #9, Continuance of Existing Structures, whether the second sentence, which reads” If, at any time in the future, either or both of the existing buildings on the subject site are demolished, destroyed, relocated, or removed, this Variance will lapse. . .” should be changed to restrict that clause to just the main house. Mr. Cockey noted any demolition, removal or relocation of the garage would be covered under the Historic Districts Ordinance. He indicated there could be a circumstance, given the garage is a much smaller structure than the house, where something destroyed the garage. He noted although this would be a historic loss, it would not destroy the essential nature of the site. He stated if the house were destroyed, that would be an entirely different situation. Mr. Cockey stated he would be interested in seeing the second sentence of Condition #9 changed to read: “If, at any time in the future, the existing house is demolished, destroyed, relocated or removed. . .”.

Discussion was had regarding substituting the words “existing primary structure” or “principal structure”, which had been used in Condition #2.

Mr. Colling stated he would rather not see that condition changed from the standpoint if there was a fire, the Historic Districts Commission would probably only allow the additional structure to be rebuilt. It would also have to go before the Historic Districts Commission to rebuild. He noted he didn’t see the need to designate this as the principal residence. If it was an act of God or a fire where the house burned down, the historic treasure would be lost at that point.

Mr. Cockey stated his concern was the garage. He noted is was a distinct structure that wasn’t connected to the house. He indicated with the condition as it is presently written, if the garage was burned down or destroyed by a tree falling on it, etc., and the house was totally unaffected, the next morning the businesses would have to cease operation and come and apply for a new variance as this variance would lapse immediately.

Mr. Colling stated his finished comment was that he didn’t like the portion requiring the reoccupancy and reuse, because there are conditions that could occur, such as the garage loss, where the garage should be rebuilt and it would be handled by the Historic Districts Commission, but he didn’t think their occupancy should be revoked.

Mr. Cockey stated if the house was destroyed, but the garage still stood, then having the variance lapse might make sense, but he didn't feel the whole variance should lapse if the garage was destroyed. He noted the garage was a much smaller structure and a relatively minor part of the complex of the two buildings. He stated he felt the way Condition #9 was currently written, they would have to close down their offices, move out and wait until they received a new variance. Chairperson Verschueren directed the matter to Attorney Staran.

Mr. Staran noted it was a good point and suggested perhaps the condition should be tied to the principal building, the house, rather than to both. He stated it would also be appropriate to add an additional sentence reflecting what the Board intended to happen in the event just the garage burns down. He questioned whether it was the Board's intention that it could be rebuilt and reoccupied for office or not. He suggested this be spelled out clearly in the condition.

Chairperson Verschueren informed the Board both the garage and the house were made out of Michigan tile, so it would be very unlikely that the walls would burn. He noted the interior and the roof might burn, but the walls would still stand. He noted in that case, the Historic Districts Commission would then become involved, and they would probably rebuild it.

Mr. Rosen questioned who had written the Condition and whether they had considered this possibility, or where the exact wording had come from.

Mr. Kagler indicated that at the last meeting, the concept of having offices in the accessory structure was not something that the staff had envisioned, but was something the applicant had specifically requested. He noted the Historic Districts Commission, in the event something happened to either of the structures, would handle the appearance of the building when it was reconstructed. He stated this motion being considered tonight addresses the use. He noted what they did not address, and it was a good point that was raised, was it would have a very different impact relative to the total use of the site if "just the garage" were destroyed relative to "just the house" being destroyed. In looking at those two different instances, if the house were destroyed and not the garage, the argument could be made that something substantial had happened on the site and would validate a lapse. He noted the case could be made that if something just happened to the garage, that's relatively insignificant relative to the use of the entire site, that the use could continue, the variance could stay in effect, but they would still have to obtain whatever approvals are necessary from the Historic Districts Commission.

Mr. Rosen brought up a situation where if a tree fell on the garage and it was partially destroyed, and questioned whether the process would be they would go back before the Historic Districts Commission and get a permit to rebuild. Chairperson Verschueren questioned whether they would come under the 75% rule.

Mr. Cockey stated from the Historic Districts Commission standpoint, if the tree fell and the structure did not have to be torn down but was substantially damaged, as long as what they are doing is rebuilding to the original appearance, they actually would not require any further permission. He stated if the structure was essentially destroyed and had to be taken down and they wished to rebuild, then they would need to get a Certificate of Appropriateness before they could rebuild and the Historic Districts Commission would take into account the Secretary of Interior Standards, which he felt given the subject site, they would interpret rather rigorously in terms of any rebuilding.

Mr. Rosen questioned if they could rebuild. Mr. Cockey stated they could potentially rebuild. Mr. Rosen questioned if there was a difference for either near or total destruction. Mr. Cockey stated his prior point was from the Historic Districts Commission standpoint. He noted if the garage became a legally non-conforming structure, then the 75% rule might apply, and while the Historic Districts Commission might approve rebuilding, the other Commissions may not. He didn't have any way of knowing if the garage would be legally non-conforming. Chairperson Verschueren questioned if the 75% rule would be the whole site, and not just the garage.

Mr. Rosen proposed a different situation. He questioned what would happen if the principal structure, the house, were partially destroyed and whether they could rebuild under the same set of

circumstances. Mr. Cockey stated that would be the same situation.

Mr. Rosen noted the question they were dealing with was if the house were to be completely destroyed or substantially destroyed and not rebuilt, would the use variance go away. He noted they didn't want to have a use variance on a piece of property where the original reason for the use variance was gone. He noted this particular Condition was more complicated when considering the partial destruction situation.

Mr. Colling suggested they word it as Mr. Rosen had just stated, i.e., if it was substantially destroyed without the ability to be rebuilt, then the variance terminates. Mr. Rosen and Chairperson Verschueren agreed that was probably a good idea. Mr. Cockey suggested that the clause be limited to the primary structure (house) and not include the garage. He noted if the garage was destroyed, then it would be left to negotiations with the Historic Districts Commission and the City about rebuilding the garage, but the rest of the use variance would continue. He stated if the house is substantially destroyed, they would have to start over again.

Mr. Anzek questioned if they rebuilt the house to its existing condition, why wouldn't the Board want the Use Variance to continue. Mr. Rosen stated he believed the Board would want it to continue, if it were under the Historic Districts and it was restored as a historic structure. He noted they didn't want to allow a situation where the house burned down and they tried to put in an office building. He noted that part should be made very clear.

Mr. Cockey clarified that the site as a whole, not just the house, is what constitutes the historic district. He noted if the house was destroyed it would still be a historic district, but the general practice in a situation like that would probably be to have it removed from its historic district listing.

Mr. Rosen proposed a change to his motion, specifically Condition #9, stating the second sentence should read: "If, at any time in the future, the principal structure (house) on the subject site is substantially demolished or destroyed or rendered unbuildable, or is relocated or removed, this variance shall lapse and be no longer in force." Mr. Rosen noted the balance of the Condition remains the same. He clarified if the house was demolished or destroyed and is not rebuildable, then the Variance will lapse. If it's relocated, then it lapses. If it's removed, then it lapses.

After further discussion by the Board, Mr. Rosen stated the change to his motion, Condition #9, should read: "If at any time in the future, the principal structure (house) on the subject site is substantially demolished or destroyed, such that it cannot be rebuilt, or it is relocated or removed, this Variance shall lapse and shall be no longer in force." Mr. Cockey noted as seconder on the motion, he agreed with Mr. Rosen's change.

Revised Condition #9:

9. **Continuance of Existing Structures.** This Variance is conditioned on the continued existence of the existing structures in such modified condition as may be permitted by the City. If at any time in the future, the principal structure (house) on the subject site is substantially demolished or destroyed, such that it cannot be rebuilt, or it is relocated or removed, this Variance shall lapse and shall be no longer in force. Further approval by this Zoning Board of Appeals shall be required prior to reoccupancy or reuse, as may be applicable, of the subject site and any such structures remaining thereon.

Chairperson Verschueren asked the Board Members if they were all clear on the change and asked Mr. Staran if the change was acceptable. Mr. Staran stated the change was fine as restated. Mr. Anzek noted Mr. Kagler had a question. Mr. Kagler questioned in light of the previous discussion, did the Board want to add another sentence stating "if at any time the accessory structure (garage) on the subject site is substantially demolished or destroyed, such that it cannot be rebuilt, or it is relocated or removed, such structure may be reconstructed or otherwise modified consistent with the requirements of the Historic Districts Commission". The Board Members discussed the suggested change and decided not to include that language in Condition #9.

Mr. Simon brought up Condition #2, Use-Location, and asked what change had been made. Mr. Rosen stated he intended to indicate that the attic level of the accessory structure (the garage) is only for storage. Mr. Simon questioned whether they were allowing it for storage. Mr. Rosen stated they were and he wanted to make it clear the attic level of the garage was to be used for storage only. Mr. Simon noted the structure did not appear to have much room in the attic area for anything other than storage.

Mr. Simon then questioned the change to Finding #7 (former Draft Finding #8). He requested a review of the last sentence of Finding #7. Mr. Rosen read this finding for the benefit of the Board. Mr. Simon questioned whether the last sentence was necessary for a finding of the Zoning Board of Appeals or whether it was a political statement. Mr. Rosen stated that was actually what happened. Mr. Simon stated he hadn't heard any evidence during this hearing or the previous hearing to substantiate that finding. He stated he was willing to listen to the evidence, and if it is going to be included as part of the findings, he would like to review the evidence.

Mr. Cockey stated there was discussion at the prior meeting, contributed to by Mr. Dale Hughes, one of the residents, regarding the sequence of events with the Oakland County Road Commission as to why they widened the road as wide as they did in front of the house, and how that lead to considerable change in the topography of the front yard. He stated there was also discussion regarding the actions of the Oakland County Road Commission and the negotiations with the various individuals. He noted he felt they had reviewed in depth as to how the property ended up where it was.

Mr. Colling stated he agreed with Mr. Simon. He stated in thinking about the evidence presented, he heard none that would lead him to believe there was a deliberate effort to undermine the value of the property. He stated, although this may have been the result based on the decisions that were made, undermined meant a more intentional situation rather than inadvertently.

Mr. Staran commented that the suitability of the property for residential purposes really goes right to the heart of the request. He stated in order to grant a Use Variance, the Zoning Board of Appeals needs to determine that there are unnecessary hardships which prevent the property from reasonably being used for the purposes that it is zoned. He stated unless there is a finding that the property is not suitable to a residential use, then it would be difficult for the Zoning Board of Appeals to grant the variance. He indicated he viewed it not as a political finding, but more of a critical finding if this Board is going to grant a Use Variance.

Mr. Cockey noted there appeared to be two different conversations going on. One being the interpretation of the discussion of the validity of the finding as a whole; and the second being a discussion about the particular choice of words. He stated if they were talking about the choice of words, they needed to be careful about confusing that issue.

Mr. Rosen stated he understood Mr. Simon may have a problem with the word "undermining". He stated the sentence read ". . .the Oakland County Road Commission implemented changes that had the **effect** of undermining. . .". He stated the sentence could be changed to read ". . .the Oakland County Road Commission implemented changes that had the effect of **decreasing** the suitability of this property for residential use". He noted he wasn't suggesting it was intentional or necessarily sinister. He noted it was simply they did what they had in mind and he didn't believe they even thought about it. He stated they did what they felt was the right thing to do, they felt the property should be office as it appeared to them to be the highest and best use of the site, and they went ahead and did it. He stated they never came to the City; they never asked anybody; they never showed up before the Planning Commission or City Council or the Zoning Board of Appeals; they just went ahead and did it because they had the governmental authority to do so. He stated his point was the "result" of that was the changes, both by taking away the driveway, taking away access, widening the road so far to the west, creating the steep front of the house, and all of that combined undermined the ability of someone to live there comfortably, or decreased the suitability. He clarified this was not sinister or in any way underhanded, it was just what happened.

Mr. Kagler clarified Mr. Rosen's wording for the Board. He stated Mr. Rosen didn't say the

Road Commission undermined, he said that the Road Commission's changes undermined. He stated it wasn't the Road Commission that did the undermining, it was what they did that resulted in undermining the property. He noted Mr. Rosen wasn't placing blame on the Road Commission, but rather on the changes that were made.

Chairperson Verschueren stated there was a motion on the floor that had been properly seconded and asked whether there was any further discussion. He reminded the Board a Use Variance required five yes votes to pass.

Mr. Cockey commented that there were five members of the Board present tonight and the Use Variance required five yes votes. He noted if anyone was inclined not to support the motion, perhaps there should be some discussion about how the applicant would like the Board to proceed and what the appropriate way to proceed would be.

Mr. Simon questioned the current wording of the last two sentences of Finding #7. Mr. Rosen stated they read: "The existing topography and isolation of the subject site is not a self-created problem, but rather a result of actions taken by previous owners and by the Oakland County Road Commission with the widening of Livernois Road and the access changes to the property. Specifically, it appears that the Oakland County Road Commission implemented changes that had the effect of decreasing the suitability of the property for residential use".

Revised Finding #7:

7. The problem is not self-created. There are no apparent self-created hardships associated with the subject site. The structure was constructed prior to many of the current surrounding land uses and prior to the expansion of Livernois Road. The existing topography and isolation of the subject site is not a self-created problem, but rather a result of actions taken by previous owners and by the Oakland County Road Commission with the widening of Livernois Road and the access changes to the property. Specifically, it appears that the Oakland County Road Commission implemented changes that had the effect of decreasing the suitability of the property for residential use.

Mr. Cockey agreed and seconded that wording. Mr. Rosen clarified the word "undermining" would be changed to "decreasing". The Members agreed. Chairperson Verschueren called for a roll call vote on the motion.

Complete Motion as Amended:

MOTION by Rosen, seconded by Cockey, for File No. 00-030, that the request for a Use Variance pursuant to Section 24.07 of Ordinance 200, to permit the use of professional office use within the R-2, One Family Residential zoning district, **BE GRANTED** by the Rochester Hills Zoning Board of Appeals with the following findings and conditions for the Avon Prairie House, LLC, for Mr. Sam Wardlow and Mr. Mark Erickson, 512 Madison Avenue, Rochester, Michigan 48307.

Findings:

1. The request has properly followed the required procedures of the City of Rochester Hills to apply for a Use Variance. The City Council, at its meeting on July 23, 1997, rendered a final decision denying a rezoning of the property to an O-1, Office Business District, where the proposed professional office land use would be permitted under the Zoning Ordinance. The Building Department, in a letter dated June 29, 2000, issued a written determination that the proposed professional office land use is not permitted under the Zoning Ordinance in the current R-2 (One Family Residential) District, where the property is located.

2. The granting of this use variance request is consistent with the Planning Commission's 1999 Master Land Use Plan, Historic Preservation Policies, Number 3, Zoning and Land Use for Historic Properties (page 79), which states as follows:

“Creatively zone historic properties to assure ongoing use and maintenance of the resource. Ideally, the first choice for historic preservation would be to maintain the original use or uses of the property and structures. However, this may not always be practical. Flexibility in zoning and consideration of reusing historic resources based on the community's determined needs and modern market realities can allow for occupation and use of otherwise obsolete, vacant sites. Adaptive reuse of historic sites must be authorized according to procedures that will maximize retention of the historically significant aspects of the site and structures.”

3. The Historic Districts Commission, on August 10, 2000, adopted a motion stating that it “... is in general agreement with the changes and renovations to the property identified as 71 N. Livernois as currently proposed by Avon Prairie House, LLC. The changes shown to the Commission, contained in the applicant's presentation package shown at the August 10, 2000 regular meeting, are in compliance with the Secretary of Interior Standards. The Commission is also in agreement with the proposed alternate use of the resource as an office as this use is compatible with the historic nature of the property.” This action by the Historic Districts Commission has been communicated to the Zoning Board of Appeals consistent with Section 4-06.06(j), Zoning Variances, of the City's Historic Districts Ordinance, which states as follows:

“Where the Historic Districts Commission determines the granting of a requested zoning variance would, due to peculiar design or construction, aid or assist with the preservation or enhancement of the historic appearance (or a historic resource), the Commission may so advise the Zoning Board of Appeals.”

4. Evidence before the Zoning Board of Appeals demonstrates the property in question does not appear to be able to be reasonably used and does not appear to be able to yield a reasonable return on a prudent investment if the property would be used only for purposes allowed within the current R-2 District. The subject site is bounded by existing non-residential uses to the east and south, is isolated from the existing residential neighborhood to the west and north by landscaping and topography, and has no direct access to Livernois Road except an adjacent nonresidential driveway to the south. It is highly unlikely that the subject site will ever yield a reasonable return on investment as a residential dwelling. The subject site has remained unoccupied for approximately three (3) years with its current zoning designation. No uses permitted within the R-2 District, with the exception of day care uses, have been represented as being possible uses for the site. It should be noted, however, that if a day care type use were to be proposed for the subject site, the existing site layout and surrounding conditions would hinder the site from complying with all of the required standards for approval.

5. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions. The subject site is very unique for several reasons, including extreme topography, surrounding nonresidential (retail commercial and automobile service) zoning and uses, and the historic significance of the existing structures and the subject site. The plight associated with the subject site is not a general neighborhood condition, nor is it common to other residentially zoned sites within the City.

6. The use to be authorized by the variance will not alter the essential character of the area or locality. The use variance requested would permit the location of professional offices within the existing historic house and accessory structure. The proposed use will not alter the existing structures other than renovation improvements, and the subject site will be altered only to the extent of providing required parking, landscaping, and related site improvements. The area will remain essentially the same. The essential character may well be improved by restoration of the site to active use in as close to its residential appearance as possible. This

variance would permit and require such restoration prior to such use.

7. The problem is not self-created. There are no apparent self-created hardships associated with the subject site. The structure was constructed prior to many of the current surrounding land uses and prior to the expansion of Livernois Road. The existing topography and isolation of the subject site is not a self-created problem, but rather a result of actions taken by previous owners and by the Oakland County Road Commission with the widening of Livernois Road and the access changes to the property. Specifically, it appears that the Oakland County Road Commission implemented changes that had the effect of decreasing the suitability of the property for residential use.
8. The spirit of the Ordinance will be observed, public safety and welfare secured, and substantial justice done. Uses permitted within the current R-2 District are “intended to promote a compatible arrangement of land uses for homes, with the intent to keep neighborhoods relatively quiet and free of unrelated traffic noises”. The proposed use variance will be compatible with the intent of the current R-2 District. The site will be accessed from an existing public access driveway to the south on Livernois Road and will be utilized during normal business hours, thereby relieving the surrounding neighborhood from noise and traffic impacts. The requested use variance will not create adverse impacts on the public safety and welfare of surrounding neighborhoods or the City as a whole. Furthermore, substantial justice will be done with the granting of the requested use variance, in that the historic structure will be renovated for a compatible and serviceable use to surrounding areas.
9. There is compliance with the standards set forth in Section 24.03.e of the Zoning Ordinance. The requested use variance will not impair an adequate supply of light and air to the adjacent properties, will not unreasonably increase the congestion in public streets, will not increase the danger of fire or endanger the public safety, will not unreasonably diminish or impair established property values within the surrounding area, and will not impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City. The requested use variance will improve public safety by restoring and reusing unoccupied structures, will increase the property values of the surrounding area, and will generally improve the comfort and welfare of the inhabitants of the City.
10. There is compliance with the standards for discretionary decisions as contained in Section 23.17.d of the Zoning Ordinance, as follows:
 - a. The proposed professional office use will promote the intent and purpose of the Ordinance, in that it will not alter the existing character of the area, it will not increase traffic within the surrounding residential neighborhoods, and it is generally compatible with the Master Land Use Plan’s Policies for Historic Preservation.
 - b. The proposed office use will be compatible, harmonious, and appropriate in appearance with the existing character of the general vicinity. The existing structures are located within a historic district and will need to be renovated to conform to building code requirements, which will improve the interior and exterior appearance. It should be noted that any exterior modifications to the existing structures will require review and approval of the Historic Districts Commission, which will further insure future compatibility.
 - c. The proposed use variance will not have an adverse impact on the City’s essential public facilities or services.
 - d. The proposed use will not be detrimental, hazardous, or disturbing to the existing or future neighboring uses in any way. The proposed professional office use will have a positive impact on the existing and future neighboring uses in that it will provide for the renovation of unoccupied historic structures.
 - e. The proposed use variance will not create any additional requirements at public cost

for public facilities and services.

11. Numerous individual existing conditions and factors combine to justify this use variance request and this decision is based upon the totality of all existing conditions and factors in this particular situation and on this particular site. No single existing condition or factor alone would necessarily justify approval of this request.
12. The attachment of conditions to this motion is consistent with the requirements of Public Act 207 of 1921, as amended, also known as the City and Village Zoning Act of the State of Michigan, specifically Sections 125.585(10) and 125.584c(2) as they relate to the purposes of conditions and the tests that conditions must meet.

Conditions:

1. **Use – General.** Permitted uses in the existing structures on the subject site shall be limited to professional office uses, including by example the offices of an attorney, architect, landscape architect, engineer, or other design professional, but not including medical, dental, or other healthcare related office uses. In addition, due to the particular nature and configuration of the subject site and the existing structures, as well as the anticipated layout of required site improvements, the permitted professional office uses shall be further limited to exclude any use which would generate excessive customer traffic. Examples of such excluded uses would include, but not be limited to, real estate sales, insurance, financial planning, and interior decorating office uses. Administrative approval by the Planning Director or his or her designee of any new tenant or occupant of the existing structures shall be required to ensure conformance to this condition. Appeals from the decision made by the Planning Director or his or her designee in this regard may be made to the Zoning Board of Appeals consistent with Zoning Ordinance requirements for appeals from administrative decisions.
2. **Use – Location.** The professional office use of the existing structures shall be limited to the basement level and first and second floors of the principal structure (house), as well as the ground level of the accessory structure (garage), with the attic level of the principal structure (house) and the attic level of the accessory structure (garage) permitted to be used for accessory storage purposes for the principal professional office use.
3. **Use – Operating Hours.** Use of the subject site and the existing structures shall be generally limited to normal daytime business hours (7:00 AM to 6:00 PM, Monday through Friday), with occasional late night or weekend use to be allowed, and with the intent of this Condition being to limit evening and weekend use and to prohibit 24-hour or other extensive use incompatible with adjacent residential areas.
4. **Concept Plan.** Proposed development of the subject site shall be generally consistent with the concept plan presented to the Zoning Board of Appeals at the public hearing preceding this action, except that there shall also be compliance with all requirements typically applicable to professional office development within the City, including but not limited to the Zoning Ordinance, Tree Conservation Ordinance, Wetlands and Watercourse Protection Ordinance, and the Historic Districts Ordinance, with all requirements to apply as if the subject site were zoned for the proposed professional office use.
5. **Signage.** Signage on the subject site shall be limited to one (1) freestanding sign, not larger than Twenty (20) square feet, located as allowed by the City’s Sign Ordinance. Information on the freestanding sign shall be limited to the name “Avon Prairie House”, or similar wording, the address of the subject site, and a graphic logo or other identifying symbol. The freestanding sign shall not be utilized to identify or advertise the names or occupations of tenants of the existing structures. No wall signs shall be permitted on the existing structures, and additional signage on the subject site shall be limited to directional signage and signage required for public safety purposes. Signage styles and locations shall further be compatible

with the existing structures as determined by the Historic Districts Commission.

6. **Existing Berm.** The existing berm extending around the north and west sides of the subject site shall conform to any restrictions, as now existing or hereinafter amended, on the subject site regarding its location, height, vegetation, groundcover, and maintenance. Conformance to current restrictions shall not preclude additional plantings as may be required to conform to any other City requirements.

7. **Lighting.** All lighting on the subject site shall be low level, residential-style, down-directed, and shall be limited to the minimum necessary for public safety purposes as determined by the Planning Commission. Lighting fixture styles and locations shall further be compatible with the existing structures as determined by the Historic Districts Commission.

8. **Commercial Vehicles.** Parking of commercial vehicles on the subject site shall conform to the requirements of the City's Commercial Vehicle Ordinance as it pertains to residential properties.

9. **Continuance of Existing Structures.** This Variance is conditioned on the continued existence of the existing structures in such modified condition as may be permitted by the City. If at any time in the future, the principal structure (house) on the subject site is substantially demolished or destroyed, such that it cannot be rebuilt, or it is relocated or removed, this Variance shall lapse and shall be no longer in force. Further approval by this Zoning Board of Appeals shall be required prior to reoccupancy or reuse, as may be applicable, of the subject site and any such structures remaining thereon.

10. **Receipt of City Approvals.** This Variance shall be contingent upon the receipt of all required City approvals for alterations to the subject site and the existing structures, and establishment of the proposed professional office use. If, for whatever reason, Historic Districts Commission, Planning Commission, or other required City approvals cannot be obtained, further approval by this Zoning Board of Appeals shall be required prior to reoccupancy or reuse of the subject site and/or any structures thereon.

11. **Conditions as Permanent Restrictions.** All conditions of this decision shall be recorded as permanent restrictions on the subject site, to be modified only following mutual agreement between the owner of the subject site and the Zoning Board of Appeals, their successors and assigns. The applicant shall prepare an appropriate written restrictive covenant, in recordable form satisfactory to the City Attorney, and the document shall be recorded setting forth the restrictions.

Roll call vote:

Ayes: Colling, Simon, Cockey, Rosen, Verschueren
Nays: None
Absent: Brennan, Robbins

MOTION CARRIED.

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6. ANY OTHER BUSINESS:

There was no other business to come before the board.

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