

- 5. The alleged hardships or practical difficulties do not include substantially more than mere inconvenience or inability to attain higher financial return. Specifically, the proposed new signage, in area and placement on the canopy, is primarily to provide distinction between different services available on the site. No evidence has been presented that demonstrates signage cannot be designed, constructed and installed, that meets the ordinance requirements for size and function, as well as those requirements desired by the applicant.
- 6. The alleged hardships or practical difficulties are not exceptional or peculiar to the property and result from conditions which do exist throughout the City. Specifically, canopy signs are required by Ordinance to be removed at the end of the year 2004. Granting a variance to allow canopy signs on this property would allow canopy signs to continue beyond the amortization date in the Ordinance and would provide this applicant with a substantial advantage over similarly situated businesses.

Roll Call Vote:

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

MOTION CARRIED

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5. 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

Donald Westphal, managing partner of Avon Prairie House, LLC; Sam Wardlaw, Partner of Avon Prairie House, and Mark Erickson, Member of Avon Prairie House, LLC, came forward and identified themselves.

Mr. Westphal summarized their application. He noted many members of the Board were aware of the history surrounding 71 N. Livernois. He stated he was a landscape architect and has maintained his business in Rochester for over 35 years, currently located at 512 Madison Avenue. He stated about three months ago they decided to seek larger quarters. At that same time, Mark Erickson, an attorney/associate of Mr. Westphal, indicated he was also seeking larger quarters. They looked at several properties available in the City of Rochester; however, they didn't find any of those properties suitable for their needs. They then found 71 N. Livernois was available for sale by the Oakland County Road Commission, who had acquired the property during their expansion of Livernois Road. He noted the Road Commission had attempted to rezone the property several years ago, but the rezoning was denied. The property has been boarded up since that time.

Mr. Westphal informed the Board they had met with the neighbors of 71 N. Livernois to hear their concerns; and held a study session with the Planning Commission and sought guidance from the Planning Commission as to what vehicles were available within the City of Rochester Hills to accomplish their plan. Subsequently, they have met twice with the Historic Districts Commission, exploring their plan with the HDC and seeking their endorsement. They felt this was the logical progression to avoid seeking approvals from one Commission that would later be negated by another Commission.

Mr. Westphal indicated they had applied for a use variance, working with Mr. Anzek in the Planning Department. They had also met with the neighbors again on Thursday, September 7, 2000 to address some of their concerns. They are requesting a use variance that would allow professional offices in the building, but maintaining its residential appearance. He noted the building had some unique characteristics, not the least of which was the historical designation. The house and garage were built in 1922 and are designated a single site historical district. The exterior of the building, with the exception of what would need to be done to make the front accessible because of the steep slope created by the road expansion, basically would remain the same. He noted they had explored their intentions with the Historic Districts Commission and he stated he believed they had concurrence with the Historic Districts Commission on an informal basis. They have not made a formal application to the Historic Districts Commission pending their results before the Zoning Board of Appeals.

Mr. Westphal indicated on his display board their vision for the property. He noted they intended to use the building and the garage for professional offices; the provision for 18 parking spaces; and the ramps necessary to open up the front door and to make it handicap accessible.

Chairperson Verschueren inquired whether the applicant knew who the original architect of the home was. Mr. Westphal indicated the home is prairie style building, noting there are examples of that type of building all over the Midwest. He is unaware whether there is a specific architect for that type of building. Mr. Westphal noted it was an interesting structure.

Chairperson Verschueren verified the applicant has received a copy of the staff report for this matter. Mr. Westphal indicated they had.

Mr. Ed Anzek, Director of the Planning Department, presented the staff report. Mr. Anzek noted, as the applicant had summarized, they had been involved in numerous discussions with the City. He emphasized when the applicant appeared before the Historic Districts Commission recently, they were well received and unanimously supported by a motion of endorsement for the project to go forward. Mr. Anzek indicated the next step of the process, determined after meeting with the city attorney and in discussions with the applicant, is to seek a use variance from the Board. Mr. Anzek introduced Mr. Rob Kagler of McKenna & Associates who had prepared the staff analysis provided in the packet given to the Board. Mr. Westphal requested a copy of Mr. Kagler's staff analysis which was provided to him.

Chairperson Verschueren **declared the public hearing open**, calling for proponents and/or opponents who wished to speak.

Ms. Jane Fleming, 1361 New Life Lane, came forward and stated she had met with Mr. Westphal last Thursday evening. She stated she originally wrote the letter requesting the house be considered for historic consideration. She stated she felt Mr. Westphal's proposal might be the right solution for the property. She expressed her concern that the use variance would open the door for the other business property owners adjacent to the property. She believes the historic designation will help control that issue and she is in favor of the plan. She likes the plan and supports and believes Mr. Westphal's plan will make the home a real point of interest for the City.

Chairperson Verschueren questioned the City Staff about the next step for the applicant if the use variance is granted. Mr. Anzek stated they will have to go before the Planning Commission, after technical compliance review, for site plan review and approval. He stated if the use variance is granted, he presumed there would be a series of conditions to set the standard for review and approval. He noted those conditions will run with the approval and lock the property in. He explained the availability of the use variance will be limited by the tight parameters attached to it. Chairperson Verschueren noted for the resident's information that any hearings before the Planning Commission would be open to the public for their comment. Mr. Anzek stated they would be happy

to take any names and addresses and invite them to the meeting.

Ms. Fleming again indicated she supports Mr. Westphal's plan and wants to make sure there's good communication between the residents and the commercial office entities.

Mr. Cockey commented for clarification purposes about the Historic Districts Commission. He noted the parcel is a designated non-contiguous historic district, which means it falls under the Historic Districts Ordinance. He stated any changes to the exterior appearance of the structures or the property require review and approval by the Historic District Commission. This is a step that is not required of the other parcels in the City which are not Historic District.

Shirley Metzler, 1311 New Life Lane, came forward a read a letter she had drafted to the Rochester Hills Zoning Board of Appeals and the Avon Prairie House. She commented that 71 N. Livernois had been lived in prior to the road widening. The property had access from Livernois and she felt it could continue under residential use. She would like a fence installed along the drive and the existing residential land. She questioned how tonight's request for a use variance differed from the prior requested rezonings. She wondered if the granting of this variance will set a precedent for future similar zoning. She noted the City has other parcels of a similar nature and she feels the City, if it grants this variance, must consider updating the Master Plan, taking into consideration all residential properties along major thoroughfares, truck routes, and near commercial, office and light industrial. She notes the City of Rochester Hills is in the last stages of development and there is a need for all residential parcels that are hard to develop and not just PUD's.

Ms. Metzler continued, if consideration is granted, she would like to know: (A) the intended hours of operation; (B) the location of the dumpster; (C) the total number of employees; (D) if a fire suppression system is required; (E) if all floors will be handicap accessible; (F) whether water and sewer remain residential rates or will commercial rates apply; (G) will a masonry wall be installed between the office and residential property; (H) on the September 8th plan presented, the Heartpeace water retention area was not shown; (I) would the requirements be any different if the structure were to be used as a day care, which is a permitted use in a residential zoning, than the office use being requested tonight.

Ms. Metzler stated she was very interested in this request as she had personally proposed a similar office rezoning request in 1988 on another parcel with a house built in 1908 but which wasn't designated historical.

Mr. Erickson responded to Ms. Metzler's issues indicating the site plan-type issues will be addressed after approval of the variance. He noted some of her questions were addressed in the application submitted by the Avon Prairie House. He explained the property was very unique and why it couldn't be used as a residence again, i.e., no longer having access to Livernois Road and the expensive costs of renovating which would not be supported by market value. They intend to remove and replace all the electrical, plumbing, heating and air conditioning, and will be making some extensive roof repairs, just to bring the building up to livable condition. Their current estimates and bids total an excess of \$500,000.00. He indicated as a real estate attorney he was familiar with the real estate market throughout the area, having been in business for over 15 years, which places this home out of residential market value, especially considering the parcel, the location and the historic designation.

Mr. Erickson further noted this variance wouldn't create a precedent because of the number of unique factors of the property. These factors, consisting of the historic designation, the location of the property and the adjoining commercial properties, is one of the main reasons they didn't seek rezoning. He stressed this was a unique property and required a unique solution. He stated they didn't want to see the building torn down, rather they want to preserve the home. He stated they understood there could be several conditions attached to the use variance and they were prepared to work within those conditions.

Chairperson Verschueren verified all three members of the applicant had copies of the staff report. Mr. Wardlaw and Mr. Erickson accepted copies of the staff report.

Ms. Metzler noted in 1988 she had refurbished a home that the City wouldn't rezone, she went to court and lost. She stated her property ending up being split and sold at a loss.

Dale Hughes, 1408 New Life Lane, came forward and stated his property abuts the white house. He explained he lives in the barn that was part of original property. He noted at one time his home was also 71 N. Livernois. The original site was a 22 acre site that was divided. Mr. Hughes indicated he had met with the applicant several times and he was very impressed with their plan. He agreed the property is an eyesore today and it would look stunning if completed by the applicant as he proposes.

Mr. Hughes provided the members a brief history of the previous applicants requesting a rezoning on this parcel. First was the Homeowners Association who were turned down so as not to set a precedent because their request was a change of the master plan. He noted there had also been some litigation regarding this property, which they won in Circuit Court and in the Supreme Court. The courts gave the Homeowners Association the house, barn, some outlots and some of the lots that were still up for sale. The Homeowners Association then sold it to a speculator who also was turned down for rezoning and who subsequently sold the property. Mr. Kaye, the owner of the Sunoco gas station then purchased the property. He was also turned down for re-zoning for an office complex or shopping center.

Mr. Hughes noted when the widening of Livernois came up, the original turn around for the buses was going to be placed at New Life Lane. The Homeowners suggested to the Road Commission that the turn around be moved further up the hill. The Road Commission moved the turn around across from 71 N. Livernois. The Homeowners Association negotiated a 35' berm with the Road Commission which wasn't completed to the Association's satisfaction. The Road Commission sold the house to Mr. Westphal who wants to change this residential property to office.

Mr. Hughes stated the applicant's plan seems to be the best plan the adjoining residents have seen to date. Mr. Hughes then reviewed the letter he sent to Michele Goldstein of the Planning Department, a copy of which had been provided the Board Members. Mr. Hughes stated their main issues were the number of employees; the economic impact on his property; the number of parking spaces and the placement of the spaces; re-buffering and refurbishing the buffer berm, which the applicant has agreed to do; retention of historical trees, especially a walnut tree in the back, which the applicant has agreed to do; the homeowners would prefer a masonry wall buffer rather than the wood fence that is there; eliminate above ground lighting and hours of operation - which the applicant has agreed to nothing above four foot on the site; hours of operation; storage only on the third floor of the building, which the applicant has agreed to; no additional buildings to be built on the property, which the applicant does not intend to do; and they do not want any large trucks or heavy equipment stored around the property, which the applicant does not use.

Mr. Hughes indicated they felt the granting of this variance may allow the 25' buffer strip between the subject property and the strip mall to be changed to a parking lot for the mall. He noted although they liked the applicant's proposed plan, they would like some firm conditions wherein they aren't allowed the same rights as an office building. He noted changing the property from residential to an office building will increase the value of the property. He felt he should point out this property is a historical property. He concluded that although the property is an eyesore now, they would like the Board to keep the property more residential office rather than commercial office.

Lynn Rizzo, 1360 New Life Lane, declined to speak.

David Campbell, 560 Pinehurst, came forward and stated he encouraged the granting of the use variance, emphasizing it is a use variance. He stated that due to the unique issues relating to this

property, he felt the required findings made necessary in Section 24.07 are easily attained. He stated the subject parcel's zoning status represents the many isolated residential parcels scattered around the City. This may have made sense at one time, but thanks to growth, may require a change in its use. He noted when the property was constructed, living on Livernois was not an issue. He didn't believe anyone would invest in a property for a typical family upbringing that is located next to a gas station, sharing a drive that is an easement to a Tubby's Sub Shop, or teaching a child how to ride a bike on Livernois or on that easement driveway. Under today's standards, this would not be a prudent investment for a single family use. He stated the intended use will not alter the essential character of this area, as currently the property is abandoned and unsightly. The applicant's use will enhance a current eyesore without infringing on the community. Traffic will not be adversely affected due to the nature of business. The applicant will not affect the supply of light and air to the neighbors, they will eliminate the current fire hazard always possible in an abandoned building, and they will restore the property values by refurbishing the existing abandoned property under the guidance of the Historical Districts Commission. Mr. Campbell stated he understood the importance of not setting precedence; however, the unique issues presented by the applicant and staff for this property clearly buffer the Board from establishing a precedence for this sight or for any future applicant wishing to present the same request for a typical office use in a residential. Mr. Campbell urged the Board to grant the use variance for the good of the City, so the property could once again be viable.

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

Mr. Collins Colling questioned the applicant as to whether they intended to develop for their own use, how they intended to use the various floors in the building, and would they be renting it to other lessees or other single professionals.

Mr. Westphal stated they are currently in the process of determining their own use. He noted they had been concentrating on the issues surrounding the outside of the building and hadn't started on allocating the inside space. He noted his firm's space needs would indicate they will occupy the whole second floor, plus the storage space in the attic. He stated one of their possibilities was to construct a kitchen/lunch room arrangement on the first floor, and Mr. Erickson would occupy the remainder of the north side of first floor. This would leave half of first floor available. The basement was where the utilities, i.e. furnace, etc., would be and they may have some space to rent in the basement. They are planning on utilizing about 400 square feet of space in the garage. He noted the partners would be occupying more than half of the available square footage. The remainder would be available for lease. He noted any lessee would have to be a business similar to their own, i.e., not a lot of customer traffic, because of the severe restrictions of the site for available parking.

Mr. Collins Colling noted most professional corporations, especially the smaller businesses, keep erratic business hours, questioning the type of hours currently kept by the applicants' businesses.

Mr. Westphal noted he doesn't require his employees to work weekends or evenings except on the rare occasion to meet a deadline. He stated he will come in Saturday afternoons, but he is usually by himself.

Mr. Collins Colling clarified with the applicant that although there may be occasional evening or weekend hours, these are not the applicants' normal business hours. Mr. Westphal concurred they did not have regular evening hours.

Mr. Collins Colling questioned whether the space would be office space only. The applicant stated that it would be.

Mr. Simon followed up on the previous questions. He noted the staff report recommended a motion that included a set of conditions. He pointed out the staff report recommendations differed

from the recommendations included in the report of McKenna Associates dated September 7, 2000. He pointed out the McKenna report recommended the proposed use apply only to the existing principal structure (the house) and recommended the garage be permitted for use as additional parking and/or storage. Mr. Simon noted this was a direct conflict of the applicant's proposed use of the accessory building. Mr. Simon requested a clarification of this issue from the staff.

Mr. Anzek stated the staff recommendation addressed the use of garage because it was brought up at the Historic Districts Commission meeting. He noted McKenna Associates weren't provided that information.

Chairperson Verschueren stated he didn't believe the reports had to be the same. He further stated he would like to see more reports on each issue. Mr. Simon noted he would like to establish whether they would allow use of the accessory structure before they decide to propose the motion.

Chairperson Verschueren clarified for the applicant's benefit that a use variance required five votes to pass the motion. He also clarified the use variance requirements with applicant.

Mr. Cockey indicated he had a list of items he wanted to mention. He noted the proposed plan was reviewed at the HDC meeting in August. He noted the HDC was enthusiastic about the proposal from a historic standpoint, i.e., the proposal to restore the building to its original appearance. He noted this was the HDC's perspective. He stated the applicant's intent before the HDC had been to avoid conflicts between the different commissions. Mr. Cockey stated he did have some concerns from a ZBA standpoint, one of which was the impact on the neighborhood.

Mr. Cockey noted the use variance has been defined as professional office use. He questioned whether it would be appropriate and possible to tighten that definition up a bit. He noted a medical professional office would have a high number of employees and would generate a large number of clientele throughout the day. He stated this was significantly different from the applicants' businesses, which wouldn't have a high number of daily customers.

Mr. Cockey indicated the definition of use should include professional office use other than medical or dental. Mr. Cockey questioned the feasibility of granting the use variance, since use variances are so rarely granted. He noted the property to the south of the subject parcel was not particularly attractive aesthetically because it was commercial; however, the property to the north and west is a very attractive residential area. He noted this parcel has elements of both. Mr. Cockey stated that the parcel has changed substantially since it has been owner-occupied. The road widening took a lot of the front yard and dramatically changed the topography, along with the increase in traffic. He noted these items, coupled with the cost of refurbishing the home, would not make it feasible to have a residence on the property.

Mr. Cockey stated there were also good reasons not to just arbitrarily rezone the property to office and leave it open to anything that would be permitted. He noted there were good reasons to consider a use variance to permit a specific use. He again stated they should consider framing the use variance so it is restricted to the use requested without the conditions being so restrictive as to make the property non-viable in the future.

Mr. Cockey asked the applicant what the square footage of the first and second floor of the house was. The applicant noted the home had an uninsulated attic, a full basement, and the first two floors were somewhere in the vicinity of 3,000 square feet, using the outside walls. He further explained when they added all the available spaces together, including the garage and the basement, they came up with about 3,600 square feet.

Mr. Cockey inquired how many parking spaces they had allocated. Mr. Westphal indicated they had 18 spaces. Mr. Cockey noted it was reasonable to assume virtually everyone in Rochester Hills drives a car to work. He stated the number of employees in the structure would be tied in to the number of available parking spaces. He questioned whether the applicant would have space available for clients. Mr. Westphal noted he had a problem with restricting the number of employees

who could occupy the building and questioned who would regulate that; however, he indicated the conditions of the site would dictate how many employees are in the building. Mr. Erickson noted there were other ordinances which would limit the number of employees in the building, such as the fire ordinance and this issue would be adequately addressed elsewhere.

Mr. Cockey brought up the prohibition of parking commercial vehicles. He noted the definition of a commercial vehicle could be interpreted as any vehicle owned by a business, regardless of its make or size. He referenced the City's Commercial Vehicle Ordinance for residential parking which prohibits parking of dump trucks, trucks with ladder racks, etc., along with other limitations. Mr. Cockey stated one of the conditions of the motion should state the vehicles on the site would need to conform to the residential commercial vehicle ordinance. Mr. Westphal indicated they did not have any problem with that condition. Mr. Erickson added they had informed the neighbors they would comply.

Mr. Cockey brought up the type of business and questioned whether it was sensible to have something restricting the hours of operation, perhaps specifying that meetings with clients would not take place outside normal business hours. Mr. Westphal indicated they didn't have any problem with normal business hours and stated he didn't think they would have any clients who couldn't keep normal business hours, outside of an occasional Saturday afternoon.

Mr. Cockey then discussed the signage for the business. He questioned the applicant about the type of signs they anticipate using. Mr. Westphal indicated their preference was to identify the building as the Avon Prairie House. He stated they were not planning to have a ladder-back sign identifying the businesses inside. He further indicated they had worked out a logo they were planning on using and they may work the name into the retaining walls. Mr. Cockey stated a potential condition to be added to the use variance might be that any free-standing signs be confined to one of a certain square foot size, identifying the name of the building and its address. Any other signage about the residents of the building would be internal. Mr. Erickson noted their letterhead will prominently include the Avon Prairie House name. Their hope is the building will become known as the Avon Prairie House, not as 71. North Livernois.

Mr. Cockey stated they may still need some discussion to define the term professional office use.

Mr. Brennan brought up one of the resident's questions about a day care being able to operate out of the building. He questioned the staff as to whether day care was considered a professional office use. Mr. Anzek stated it wouldn't unless the Board permitted it under their use variance as a condition. Mr. Anzek stated his understanding of a use variance was the Board prescribed the uses permitted.

Mr. Brennan asked whether the Board could dictate that only one business occupied the building. He further stated his concern was that a percentage of the building was being leased by tenants, and he noted the tenants could keep irregular hours and could be disruptive to the neighborhood. Mr. Brennan also brought up the fact the current applicant may at some time sell the building and the new owners may not comply with the hours and number of clients. He noted the current applicant would be a great contribution to the community; however, due to the change of use, he was more in favor of one business only in the building.

Chairperson Verschuere reminded the Board they could restrict the hours in the conditions put on the use variance. Mr. Westphal indicated one of the conditions of the professional office could include an exemption of medical, dental or health related, which he was in agreement with. He further indicated they would use these guidelines and would only want tenants that are similar and would compliment their business.

Mr. Brennan stated this condition could limit the possible potential tenants and it could become an economic issue for the applicant, forcing them to accept any type of tenant. He also indicated this could cause potential problems should the applicant sell the building or move out and

re-lease the building. Mr. Westphal replied that designating the kind of professions allowed and the building itself would serve as a guide in this situation.

Chairperson Verschueren noted the use variance stays with the land, not with the applicant. Mr. Westphal stated if the Board set the condition with the use variance specifying no medical or dental, then that condition stays with the land as well. Mr. Westphal further indicated this was part of their reason for requesting a use variance rather than rezoning.

Mr. Colling stated in his review of Mr. Hughes' letter he noted there were some items the Board could address and some they couldn't. Mr. Colling didn't feel they could specify the hours of operation due to the fact there are deadlines requiring late hours. He further noted, even if they specify no medical/dental, professional office space includes accountants, financial consultants, etc., which could increase the volume of traffic in and out of the building. Mr. Colling questioned whether the Board could define the restriction to meet the standard of a type of business that is generally 8 to 5, with occasional late night activity, and whether it could be applied to future owners/tenants.

Mr. Westphal responded that the site plan, the site itself, the 35' buffer along the north and west of property which severely limits the parking, will all prohibit a business from coming in with a large customer base and large number of employees. They wouldn't be able to operate a business without parking. It was also noted by the members that the use variance would stay with the land along with its requirements.

Mr. Colling indicated there have been circumstances where the original intended use of the building changed when the original owners left. He also felt some tenants could encourage employee and customer parking across the street at the shopping center. Mr. Colling noted there were some serious potential problems with the use of the building.

Mr. Westphal noted the issue driving this discussion was the concern of potential disruption by the business to the neighbors to the north and west. He reminded the Board they had agreed to a 35' distance buffer; to plant appropriately sized plant materials to provide the necessary screening of the parking lot; that there wouldn't be a substantial disruption because of the use variance; they will put in low-level lighting, and they were very conscience of their ability to use the property in a manner consistent with the use variance and its conditions. Mr. Westphal noted they chose this parcel because of its challenge; however, it represents a risk to them as well.

Mr. Colling noted their commitment to the project. He noted the use variance stays with the land and he still questioned the Board's ability to write conditions to the use variance to limit the type of future owners/tenants in the event of bankruptcy, retirement or sale of the property. Mr. Erickson noted the Board could do more with a use variance as opposed to seeking a rezoning. He stated the applicant understands the issues.

Mr. Cockey stated he shares the same concerns, but felt the Board should investigate the way to deal with their concerns. He further noted he believed they could control future use. Chairperson Verschueren reminded the Board this matter will also have to go back to the Planning Commission.

Mr. Cockey suggested in the literal use of the request, professional office was way too broad. He noted the possibility of specifying legal offices, architects, landscape architects, other design professionals and attorneys may be a reasonable set of conditions. He noted if fifteen or twenty years down the road it becomes non-viable, circumstances in the City may have changed as well, and whoever owned the property at that time would have to come for a new use variance. Although he noted there were concerns about the types of any new businesses conducted by new owners and/or tenants.

Mr. Westphal stated he believed when the building is completed the way they envision it, the

kinds of people who will be attracted to the building would be of a like mind set.

Mr. Rosen noted this property has come back before the Planning Commission three or four times, along with the discussions in the workshop, and it was a difficult situation and very hard to deal with. Mr. Rosen further noted the degree to which the use variance is tied to the building is going to accomplish what they are trying to do. He stated since it was a historic building, there would be a lot of difficulty with how much can be done with the building, i.e., won't be able to expand it, and there's a deed restriction on the berm, which although the Board can't enforce it, has some effect on the applicant, presenting a real site restriction. Mr. Rosen indicated tying the use variance to the buildings and limiting the size of operation, coupled with the applicant's inability to do much more with the site, should effectively tie up the property. He noted the uses are different; however, he felt the bigger concern was the house not be torn down and a regular office building be built in its place at some time in the future. He explained this has been the issue for the last ten years, that another encroachment to the north of a regular office or other commercial type structure could occur. Mr. Rosen noted they were dealing with a use variance and a very narrow set of circumstances that change the picture substantially. He believes the use variance has a lot of merit if the Board can tie it successfully to the building and to the kinds of uses that make sense in that kind of a building under those circumstances.

Mr. Westphal noted the Board needed to keep in mind the historical nature of the building, the limited amount of square footage, and the fact they couldn't add on to the building unless the Historic Districts Commission approved the addition, along with their approval for anything else they wanted to do with the building. Mr. Westphal explained the issue of the 35' setback, noting the 35' setback, berm and landscaping were negotiated by the homeowners in exchange for their agreement as a body to not oppose any future office rezoning of this property. He noted this issue was discussed with the residents at their meeting. He explained the homeowners frustration with the Road Commission in not following through with the berm; however, the Homeowners Association didn't oppose it as a body, but did later oppose it as individuals. Mr. Westphal noted this was why the 35' buffer was there, it was matter of record and it would stay there unless new negotiations took place. Mr. Westphal expressed his hope his firm would remain at the Avon Prairie House for a long time; however, he indicated if this wasn't the case, he believed the use variance would still apply and all the issues could be dealt with and resolved.

Mr. Rosen noted the report by McKenna Associates referred to the property as a vacant site, rather than a vacant structure. He stated although it wasn't occupied, it gave a misleading impression that the Board was dealing with a situation where there isn't an existing building. He noted, for precedent's sake, since it was such an unusual set of circumstances, the Board should be able to put together a motion and findings that are clear enough and specific enough. He also noted, although there may be another similar circumstance in the City that will come up in the next ten or twenty years, the numbers weren't that large. He stated rather than vacant, it should be referred to as an unoccupied dwelling.

Chairperson Verschueren noted it could be referred to as a vacant building rather than a vacant site.

Mr. Rosen clarified it was a single family residence, currently vacant. He also noted the second page of the report reflected the subject site had remained unoccupied for over a decade. He remembered it was lived as recently as four years ago, or before they widened Livernois. Mr. Westphal stated he believed there were tenants in the home for a short period of time, and previous to that, it was used as a church for a significant period of time. Mr. Rosen stated that was his recollection as well. The building had other uses up until about three years ago. Mr. Westphal stated it was his understanding there were some problems in the building with the utilities and that is why it wasn't leased out any longer.

Mr. Hughes stated someone lived in the house when Oakland County owned it for a short period. He stated it was Mr. Kaye's son who lived in the house and did so until Oakland County

bought it. He stated it was a church from 1962 or 1963 up until the Homeowners Association sold it. It was then rented out to college students for a few years. Then Mr. Kaye bought it and his family lived in it until Oakland County purchased it. The home has been vacant since Oakland County owned the property. Mr. Rosen questioned whether that was roughly in 1997 when the transition from occupied to non-occupied occurred. Mr. Hughes concurred.

Mr. Hughes noted the Homeowners Association hadn't received copies of any Planning Commission or McKenna Associates reports and questioned whether those items were public or private.

Mr. Rosen thanked Mr. Hughes for the clarification on the occupation of the house. He noted it may not be clear to everyone about the significant differences between changing the underlying zoning and creating a very narrow set of circumstances by which the building can be used as an office. He stated the Board needed to come up with the correct words to narrow the circumstances enough to prevent the kind of situations they don't want to occur with the property. He stated their wording needed to allow enough flexibility for there to be a viable use of the property that makes good common sense. He stated the challenge is in understanding which is which and the correct wording. He discussed some of the problems in dealing with future use and how to limit it; suggesting a use; the problems with the strip mall; keeping it residential so the buffering requirements stay; the Planning Commission and the Master Land Use Plan; zoning and use of the property and the fact it's been determined the land should stay residential.

Mr. Westphal reminded the Board the applicant had been before the Planning Commission. It was their second step after meeting with the homeowners. They asked for guidance on this issue from the Planning Commission, and there was significant sentiment on the part of the Planning Commissioners that the house was functionally obsolete as a residence as much as ten years ago. He noted Planner Potere had mentioned that fact based on her experience as a Realtor.

Chairperson Verschuere stated that since the Board was having trouble finding the right words to narrow the use variance, perhaps the matter should be tabled for a workshop or special meeting, after it's advertised again, and have the City Attorney present.

Mr. Rosen indicated he felt the Board could handle the matter. Chairperson Verschuere indicated it was an alternative.

Mr. Brennan felt the matter should be tabled and wanted to make the motion. He stated he was convinced this should be a single professional use building. He objected to having tenants in the building, and shouldn't be health-care related at all, which would include medical and dental. He pointed out that may be unconstitutional and believed City Attorney Staran should be included to assist with the language and the constitutionality. He stated to avoid future possibility of someone abusing the zoning, a workshop should be set up with the City Attorney present. He indicated that this was a most unusual, challenging case and due diligence required having the City Attorney present to protect everybody.

Mr. Collins Colling agreed with Mr. Brennan in wanting to exclude medical practice or health related professions; however, he didn't feel it was possible to word smith a document that will single out the types of businesses they would allow in the present as well as thirty years from now. He felt it would be hard to be accurate given the fact the Board can't predict business trends that far into the future. He stated he would like an attorney present as well.

Mr. Cockey stated he wasn't sure whether they needed an attorney present or not. He stated the professional office designation was a problem and suggested literally incorporating the wording of the uses and very similar type of uses. He supplied some suggestions of a reasonable interpretation of professional office including architects, landscape architects, a civil or local engineering office and/or attorneys offices, which could cause problems depending on type of law practiced and the volume of clients.

Mr. Cockey noted the spirit of the use variance addresses whether the uses permitted under the zoning are really not viable for a particular parcel due to the unique characteristics of the parcel. He stated the subject parcel met that requirement as it really wasn't viable to have a residence there within the scope of single-family residences that are zoned R-2. He questioned whether it was feasible for someone to take the building, perform some minimal repairs, and have people live there. He considered the other permitted uses for R-2 Zoning. He stated possibly a church, however, a church would have problems with parking. Some of the other permitted uses of R-2 Zoning wouldn't be allowed because of the nature of the parcel. This would leave day care and he discussed whether that was really a viable option given the location of the parcel and whether the neighbors would want a day care center of the size that would be sufficient to support it, especially with the extended hours of day care centers. He stated if there weren't any viable uses available within the use variance, the need arose to find some other use for the property, not necessarily rezoning, but to frame a narrow use. He noted there appeared to be general agreement with the applicant's proposed use. He noted there was rationale for having an attorney present to avoid future situations and problems.

Chairperson Verschueren stated the reason he had proposed tabling the matter was because of all the variables the Zoning Board have discussed already, and he wanted to avoid a snap decision. He stated having a workshop, or having an attorney present or holding a special meeting, since time wasn't an issue, would put everybody at ease and the Board would find out just what restrictions can be placed on the use variance.

Mr. Collins Colling called for a recess to give the Board a few minutes to ponder their options.

Mr. Westphal stated their goal was to accomplish their dream. Chairperson Verschueren asked the applicant what their time frame was. Mr. Westphal noted their next step, if they receive the use variance, was to go before the Planning Commission, which would take a couple of weeks. He noted the asphalt plants closed at Thanksgiving and the upcoming hunting season, which left them pressed for time. He stated they have been working with the City for three months. He noted the Board needed some time to craft the proper language; however, they themselves did not have a problem with limiting the variance to the kind of use their business is.

Chairperson Verschueren explained a use variance is a very serious matter and it wasn't something the Board could handle quickly. He noted the Board didn't have the answers they required and as Chairperson, it was his responsibility to provide them with an alternative.

Chairperson Verschueren called for a ten minute recess at 9:45 PM
Chairperson Verschueren reconvened the meeting at 9:55 PM.

MOTION by Brennan, seconded by Cockey, for File No. 00-030, that the request for a use variance to allow a professional office use within the R-2, One Family Residential zoning district, **BE TABLED**, with the concurrence of the applicant, in order to hold a special study session with the City Attorney and City Staff present. The Board requests that the minutes of this meeting be immediately prepared and sent to the City Attorney in order to schedule the next meeting.

Discussion on Motion:

Mr. Cockey questioned scheduling a special study session as opposed to a special session and whether the Board could take any action at either session.

Chairperson Verschueren stated the matter could be scheduled for the next regular meeting currently scheduled for September 25, 2000. He noted there is one other matter scheduled for that meeting. Mr. Cockey agreed, stating he will be out of town from October 1, 2000 until Monday, October 16, 2000.

Amended Motion:

MOTION by Brennan, seconded by Cockey, for File No. 00-030, that the request for a use variance to allow a professional office use within the R-2, One Family Residential zoning district, **BE TABLED**, with the concurrence of the applicant, to the next scheduled regular meeting of the Zoning Board of Appeals, to be held on September 25, 2000, in order to hold a special study session with the City Attorney and City Staff present. The Board requests that the minutes of this meeting be immediately prepared and sent to City Attorney for review.

Discussion on Motion:

Mr. Rosen indicated a special study session would cause problems. He suggested the matter simply be tabled to the next regular meeting on September 25, 2000. Mr. Rosen requested the City Attorney, City Staff and the applicant prepare a set of findings and conditions that satisfy the discussion held tonight to be given to the Board at the meeting. Mr. Rosen indicated that would give the Board the opportunity to review the findings and conditions and work out any problems.

Mr. Brennan indicated he would amend the motion to the next meeting. Chairperson Verschueren indicated the motion would be to table the matter to the next meeting and have the City Attorney present. Mr. Cockey seconded the motion with the changes noted.

Mr. ~~Collins~~ Colling indicated the motion was sufficient as amended; however, he suggested the restrictions of professional office with no medical or dental and types of businesses that are not walk-in, customer service oriented, eliminating travel agents, financial planners, accounting services. He noted, in other words, eliminate walk-in customer business. He noted if the City Attorney agreed with that language, that may be their basis and eliminate one big issue of walk-in business.

Mr. Cockey indicated it should be narrowed down to eliminate businesses that primarily deal with a high volume of clients and customers. Mr. ~~Collins~~ Colling reaffirmed customer service type of business would be open to the general public with numerous appointments and a high volume of traffic. Mr. Cockey noted the phrase may be professional service business to indicate more of a service business.

Mr. Rosen indicated to the need to include the Master Land Use Plan compliance. He noted the Board was asking for the City Attorney, the applicant and the City Staff ~~some~~ to come up with some draft findings and conditions based on the discussion that covers all these items. He also requested the draft be double-spaced to allow the Board to add notes, changes and corrections.

Mr. Anzek requested the record reflect some of the provisions contained in the local codes and ordinances that will help the Board determine what will be presented at the next meeting in terms of findings and conditions. Mr. Anzek requested Mr. Robert Kagler to provide these items for the record.

Mr. Kagler provided the following:

1. Planning Commission 1999 Master Land Use Plan, under Historic Preservation Policies, Number 3, Zoning and Land Use For Historic Properties, Page 79 of the Master Land Use Plan:

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.

2. City of Rochester Hills Historic Districts Ordinance, Section 4-06.06(j), under Zoning

Variances:

□ 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, the Commission may so advise the Zoning Board of Appeals. □
 Mr. Kagler made reference to one of the items in the packet given to the Board tonight, the Historic Districts Commission's Minutes from August 10, 2000, which indicated the Commission's advice to the Zoning Board of Appeals.

3. Mr. Kagler referenced the questions brought up earlier in the meeting about the types of conditions the Zoning Board of Appeals can attach to variances. He noted, while the Zoning Ordinance is not specific, the State Municipal Planning Act is. He stated essentially the Zoning Board of Appeals may impose conditions upon affirmative decisions, which refers to the types of conditions that the Planning Commission and the City Council could impose on special land use, conditional land use or a planned unit development type of decision. Mr. Kagler stated there are five different types of conditions:

- (i) To ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use and activity;
- (ii) To protect the natural environment and conserve natural resources and energy;
- (iii) To ensure compatibility with adjacent uses of land, and
- (iv) To promote the use of land in a socially and economically desirable manner.

Mr. Kagler noted there are three different tests of whether a condition does these things:

First: That it be designed to protect natural resources, the health, safety and welfare, as well as the social and economic well-being of those who will use the land use for activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

Second: Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

Third: Be necessary to meet the intent and purpose of the zoning regulations, be related to the standards established in the Ordinance for the land use or activity under consideration, and be necessary to ensure compliance with those standards.

4. Mr. Kagler pointed out there had been some conversation about how the types of office uses might be limited. He explained the main difference in the City Zoning Ordinance between different types of office uses, in terms of impact upon adjacent sites, is the difference in parking requirements. He stated the Zoning Ordinance divides office uses into two types.

First: Business offices or professional offices that are not of the second type.

Second: Professional offices of doctors, dentists or similar professions.

Mr. Kagler explained the essential difference is in parking requirements. The parking requirements for the doctors, dentists and similar professions are twice what the other types of professional offices would require. For example, if the Board were to create a finding or condition that the use would be limited to professional offices, not including those of doctors, dentists or similar professions, the effect of that condition would mean if the applicant or any subsequent owner or occupant of the site ever wanted to establish anything other than that type of office, they would have to: (1) come back to Zoning Board of Appeals and ask for the condition to be modified; (2) go to the Planning Commission and ask for the site plan to be modified to essentially double the number of parking spaces, which presumably would not be able to be accommodated on the subject site; and (3) go to the Historic Districts Commission for revising the Certificate of Appropriateness. Mr. Kagler again noted, based upon the impact on the site, the proposed number of parking spaces would preclude that.

Mr. Kagler concluded these are items in the various Ordinances that relate to any decision the Board would make.

Chairperson Verschueren indicated most of this has been done at the Planning Commission level and the Historic District level.

Mr. Rosen concurred the Historic District Commission has made its finding that the variance would help to preserve the historic district. He noted it wasn't exactly a recommendation to do it, but they agreed with the plan. Mr. Rosen noted the Planning Commission, as in the Master Plan, recognizes that this type of activity can occur, but also leaves it to the proper place, which is the Zoning Board and the Historic Districts Commission to decide and do it. Mr. Rosen stated the State Enabling Act makes it very clear the Board has the authority to do it, but as a practical matter, they have to make it workable. He requested more words around the professional office to make it clear and nice and solid. He believed they had the basic premise for that, noting the major change in circumstances was the widening of Livernois Road. He noted they may end up with a three of four page set of findings.

Chairperson Verschueren noted the Historical Districts Commission voted with a motion to make it easier for the Zoning Board of Appeals. The members agreed the Ordinance required it and the HDC did exactly what they were supposed to do.

Mr. Simon asked for the agreement of the applicants to postpone the matter. Chairperson Verschueren indicated the applicant had already agreed to the postpone. Mr. Westphal agreed they would be happy to comply. Mr. Westphal asked whether the Board members would be interested in touring the buildings and property before the next meeting and see exactly what is there and get a good picture of what they are working with, as well as an understanding of the practical difficulties they are running into. Chairperson Verschueren inquired whether they could come out at 6:00 PM. Mr. Westphal noted that was fine.

Mr. Erickson requested clarification from the Board members as to what they wanted him to prepare before the next meeting. Mr. Anzek advised Mr. Erickson to start with the Planning Department.

Complete Amended Motion:

MOTION by Brennan, seconded by Cockey, for File No. 00-030, that the request for a use variance to allow a professional office use within the R-2, One Family Residential zoning district, **BE TABLED**, with the concurrence of the applicant, to the next scheduled regular meeting of the Zoning Board of Appeals, to be held on September 25, 2000, in order to allow the applicant, in conjunction with the City Attorney and City Staff, to present the Zoning Board of Appeals with specific findings and conditions limiting the uses that would become available to the subject property in the event the requested use variance is granted. The Board requested that the minutes of this meeting be immediately prepared and provided to the applicant, the City Attorney and City Staff for

review.

Roll call vote:

Ayes: Colling, Rosen, Brennan, Cockey, Verschueren, Simon
Nays: None
Absent: 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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7. NEXT MEETING DATE:

Chairperson Verschueren reminded the Board that the next Regular Meeting is scheduled for September 25, 2000.

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8. ADJOURNMENT:

Upon motion by Colling, seconded by Cockey, for adjournment, the Chairperson declared the Regular Meeting adjourned at 10:15 p.m. Michigan time.

* * * * *

Gerard Verschueren, Chairperson
Zoning Board of Appeals
City of Rochester Hills

Judy A. Bialk, Recording Secretary
Zoning Board of Appeals
City of Rochester Hills

Distribution:
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