

Oakwood, Dayton, Ohio

August 2, 2006

The Planning Commission of the City of Oakwood, State of Ohio, met this date at the Oakwood Community Center, 105 Patterson Road, Dayton, Ohio, 45419, at 4:30 p.m.

The Chair, Mr. William Kendell, presided and the Clerk, Ms. Cathy Blum, recorded.

Upon call of the roll, the following members responded to their names:

MR. WILLIAM KENDELL.....PRESENT
MR. JEFFREY B. SHULMAN.....PRESENT
MR. STEVEN BYINGTON.....PRESENT
MR. ANDREW AIDT.....PRESENT
MR. CARLO C. MCGINNIS.....ABSENT

Officers of the city present were the following:

Mr. Norbert S. Klopsch, City Manager
Ms. Dalma Grandjean, City Attorney
Mr. Jay A. Weiskircher, Assistant City Manager
Mayor Judy Cook
Mr. Kevin Weaver, Public Works & Engineering Director

The following visitors registered:

Pokey & Tony Huffman, 1100 Runnymede Road
John Koverman, 120 W. Second Street
Molly & Dick Cammerer, 1505 Woodstock
Faye Wenner, 1900 Coolidge Drive
Bob Curry, 530 Maysfield Road
Allan Rinzler, 1475 Ridge Gate Road
Elana Bolling, 405 Kramer Road
Dick Amann, 600 Harman Avenue
Harrison Gowdy, 452 Irving Avenue
Vince Russell, 304 Northview Road
Fred Abrams, 415 Kramer Road
Jane Maney, 300 Southview Road
Susan & John Harris, 1900 Southwood
The Koehlers
Rose Eckerle, 322 Collingwood
Jim & Tami Whalen, 944 E. Schantz
Linda Mayhew, 2222 Coolidge
Aart denHoed, 410 Ridgewood
Tom Donnelly, 830 Oakwood
Chris Brown, Altick & Corwin
Jay Woodhull, 1206 Oakwood Avenue
Mr. and Mrs. Schooley, 601 Woods Road
Marlene Maimon
John Fabelo, Lorenz + Williams

It was moved by Mr. Kendell and seconded by Mr. Byington that the absence of Mr. McGinnis be excused. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Kendell welcomed Mayor Cook who is sitting in on behalf of vacationing Vice Mayor McGinnis. Although Mayor Cook can participate and ask questions, she is unable to vote since she is not an official member but representing council.

It was moved by Mr. Kendell and seconded by Mr. Shulman that the minutes of the commission meeting held July 12, 2006 be approved as submitted and the reading thereof be dispensed with. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Application #06-8, the special use request of Linda Meister/Rick Smith to install a curvilinear driveway at 619 Woods was reviewed. Mr. Aidt excused himself from the hearing. Mr. Kendell indicated Mr. Aidt may remain at the table and explained to the applicant since only three are voting, unanimity is required and the applicant can postpone at no additional cost. The applicant asked to proceed. Mr. Weiskircher referenced a PowerPoint presentation which included photos of the property that depict the 180 foot long driveway, existing front yard, and the proposed curvilinear drive. The width of the drive is 12' and they plan to use the existing curb cut and drive to access the proposed curvilinear driveway. He reviewed two other neighboring properties with curvilinear drives, abutting neighbor to the south 633 Woods and 661 Woods. In addition to the special use standards, the commission also reviews curvilinear drive standards. Mr. Weiskircher pointed out the proposal will result in the removal of 1,700 square feet of grass where hardscape will be installed. Mr. Shulman asked if that includes the existing drive. Mr. Weiskircher responded no and estimated an additional 1,000 square feet.

Mr. Amann, Siebenthalers, representing the owners, noted the narrowness of the existing drive and added that Dr. Meister often leaves and returns in the dark. He went on to say that she recently struck a vehicle parked on the street while backing out of her driveway. Dr. Meister is interested in having an accessible drive that assists with the traffic flow and safety issue of the street, thus the curvilinear proposal. He indicated although they don't meet all the standards, there is the issue of safety.

Mr. Kendell asked for comments. Mrs. Schooley, 601 Woods, explained they are the neighboring property. She was born and raised in Oakwood, has owned four homes, and is saddened by all the changes with pools, home additions, etc., all of which affect the neighborhood and unless you live next door, no one cares. She indicated most homes are on small lots and the city is permitting change. She noted their home is on the corner and is cursed with the Lutheran Church lights and ongoing use of space as a parking lot. She noted at night the car headlights burn directly into their home and no one cares. Mrs. Schooley explained across the street at 600 Woods, cars are parked all the time and facing each other and to the rear on Thruston there is a large red pick-up truck. She noted now at 619 Woods, the one-story ranch property, they want a "U" shaped drive which won't be aesthetically pleasing. Mrs. Schooley indicated unlike the other neighbors where the drive is screened by the garage, this proposal will turn the front lawn into concrete. She noted they also need to think about the water table and how it will impact their yard. She doesn't feel reducing the green space is a very good idea and expressed concern with additional vehicles being parked. Mrs. Schooley indicated from their home they see beautiful green grass and trees – it fits to live on Woods Road, and wondered if they now need to put up block-out shades. She added they have put \$100,000 improvements into their home and asked that this proposal be rejected and an alternative plan that doesn't impact the green space be made. She noted Mrs. Black, Woods Road, and they are impacted the greatest and Mrs. Black is currently out of town. She added they spoke to the neighbors about their property line and questioned how many feet separate the properties. Mr. Amann pointed out the property line at the top of the drawing. Mr. Schooley indicated there is only about 6' between. Mr. Amann believed there was more room than that, the drawing is not to scale. Mrs. Schooley concluded and added they enjoy their neighbors.

There were no other public comments. Mr. Shulman asked if they would consider scaling back the project and redesigning the existing drive. Mr. Amann indicated they could expand but 12' is the maximum width. Mr. Byington suggested a turnaround rather than a curvilinear proposal. Mr. Amann indicated Mr. Bunting met the owners at the site and told them their initial plan which included a turnaround wasn't a good fit. Mr. Weiskircher explained the ordinance precludes a three-point turnaround which the initial proposal included. Mr. Shulman asked if historically they have permitted wider drives. Mr. Weiskircher responded yes, wider drives closer to the garage, but not wider than 12' at the curb cut which would set a precedent. Mr. Kendell recalled granting enlarged turnarounds as well, but was unsure of the three-point. Mr. Weiskircher reminded the commission when the zoning code was amended, they included language about the three-point turnaround. Mr. Shulman suggested they review

an alternate plan with a widened drive. The commission reviewed the initial plan. Mr. Kendell suggested since changes are being suggested to this proposal, chance of it being approved as is are slim so the applicant should return next month with a revised plan that minimizes the loss of green space. He indicated since they could table this, there would be no additional expense. Mr. Amann concurred.

Therefore, it was moved by Mr. Kendell and seconded by Mr. Shulman that application #06-8, the special use request of Linda Meister/Rick Smith to install a curvilinear driveway at 619 Woods Road, and known as pt. lot #2658, be tabled pending submission of revised drawings. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Application #06-9, the special use request of Burton and Linda Mayhew to further reduce the rear yard green space requirement for the purpose of installing a paver brick and flagstone patio at 2222 Coolidge was reviewed. Mr. Weiskircher referenced a Power Point presentation which depicts pictures of the small rear yard area, view from Coolidge, and area where they plan to install a paver/flagstone patio and walking path. He explained they will use more than 50% of the rear yard green space. Mr. Weiskircher referenced the area by the existing basketball hoop where the owners plan to install arbor vitae to offer more privacy. Mr. Byington asked if the applicant is aware that trench drain information needs to be submitted. Mr. Mayhew concurred. Mr. Shulman indicated he drove past the home within the hour and noticed a truck with a lot of bricks and stone and asked if they are in the process of installing this project. Mr. Mayhew indicated he removed the rear walk and was getting ready to start, but would wait until they checked with the city. Mrs. Mayhew explained there is other work going on which is why the truck was there. She had hoped there was a picture of the front of the house where they have already undertaken a lot of work. Mr. Shulman noted the neighbors abutting on Peach Orchard have quite a drop off from the retaining wall which will impact the drainage. Mr. Mayhew indicated they have talked with all the neighbors who are excited about the improvements. Mr. Kendell asked if there were other comments. Mrs. Bolling, 405 Kramer, asked if pavers installed over sand are considered hardscape. Mr. Weiskircher explained credit is given for the sand in the calculation as it relates to the size of the trench drain.

SPECIAL USE STANDARDS

- A. The proposed use at the specified location is consistent with the Comprehensive Plan.
PRELIMINARY STAFF FINDINGS: The use of pavers and flagstone are consistent with the principle in the Comprehensive Plan that residential improvements be compatible with the scale and character of the surrounding neighborhood.
PLANNING COMMISSION FINDINGS: Sustained.
- B. The proposed building or use will not adversely affect or change the character of the area in which it is located.
PRELIMINARY STAFF FINDINGS: The rear yard is very small and the area in question is surrounded by an existing privacy fence.
PLANNING COMMISSION FINDINGS: Sustained.
- C. That the establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, convenience or general welfare.
PRELIMINARY STAFF FINDINGS: The proposed materials in this application are routinely used in residential applications and therefore should not be detrimental to the public's general welfare.
PLANNING COMMISSION FINDINGS: Sustained.
- D. That the proposed use will not be injurious to the reasonable use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood.
PRELIMINARY STAFF FINDINGS: The proposed paver and flagstone areas are screened from the adjoining neighbors by a privacy fence.
PLANNING COMMISSION FINDINGS: Sustained.
- E. The proposed use at the specified location will not significantly adversely affect the use and development of adjacent and nearby properties in accordance with the regulations of the district in which they are located. The location, size and height of proposed buildings and other structures, and the operation of the use will not significantly adversely affect the use and

development or hinder the appropriate development of adjacent and nearby properties.

PRELIMINARY STAFF FINDINGS: The proposed paver patio and flagstone areas should have no impact whatsoever on the use and/or development of properties within the area.

PLANNING COMMISSION FINDINGS: Sustained.

- F. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.

PRELIMINARY STAFF FINDINGS: As already mentioned, the use of pavers and flagstone in a residential setting is common practice and will not depreciate property values.

PLANNING COMMISSION FINDINGS: Sustained.

- G. That adequate utilities, access roads, off-street parking and loading facilities, drainage and/or other necessary facilities, have been or are being provided at the applicant's cost.

PRELIMINARY STAFF FINDINGS: If approved, the applicant will need to install a trench drain to handle the additional stormwater runoff from the added impervious surface.

PLANNING COMMISSION FINDINGS: Sustained.

- H. That adequate measures have been or will be taken at applicant's cost to provide ingress and egress so designed as to minimize traffic congestion in the public streets and avoid hazards to pedestrian traffic.

PRELIMINARY STAFF FINDINGS: This standard is not applicable to this application.

PLANNING COMMISSION FINDINGS: Sustained.

- I. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by Council pursuant to the recommendations of the Planning Commission.

PRELIMINARY STAFF FINDINGS: Except for the special use request, the proposed paver patio and flagstone areas conform in all other respects to city rules and regulations.

PLANNING COMMISSION FINDINGS: Sustained.

Therefore, it was moved by Mr. Shulman and seconded by Mr. Aidt that whereas the Planning Commission has heard and considered the evidence presented by the applicant and has heard and reviewed the staff's preliminary findings, the Commission concurs with the staff's findings; and based on the foregoing, the Planning Commission finds that the special use standards set forth in Oakwood Ordinance Section 1004.6 are each met; and therefore approves application #06-9, the special use request of Burton J. and Linda Mayhew to further reduce the rear yard green space requirement for the purpose of installing a paver brick and flagstone patio at 2222 Coolidge Drive, and known as lot #2962, based on plans and information previously submitted and in compliance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Application #06-10, the special use request from Oakwood Investment Group, LLC to amend the existing Sugar Camp PUD for the purpose of permitting religious uses (with ancillary uses that may include a school, day care center and offices for non-profit organizations) as additional permitted uses in an approximately 4.48 acre portion of the site, at 201 W. Schantz Avenue was reviewed. Mr. Kendall indicated most of the audience is probably here for this request. Due to the interest, he had asked the law director to prepare the following statement which he read:

"Good afternoon ladies and gentleman, we will now proceed to review Application 06-10 submitted by the Oakwood Investment Group, LLC. This application is for a special use permit. Before we begin the hearing, I would like to set forth some ground rules. First, this hearing is only on Application 06-10. This application is to allow religious institutional uses at the Sugar Camp site. This application is not for the overall development, but is solely for the special use permit to allow a religious institutional use in an existing building at the Sugar Camp site.

We will conduct this hearing as a quasi-judicial hearing. That means that we will be conducting the hearing in a manner similar to that of a trial. In order to do so, I will ask that all witnesses seeking to testify be sworn in by the City Attorney. In addition, I ask that all comments be confined to presentation of evidence for or against the application, which the Planning Commission members may consider in making our decision. This evidence should be reliable, probative, and substantial. "Reliable" means that it is based on some standard of fact or some facts which can be proved; "probative" means that the facts presented are directly related to whether or not the special use permit should be issued for this site; "substantial" means that there should be meaningful facts presented to allow us to decide whether or not to grant this special permit. Examples of reliable, probative, and substantial evidence include any traffic studies indicating the number of cars which may be increased as a result of this use, any site plans showing the locating of buildings or improvements, or statistics which can prove or disprove whether or not this use is appropriate for the site. Examples of reliable, probative, and substantial evidence do not include unsubstantiated opinions about the impact of granting the request, or opinions about whether or not alternative uses would be more desirable.

We understand that this project involves many considerations, but right now we are here only to determine whether or not the proposed religious institutional use is appropriate for this development. If you have issues, concerns, or comments unrelated to this use of the property as a religious institutional use, we ask that you refrain from making them at this hearing, but wait until the applicant submits future proposals for the development of this site. We would also ask that you refrain from repeating comments made by other participants at this hearing. We understand that many of you will wish to have your views known, but our goal is to conduct this meeting as efficiently and expeditiously as possible, while also allowing for a full and fair presentation of all relevant testimony. We ask that if you were going to make a comment that someone else has already made, that you refrain from doing so. We also encourage, if a group of you would like to get together and appoint someone to speak for you, that you do so now before the start of this hearing.

We will proceed by having Jay Weiskircher present the staff report; then the applicant, Oakwood Investment, LLC, will present its application and the evidence supporting it. Then we will open the public hearing to people who favor the proposed religious institutional use, followed by those who are opposed to this use. We will then allow the applicant, or its representative, time to rebut this evidence. In addition, the applicant has the right to cross-examine any witnesses who has given testimony for or against this application. This right is allowed under applicable state law. We will allow the applicant to exercise this right, but we will monitor the timing and the nature of the questions. If I, as the Chair believe that the cross-examination is becoming argumentative, meaning that it is basically being used to argue with the person being examined, I will cut off the questioning.

Citizens who wish to make general comments may do so during the time reserved for visitors after our quasi-judicial hearing is concluded.

I would like this meeting to be run as smoothly as possible, and will appreciate cooperation from the audience and from the applicant. Please wait to be recognized by the Chair before speaking and then come to the podium and identify yourself by name and address. We ask the audience to refrain from disruptive behavior, such as applause or interjection of comments. We also ask that comments (as opposed to testimony) be limited to three minutes and be addressed to the Chair or the Commission as a whole, not to individual members, proponents, opponents, city staff or members of the audience. With that, we will begin the meeting.

REMINDERS REGARDING SUGAR CAMP.....

- *Over the past few years, there has been a "dead calm" at Sugar Camp because it has been empty. It is easy to forget the level of activity there when it was fully used by NCR. That level*

was accepted by the neighborhood and community and during that time frame neighboring property values continued to escalate. With the redevelopment of Sugar Camp consideration must be given to the level of activity during NCR's peak use period.

- *When fully used by NCR, Sugar Camp contributed in excess of half a million tax dollars annually to support operational costs of our city and schools. This annual income is sorely missed.*
- *The citizens of Oakwood do not own Sugar Camp. A group of business persons does. The documents that guide potential uses for this property include our Comprehensive Plan, the Sub Area Plan and our Zoning Code. These documents allow many possible uses and combination of uses, but also prohibit some uses. The decision as to which of the allowable uses will be promoted goes to the owners. It is their proposed plan that will be presented for review and consideration. That is both the manner in which the process is outlined and how the rule of law applies.*
- *The voice that we hear most often, most regularly, most vehemently by the most people in Oakwood is "Don't raise our taxes." This message must have strong influence on decisions regarding Sugar Camp.*
- *That having been said, and believing every word of it, it is also understood that allowing development that so changes the community that Oakwood loses what sets it apart as unique, is counterproductive. This point has been raised by citizens and is clearly understood by the Planning Commission. In now reviewing and considering the application before us today, the Planning Commission must balance competing needs and desires and ultimately render a decision that the commission believes is in the best interest of the Oakwood community."*

Mr. Weiskircher referenced a Power Point and noted several of the slides relate to questions raised during the informational meeting held last week. He explained the Oakwood Investment Group, LLC is requesting an amendment to the 1969 Sugar Camp PUD which permitted its use for education, training, laboratory and/or research center of business and industrial organization. The proposed amendment will permit religious uses (with ancillary uses that may include a school and day care center and offices for non-profit organizations) as additional permitted uses on a 4.48 acre portion of the site. The timing of the application is being driven by Beth Abraham's desire to occupy their new space in time for the High Holy Days in the fall of 2007. The project must begin soon in order to be able to complete the estimated \$3 million renovation. He reiterated the only issue being considered today is the religious use. The Master Plan for the site will be presented in the upcoming months. Mr. Weiskircher reviewed the overall site that was divided into three parcels; parcel 1 houses the existing buildings. He noted parcel 2 was recently purchased by someone else with easement rights onto parcel 3. The area outlined in purple is where the group plans to devote the religious use, 4.48 acres which includes two existing buildings and the adjacent parking lot.

Mr. Weiskircher reviewed the overall campus, Building A and D which are not part of today's application; Building B-19,500 square feet for religious ancillary uses and Building C-55,500 square feet for the synagogue. He noted the existing curb cut and road will remain; there are 220 parking spaces which will be reconfigured to approximately 250 spaces. Since there are 250 seats in the synagogue and given the proposed office use for Building B, the number of available parking spaces far exceeds the approximately 150 required by the zoning regulation. He referenced the following photos: Building C; Building B; entrances to B and C; view from Building C looking west to West Schantz and the existing thick vegetation; from the walk in front of 236 W. Schantz; looking north to Building C from the parking lot; and the view of Sugar Camp from Kramer to W. Schantz. Mr. Weiskircher then reviewed the timetable of significant events at Sugar Camp from the early 1900's to date as well as the zoning history of Sugar Camp. He then reviewed city commissioned studies and plans involving Sugar Camp including the 1989 Comprehensive Plan, Development Master Plan for NWC of Far Hills and Schantz – Novas Plan I; Woolpert Plan; Novas Plan II and the Subarea Plan. He indicated the Subarea Plan is important in this application and reviewed a summary and conclusion of the Plan as well as general site development recommendations. He then referenced a matrix in the Subarea Plan of potential development scenarios on the 24-acre site based on whether the buildings were maintained or removed. Mr. Weiskircher indicated additional city sponsored Plans include the 2004 Comprehensive Plan; 2004 Sugar Camp Subarea Plan

Site Development Alternatives and Guidelines. (Note: Copies of the PowerPoint slide presentation are made a part of application file #06-10 and incorporated therein for reference as to specifics on timetable, zoning history, studies, etc.)

Mr. Weiskircher referenced the Federal Religious Land Use and Institutionalized Persons Act of 2000. This Act prohibits local governments from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in the furtherance of a compelling governmental interest. The Act goes on to prohibit local governments from imposing or implementing a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

Mr. Kendell asked that representatives of the Oakwood Investment Group, LLC make their presentation. Mr. Curry, attorney with Thompson Hine is representing the Group and introduced Allan Rinzler, co-owner, Rabbi Bernard Barsky, Beth Abraham, Susan Katz, President and Mark Fueherer, Past President. Mr. Curry reviewed the background of the application and explained given the change in demographics and most congregants are living in the south suburbs, representatives of Beth Abraham decided to look for a new location. The search committee including a group of investors focused on Sugar Camp but there were other competitors. The group became aware of the financial challenges of the site with its four empty buildings and price tag. Mr. Curry explained they saw this as an ideal location and propose to utilize Building C for the synagogue based on a \$3 million renovation. He indicated since the office market in Dayton is difficult and they plan to use two buildings for religious use, there are a number of challenges associated with the site. He noted they have a tenant for part of one of the office buildings. Given the synagogue in the center of everything, it has made working with the entire site more possible. Mr. Curry indicated the owners have met with the city on development options and based on review of the Comprehensive and Subarea Plans, they plan to include housing for empty-nesters. He indicated they are in the process of putting together a Master Plan but in order to make that happen, the synagogue has asked for approval to proceed with a \$3 million renovation project. Mr. Curry indicated Building B, which is adjacent to C where the Synagogue will be located, currently has no specific purpose but they would like permission to have that for ancillary uses, i.e., school, education, and potential office space for non-profit organizations. The balance of the overall site is more flexible but based on timing; they would like to proceed with the Synagogue.

Mr. Curry referenced the zoning which was reviewed by Mr. Weiskircher. He noted it was zoned a PUD in 1969 and NCR built four buildings on the site. Later the city overlaid a multi-use special planning district designation which now includes a two step process for approval, a recommendation made by the Planning Commission which is forwarded to city council for disposition. Mr. Curry believes the 1997 lawsuit settlement agreement is not applicable since that was specifically designed for NCR. In regard to the Subarea Plan and its different concepts, they envision following the concept of an institutional use for the two buildings plus housing. Mr. Curry indicated the final piece of zoning relates to the Federal Religious Land Use and Institutionalized Persons Act of 2000 which requires that the city consider religious uses in the same manner as non-religious uses. He indicated these buildings are vacant, re-use is difficult and the religious use should not be subjected to any higher standard.

Mr. Curry indicated there are two sets of standards which he will have Mr. Rinzler address. Upon arriving at the podium, the City Attorney swore in Mr. Allan Rinzler prior to his testimony. Mr. Curry read the following standards and asked for Mr. Rinzler's response. (Note: Those responses have been added herein, followed by staff comments which the commission had before them.)

Even though religious uses are not specifically contemplated in the Multi-Use Special Planning District, there is a provision for use exceptions in Planned Developments, provided the applicant meets the burden of proof by a preponderance of the evidence, and Planning Commission finds the development meets the three standards set forth below.

A. That the uses permitted by such exception are necessary or desirable and are appropriate with respect to the primary purpose of the development.

Mr. Rinzler: The use of the synagogue in C and ancillary uses in B makes it possible to preserve the other buildings. The unique exterior stone façade will remain as is but the interior is difficult to adapt. He indicated the architect hired for the project was impressed with the site and was able to create a vision for the Synagogue. The mixed use of religious, residential and office are compatible with the site's previous use and area.

Staff Comments: The primary components of the development will be a mix of residential and commercial office space. The religious component is seen by the applicants as a complimentary use to the other primary components of the plan.

- B. That the uses permitted by such exception are not of such a nature or so located as to exercise a detrimental influence on the surrounding neighborhood.

Mr. Rinzler: There are no plans to change the exterior; the buildings will remain as is. He indicated there is very little traffic on a typical day with few employees and visitors. The majority of activity is during Saturday morning services and special holidays. He noted there won't be the amount of daily traffic when NCR was there; the building is set back from the street and from the residential properties on the south side of W. Schantz.

Staff Comments: There are numerous religious institutions located throughout the community in established residential areas. In this application, the buildings proposed for the religious use are partially screened from the adjoining residential properties by existing buildings and vegetation as well as W. Schantz Avenue.

- C. That not more than 25% of the ground area or of the gross floor area of such development, whichever is greater, shall be devoted to the uses permitted by such exception; however, in a residential planned development not more than 10% of the total land area shall be devoted to business uses.

Mr. Rinzler: They comply with the 25% rule as it relates to land area. In this 4.48 acre site, out of the 24+ acres, they are using less than 20%.

Staff Comments: The proposed religious use occupies only 20% of the land area and will occupy an even smaller percentage of the gross floor area once the other components of the development are completed.

SPECIAL USE STANDARDS

- A. The proposed use at the specified location is consistent with the Comprehensive Plan.

Mr. Rinzler: They have worked with the city on elements of the Subarea and Comprehensive Plan. Their plan is consistent with the Subarea Plan since the religious use is an institution, assembly and office; and they plan to re-use the existing buildings. Mr. Curry noted they are not proposing an assembly use as it might relate to banquets. Mr. Rinzler concurred, only as it relates to educational. He noted the Comprehensive Plan spells out its objective and a religious institution helps care for children and the elderly to contribute toward the quality of life. He noted it is part of the synagogue's mission to serve the congregation and community and believes they meet that objective. Mr. Curry asked about the Subarea Plan. Mr. Rinzler indicated the office components will remain. They plan to use two buildings for religious institutions and then can actively engage in marketing the other two buildings. Mr. Rinzler indicated there has been a lot of discussion about office space and he has been involved in a major downtown building for 25 years, the Talbott Tower. He indicated the synagogue will use Buildings B and C, which leaves 80,000 square feet in A and D. He has had conversations with one taxable institution in utilizing some of that space as well as another possible tenant. He indicated it is very challenging but they plan to reuse the buildings.

PRELIMINARY STAFF FINDINGS: The 2004 Comprehensive Plan recommends that the Sugar Camp parcel be promoted as a high-quality, mixed-use planned development area which might accommodate a combination of office, multi-family residential, open and recreation spaces, and business uses. The applicants are proposing that only a portion of the available land be designated for religious purposes. Preliminary plans call for the remaining available acreage to be devoted to residential and commercial office space; both of which are preferred land uses under the Comprehensive Plan. Moreover, one objective of the Comprehensive Plan is to provide special facilities and services for particular groups within the community including the elderly, young families and youth.

- B. The proposed building or use will not adversely affect or change the character of the area in

which it is located.

Mr. Rinzler: He reiterated the plan does not change the exterior of the building, traffic is modest compared with the NCR use, the building is set back from the street and they plan to maintain the green space along Schantz.

PRELIMINARY STAFF FINDINGS: At its peak, NCR had more than 150 employees at the Sugar Camp facility during the regular Monday through Friday work week. With the proposed religious use, the number of individuals using the facility at any one time, even with ancillary uses, will be fewer than the original business and training use.

- C. That the establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, convenience or general welfare.

Mr. Rinzler: He indicated they agree with morals, the synagogue use has a low impact, is not used heavily during the week and the area is well screened.

PRELIMINARY STAFF FINDINGS: The applicants are proposing to re-use Buildings B and C for religious purposes. Access to the site will be from existing curb cuts and parking needs will be accommodated on-site using existing spaces.

- D. That the proposed use will not be injurious to the reasonable use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood.

Mr. Rinzler: He noted the people to the west won't complain (cemetery), to the north is outside of Oakwood and to the west is vacant land. He noted Sugar Camp is approximately 24 acres and was originally purchased in 1902. NCR later acquired property abutting Far Hills after the gas station was demolished, as well as residential homes on Far Hills. He indicated the plan for the synagogue is not injurious to the reasonable use nor will it diminish property values. Mr. Rinzler reiterated the building exterior will not change, traffic is low, and they will maintain the setback and landscape.

PRELIMINARY STAFF FINDINGS: There are already a number of religious institutions in residential areas throughout the community. The proposed buildings for the religious use contemplated in this application are the most remote of the religious sites around the community.

- E. The proposed use at the specified location will not significantly adversely affect the use and development of adjacent and nearby properties in accordance with the regulations of the district in which they are located. The location, size and height of proposed buildings and other structures, and the operation of the use will not significantly adversely affect the use and development or hinder the appropriate development of adjacent and nearby properties.

Mr. Rinzler: The property is surrounded by developed land and they plan to work closely and have already scheduled a meeting with the owners of the Schantz and Far Hills property. He believes it's in their best interest to work together on mutual development. Mr. Rinzler believes the religious use will not have a negative impact on the residential area.

PRELIMINARY STAFF FINDINGS: As already mentioned, the applicants are proposing to re-use Buildings B and C for religious purposes. Residentially zoned property on the south side of West Schantz is already fully developed and the applicants do not believe that the religious use will adversely affect their preliminary plans for developing the remainder of the site.

- F. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.

Mr. Rinzler: He noted they have no intent to change the exterior of the buildings.

PRELIMINARY STAFF FINDINGS: There will be limited exterior architectural changes to the existing buildings. Beth Abraham has already hired a nationally known architect specializing in converting commercial buildings for synagogue use.

- G. That adequate utilities, access roads, off-street parking and loading facilities, drainage and/or other necessary facilities, have been or are being provided at the applicant's cost.

Mr. Rinzler: He concurred, this is a less intensive use than when NCR used the property. He

noted minor changes will be made to the parking but the visibility of the parking area will not be increased.

PRELIMINARY STAFF FINDINGS: Infrastructure is already in place to serve the proposed religious use. The applicants have preliminary plans to expand the internal road system and construct additional on-site parking.

- H. That adequate measures have been or will be taken at applicant's cost to provide ingress and egress so designed as to minimize traffic congestion in the public streets and avoid hazards to pedestrian traffic.

Mr. Rinzler: He indicated whatever is necessary to provide for ingress and egress to meet traffic regulations will be at the cost of the synagogue, including any change in parking, etc.

PRELIMINARY STAFF FINDINGS: The applicants are proposing to utilize the existing means of ingress and egress to the property. If the city determines that line-of-sight issues and traffic flow warrant, the applicants are prepared to install traffic signals on West Schantz Avenue.

- I. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by Council pursuant to the recommendations of the Planning Commission.

Mr. Rinzler: They plan to comply with all the regulations, including the building code during building modifications.

PRELIMINARY STAFF FINDINGS: The major modifications associated with this application will be on the interior of the existing buildings. Ingress and egress to the site are unchanged and parking needs can be met using the existing lot.

Mr. Curry noted that concludes the "technical" portion and in keeping Mr. Kendell's opening comments, asked if they could share the current status of the Master Plan. Mr. Kendell agreed it's important to know the status of that, however, they will not entertain questions.

Mr. Fabelo, Lorenz + Williams, has been working with the owners over several months on the different uses, traffic, impact, etc. Ms. Grandjean swore in Mr. Fabelo. Mr. Fabelo reviewed two drawings. On the first site plan he pointed out the center area depicted in purple that is the proposed religious use, on that parcel are the two buildings, parking lot, road and drop off area. The site has three curb cuts and the ones on Schantz will not change. He pointed out the other two buildings in the blue area will be used for office space and the areas shown in green will be for residential use. The parcel adjacent to the cemetery will be used for residential or commercial use and they propose residential building along the north perimeter. Mr. Fabelo pointed out the existing 40' setback from Schantz which they plan to maintain and respect. He indicated there is approximately four acres throughout the site that will be maintained and dedicated to green space, areas where there can be no construction. Mr. Rudy, abutting neighbor, asked if any of the green space will be for public access. Mr. Fabelo explained the green space is a buffer area where no building can occur. Mr. Curry noted in the residential area he recalled a question raised about the number, type of units, price, etc. He explained the Oakwood Investment Group will not be its own residential developer and this is a concept plan.

Mr. Fabelo reviewed another concept plan that shows residential, parking, traffic flow and how the internal pattern on the site will work. He noted the dedicated green space is non-buildable area. Toward the rear 2.35 acres, they plan to have different types of residential structures with possibly two six-story buildings on a 1.98 and 0.9 acre site. He indicated visibility in the main part of the campus will not be changed and the 2.48 acres to the west will be used for residential or commercial as potential tax revenue. He reviewed the amended parking lot next to the other office buildings. Mr. Curry reiterated the Master Plan is not why they are at the meeting but these plans show that the synagogue in the center of the concept plan doesn't change the overall use. He noted it is a fixed entity in the middle and there is no reason to hold up that proposal while other aspects are being worked on.

Mr. Kendell wondered why it's important for the synagogue to receive approval before the Master Plan. Mr. Curry explained that part of the synagogue plan is ready, they have raised the money for the renovation and it will enable everything else. Mr. Kendell asked if Beth Abraham will purchase or lease

the 4.48 acres. Mr. Rinzler explained they have entered into a lease agreement with Beth Abraham with an option to purchase if fundraising efforts are such. He indicated they have already raised funds for the renovation and one of the goals is to open the facility in time for High Holiday days in the fall of 2007. Mr. Kendell asked when construction plans will be available. Mr. Rinzler indicated plans are in the process.

Ms. Grandjean swore in Mr. Mark Fuehrer, Past President and Chair of the Relocation Committee at Beth Abraham. He explained they hired Levin Brown from Maryland to do the drawings and are currently in the process of pricing out the cost. He hopes within the next few months to have the final set of plans for a nine month construction period. Mr. Shulman noted the timing centers around Building C so the synagogue can be open in the fall of 2007 and asked if there are constructions plans for the ancillary uses in Building B. Mr. Fuehrer responded no, there aren't any plans for the interior of that building but they wanted that part of this package since it will be used for religious purposes. He noted that was not part of the \$3 million raised for the synagogue renovation. Mr. Shulman wondered when they plan to return with the Master Plan. Mr. Rinzler indicated as soon as possible; they are still working on the exact mix of residential uses. He noted they plan to meet with high-end builders for input, and they just acquired the property in May. Mr. Rinzler hopes to be at the December commission meeting with the Master Plan.

Mayor Cook noted Building B is an accessory use and if they decide on a school or day care, that particular use would require a hearing. Mr. Fuehrer understood that, but indicated this application allows them to proceed with Building C. Mr. Byington asked for information on comments made about traffic. Mr. Fuehrer explained the synagogue employs four full-time people, there are twice daily services with 10-20 people, and on Saturday there are 80-100 people for service which is a normal week plus a couple meetings. Mr. Byington asked about numbers during the High Holidays. Mr. Fuehrer estimated 300 people however; they arrive as couples or families in terms of parking needs. Mr. Shulman noted the major High Holidays are only two in the fall. Mr. Byington asked about the types of services they provide for school and day care at the existing facility. Mr. Fuehrer indicated currently they have no day-care only babysitting during services. He noted there is a religious school which is part-time a couple days a week. Mr. Shulman questioned numbers in the school. Mr. Fuehrer indicated approximately 30.

Mr. Kendell opened the meeting for comments, in particular anyone in favor of the request. Mr. Abrams, 415 Kramer, noted there is insufficient information to determine whether he is in favor. Ms. Grandjean swore Mr. Abrams in. Mr. Abrams referenced concerns expressed in 1997 about social use of the building and asked to what extent the synagogue has social events. Mr. Fuehrer explained the synagogue has social functions such as marriages, births, bar mitzvahs, confirmation, etc., parties don't occur that often. Mr. Abrams recalled concern with parties and alcohol consumption on the site occurring past 9 p.m., exiting the site, etc. Mr. Fuehrer reiterated they have life cycle events and his experience has been no alcohol usage. Mr. Kendell asked if events are confined to members of the synagogue. Mr. Fuehrer concurred.

There being no other comments in favor of the application, Mr. Kendell asked for any opposing comments. Mr. Koverman, Attorney, 120 Second Street, is representing a number of Oakwood residents with serious questions and concerns. Although they agree the synagogue would be an enrichment to Oakwood, there is concern with how the rest of the property will be developed. Mr. Koverman indicated he represented NCR in 1997 and although this proposal is less intense than Sugar Camp, Col. Deeds established the property without any zoning requirements. He noted it wasn't until 1950 that Oakwood zoned the property R-3 and then in 1969, since the Chairman and President of NCR lived in Oakwood, they established the PUD. Mr. Koverman pointed out that was obvious planning after the fact and his clients are concerned that planning after the facts not occur now.

Mr. Koverman stated that he intended to testify and asked to be sworn in as a witness. Ms. Grandjean then proceeded to swear him in. Mr. Kendell explained that Mr. Koverman had asked, since he is representing several citizens, if he had to abide by the three-minute rule. Ms. Grandjean indicated the three minute rule does not apply to testimony. Mr. Koverman indicated the four buildings are very interesting and referenced a document from NCR about the buildings. He noted Building A is where the

dining area is as well as the visual aid center, Building D is the only building truly dedicated to office use. Mr. Koverman indicated Building B contains a 450-seat auditorium. He urged the commission to obtain a more detailed site plan, including details on the driveway, the width of the private street, whether they will sell off that portion to the synagogue, etc. Mr. Koverman recalled in 1997, the Sugar Camp revision was based on an overall site development plan and believes this request is jumping too far ahead given all the unknowns. He pointed out the 4.48 site is right in the center and for planning/development, they should know what will happen around that area. Mr. Koverman noted the road is only 20-22' in width and presented a photo of a car parked in that two lane road. He added the sidewalks are curb walks, there is no additional green space. He urged the commission to obtain a site plan and plans on the north end, particularly given the steep elevation.

Mr. Koverman referenced the urgency for the High Holy Days and noted there is a beautiful 450-seat auditorium that could be used and he personally has been to church in a gym, outside - you can go to church anywhere. He urged the commission to put the brakes on this until a full plan has been submitted. He referenced the mid-rise units on the bubble plan at either end of the site, one of which is only on 0.9 acre which isn't large. He agreed the synagogue is well intentioned and wonderful but the city of Oakwood has spent considerable money on studies that suggest a full Plan be reviewed and approved before the site is developed. He indicated they could also argue about whether it is an institution or assembly and he believes a church is an assembly. Mr. Koverman referenced the *Dayton Jewish Observer* which states the aim is to sell and rent to other Jewish organizations and operations and wondered if they'll return with a Jewish nursing home. He noted his clients want to see everything tied down. Mr. Koverman also referenced that parking will be relocated and added if Mr. Rinzler is successful in renting the buildings for office use, his tenants will want nearby parking. He expressed concern that the one building will be remodeled for a specific use, yet there are no other details on the site plan, i.e., private drive, drop-off area, etc. He noted the parking lot abutting the Synagogue is accessed by several steps. Mr. Koverman asked, on behalf of his clients, that the commission defer action until they have a Master Plan on this last remaining jewel property in Oakwood. He noted the proposal is in the middle of the site and there are too many unknowns.

Mr. Kendell asked for other comments. Mrs. Elana Bolling, 405 Kramer, has lived in her home since the early 1960s and attended all the meetings, including Miller-Valentine's presentation, where they were informed due to the drop off of the property, nothing could be built in that area. She wondered how much of this site would be taken off the tax base due to the synagogue. Mr. Weiskircher explained in 2004, NCR paid \$314,000 in property tax on land valued at \$9.5 million; and later asked Montgomery County to reduce the value to \$6.9 million, thereby only paying \$252,000 in 2005. He further explained the majority of that goes to the schools and added in 1995, given the number of employees, there was \$200,000 in income tax, and added that no income tax has been generated at the property for the last several years. Mr. Curry indicated if the religious use is approved, the 4.48 acres will be tax exempt but the remainder will be taxable. In regard to the non-buildable area, he agreed the hillside behind the synagogue is not buildable, but their plan contemplates building a six-story building in a part of the hillside, into the hill so only three stores would be visible from Schantz.

Mr. Kevin Philo, 323 Claranna resident and Oakwood School Board Treasurer, wondered if the property is initially leased, then why would it be exempt if Oakwood Investment Group owns it; and also questioned the price of the 4.48 acres itself. Mr. Curry indicated the current value of the property would not include the proposed renovation. Mr. Rinzler referenced a recent case in Ohio where the Board of Tax Appeals ruled on property in Montgomery County that was leased by UD and whereby a large piece was subleased to a commercial use; in that case, the subleased property value was taxable, but the property used by UD, a not-for-profit, was tax exempt. Mr. Philo asked if they know the value of that 4.48 acres. Mr. Rinzler responded no, it wasn't replatted as a separate parcel. Mr. Klopsch thought it a fair question, the estimated revenue to the city including real estate, number of employees, etc. Mr. Curry indicated they have no calculation on the number of employees; that is a variable as well as compensation. He indicated the value of the development could approach \$50 million. Mr. Klopsch reviewed the millage the city obtains from property tax. He noted they obviously can't compare numbers at this point, but eventually the tax distribution is 70% to the schools, the city gets 9%. Mr. Koverman

indicated he has not heard any sworn testimony on the \$50 million plan and felt it was inappropriate to discuss since a Master Plan hasn't been submitted. He suggested those comments be ignored.

Mr. Bill Rudy, 120 W. Schantz, was sworn in by City Attorney Grandjean. He lives across the street and is not concerned about this one portion but the overall plan, he believes the entire plan will show if there are any limitations. He referenced city studies that deal with the entire property, not just one portion. His other concern is whether Sugar Camp's road will only be for religious uses or also for workers. He would like to know how this impacts the tax base, if the property will be subdivided to obtain approval on each section, and whether citizens will be permitted to give input on the Master Plan. Mr. Rudy noted they discussed a few ideas but to approve something in the center of the property seems rather strange. He questioned economic feasibility of the other ideas on the property, not just the center.

Mrs. Marlene Maimon, 1101 Ridgeway, was sworn in by City Attorney Grandjean. She referenced environmental concerns and recalled being told that one of the parking lots is contaminated. She expressed concern with the excavation constraints and any health risk with airborne contaminants. She understood that NCR used part of the property as a dumping site. Mr. Curry asked if she had any evidence. Mrs. Maimon indicated she learned this during a private discussion with John Eastman, LJB and a gentleman from the EPA. She also referenced a series of articles done by the Dayton Daily News. Mr. Curry asked if she is reporting second hand information. Mrs. Maimon concurred.

Mr. Gene Burbey, 284 W. Schantz, was sworn in by City Attorney Grandjean. He indicated he has no problem with the synagogue but a problem with the commission moving forward without a Master Plan.

Mr. John Kennel, 1541 Runnymede, was sworn in by City Attorney Grandjean. At the general informational meeting, he asked a question which was not answered as it relates to the Subarea Plan and the environmental clause noted therein. He believes the property shouldn't have anything designated until the Level 2 soil tests are completed. He doesn't believe it is prudent to proceed without the soil testing as noted in the Plan.

Ms. Faye Wenner, 1900 Coolidge Drive, was sworn in by City Attorney Grandjean. She read a statement that indicated she had no objection to the synagogue, and lives around the corner from the Chabad Center. She isn't as concerned with lost tax revenue as she is with the redevelopment on Fairmont. She wondered why Oakwood would want a non-profit use which eliminates any tax. Ms. Wenner also understood that the city manager's wife is a member of Mr. Curry's law firm and questioned that conflict of interest. Ms. Wenner referenced the Subarea Plan which suggests a study be undertaken by the buyer to learn if there are any contaminants in the soil. Mr. Klopsch responded that his wife discontinued practicing law in June 2003 and has no affiliation with Mr. Curry's firm. However, will begin working again in late August, as a clerk for Judge Walter Rice.

There being no further comments, Mr. Kendell closed the hearing. Mr. Byington asked the audience if there were any specifics that dispute any of the special use, use exemptions, or the Federal Act, other than the tax issues. Mr. Koverman indicated he didn't bring up the tax issue, however, referenced the Subarea Plan which states it should be part of the Master Plan. He has not heard anything negative on the synagogue use nor that the city is treating the requested use any differently. Mr. Koverman referenced special use standard B and felt the building or use will change the character of the area; and in regard to standard D, it will be injurious to zoning for the other use, i.e., parking issues for other potential users. Mr. Byington asked where it references a specific plan. Mr. Koverman indicated they don't have all the details, i.e., width of the road, right-of-way, etc. In regard to standard E, Mr. Koverman indicated the details on parking only relate to two buildings, not the other buildings and he wondered how much green space will remain. Mr. Koverman referenced special use standard G which he feels has not been met. He indicated until they obtain a good Master Plan, they will be sorry to rush through this and suggested the synagogue members use the existing auditorium in the interim. He also questioned the congregants and wondered how many walk to the synagogue and whether a crosswalk will be needed on Schantz. He reiterated this is part of the overall plan, not just a bubble plan.

Mr. Kendell indicated the applicant may present any rebuttal remarks. Mr. Curry asked about the width of the existing road. Mr. Rinzler responded 24'. Mr. Curry asked about environmental standards and findings. Mr. Rinzler indicated they have had environmental studies done for this site, have heard there are environmental issues on Lot 3, but based on studies by Miller-Valentine, United Theological Seminary and University of Dayton, there are no problems on Lot 1. He indicated it is only a nasty rumor that things are buried under the parking lot and referenced environmental aerial photos. Mr. Curry asked if congregants walk to services on Saturday. Mr. Rinzler indicated no one walks.

Mr. Kendell asked the commission if they had any other questions. Mr. Shulman explained he came to the meeting undecided and referenced how they often end up trying to do a balancing act. It was made clear to him last week and today that there is no objection to the synagogue at Sugar Camp. After reviewing city documents which govern the commission on this property, he expects it will eventually be approved and he has heard no substantial objections. He referenced how the Comprehensive and Subarea Plans reference a specific site plan review. Mr. Shulman suggested they table the issue pending a more detailed site plan and presentation by the end of the year.

Mr. Aidt asked what would happen if the religious use was a permitted use. Mr. Weiskircher indicated if a religious use was part of the 1969 PUD, then it would be permitted without additional approval required. Mr. Aidt asked what would need to be done to modify the parking. Mr. Weiskircher explained any modification to the 1969 PUD requires the commission's review. Mr. Aidt indicated the proposed synagogue use is not going to change even when they review a Master Plan. Mr. Byington noted there will be no change to the curb cut. Mayor Cook wondered what would happen if the owners did split off or subdivide the religious piece. Ms. Grandjean indicated they are still subject to a master development plan, special use standards, etc. She added they need to not treat the synagogue use request any differently than they would a different use in the buildings. Mr. Shulman noted they wouldn't let any other use in without following the special use regulations. Mayor Cook expressed concern that this group plans to have the residential aspect developed by others since they aren't in the home building business. She noted because of that they aren't reviewing details Mr. Koverman suggests. Mr. Shulman indicated residential and commercial aspects are permitted uses. Discussion ensued in regard to possible uses, details, plans, etc. Mr. Kendell noted the multi-use district was created to stop unruly development in case NCR sold the property. He noted the property can't be subdivided without the commission's approval. He noted it took months to write the Novas Plan and that Miller-Valentine talked with builders and came in with a Master Plan, although that isn't part of this issue today.

Mr. Rinzler noted it does not call for an architectural or real estate development plan, they have provided a site plan where there was a business for 44 years and their proposal includes residential, commercial, roadway, parking, etc. He indicated they can't expect specific details on the size of a house or nothing would ever get built, specifics will be forthcoming. Mr. Curry explained they have submitted a change in the use in a specific area and it's a lower intensity than what was there previously. He questioned why the commission would hold up this development, particularly since the synagogue will be located in that spot. Ms. Grandjean indicated although not a legal opinion, her analysis is that there is a site plan, the only thing the commission is to consider is whether the special use criteria have been met for the religious use request.

Mr. Koverman disagreed with the city's legal counsel; the site plan should show specifics. He indicated many jurisdictions require that specific details be submitted, i.e., mid-rise building details, roadway requirements, etc. Mr. Koverman reiterated they are not opposed to the synagogue but feel the request should comply with the Subarea Plan. Mr. Kendell noted there is some confusion in the room about the site and master plan. He indicated the plan from Lorenz + Williams depicts the synagogue use in the middle of the site and expressed concern with potential development which could necessitate removal of that building. Mr. Rinzler indicated they have submitted a plan; specifics on housing development are to be worked out. Mr. Curry indicated the purpose of this request relates to the religious use. Mr. Rinzler indicated the residential areas depicted on the plan could vary between condo and homes, and part of the PUD process will be to review those specifics once a builder has been selected.

Mr. Rudy noted the group has the desire to use the existing facility for services, however, when compared to the desires of the community, he feels it makes no sense to rush through the request.

Mr. Kendell asked if they would be willing to approve only Building C for the synagogue and then Building B could be submitted with the overall plan. Mr. Curry concurred. Mr. Kendell suggested the commission review the special use requirements, staff's analysis, testimony given, etc. He explained to the audience that the commission makes a recommendation to council who make the final determination. Mr. Byington indicated he hasn't heard any testimony as to why Building B would be a problem.

Therefore, it was moved by Mr. Shulman and seconded by Mr. Kendell that

"Whereas the Planning Commission has heard and considered the evidence presented by the applicant and other interested parties, and has heard and reviewed the staff's preliminary findings of fact. Whereas the Commission has been advised that the application must meet the standards for a special use permit as listed in Section 1004.6. Whereas the Commission concurs with the staff's findings of fact; and whereas, based on the foregoing findings of facts, the Planning Commission finds that: (1) the proposed use at the specific location is consistent with the Comprehensive Plan, (2) the proposed building or use will not adversely affect or change the character of the area in which it is located based on the facts; (3) that the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, convenience or general welfare; (4) that the proposed use will not be injurious to the reasonable use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood; (5) the proposed use at the specific location will not significantly adversely affect the use and development of adjacent and nearby properties in accordance with the regulations of the district in which they are located. The location, size, and height of property buildings and other structures, and the operation of the use will not significantly adversely affect the use and development or hinder the appropriate development of adjacent and nearby properties; (6) that the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood; (7) that adequate utilities, access roads, off street parking, and loading facilities, drainage and/or other necessary facilities, have been or are being provided at the applicant's cost; (8) that adequate measures have been or will be taken at the applicant's cost to provide ingress and egress so designed as to minimize traffic congestion in the public streets and to avoid hazards to pedestrian traffic; and (9) that the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by Council pursuant to the recommendations of the Planning Commission. Whereas, the Commission has been advised that the application must meet the standards for a use exception as listed in Section 1011.5. Whereas, based on the foregoing findings of facts, the Planning Commission finds that the application: (1) that the uses permitted by such exception are necessary or desirable and are appropriate with respect to the primary purpose of the development; (2) that the uses permitted by such exception are not of such nature or so located as to exercise a detrimental influence on the surrounding neighborhood; (3) that not more than 25% of the ground area or of the gross floor area of such development, whichever is greater, shall be devoted to the uses permitted by such exception; however, in a residential planned development not more than 10% of the total land area shall be devoted to business uses. Therefore, the Planning Commission approves application #06-10, the special use request from Oakwood Investment Group, LLC to amend the existing Sugar Camp PUD for the purpose of permitting religious uses in Building C in an approximately 4.48 acre portion of the site, at 201 W. Schantz Avenue, and known as lot #3954".

NOTE: The aforementioned motion made by Mr. Shulman related to approval of only Building C for the synagogue use. Ms. Grandjean concurred that the commission can vote on the special use with that condition. Mr. Shulman wondered if they should address a specified reasonable time to return with the master plan. Mr. Kendell suggested the December Planning Commission meeting.

Upon call of the roll on the question of the motion, the following vote was recorded:

MR. WILLIAM KENDELL.....YEA
MR. JEFFREY B. SHULMAN..YEA
MR. STEVEN BYINGTON.....NAY
MR. ANDREW AIDT.....NAY
MR. CARLO C. McGINNIS.....ABSENT

There being two (2) yea votes and two (2) nay votes thereon, said motion was denied.

Mr. Byington echoed the aforementioned motion and condition including the condition that a Master Plan for the entire site be submitted by no later than the December, 2006 Planning Commission meeting, as made by Mr. Shulman, but with the inclusion of Buildings B and C, as per the original application. It was moved by Mr. Byington and seconded by Mr. Shulman.

Upon call of the roll on the question of the motion, the following vote was recorded:

MR. WILLIAM KENDELL.....NAY
MR. JEFFREY B. SHULMAN..YEA
MR. STEVEN BYINGTON.....YEA
MR. ANDREW AIDT.....YEA
MR. CARLO C. McGINNIS.....ABSENT

There being three (3) yea votes and one (1) nay vote thereon, said motion was declared duly carried and it was so ordered.

Application #06-11, the application filed by William Siedling for: 1) front yard; 2) rear yard; and 3) driveway variances associated with a proposed subdivision of the property at 245 Park Road was reviewed. Mr. Weiskircher referenced a PowerPoint presentation which outlined the front, rear and driveway variances. He indicated the front yard on Lot 2 would be reduced from 70' to 60'. He reminded the commission in May they granted preliminary plat approval but tabled the front yard variance issue. He noted Mr. Weaver and Mr. Doolin have worked on the plan and additional variances are needed, i.e., rear yard from 60' to 50' and easement over Lot 2 to provide vehicular access to Lot 1, where the existing home is. Mr. Weiskircher reviewed the two existing means of access, the north entrance, and the south entrance which maintains the easement. He indicated the advance write-up did not include the vehicular access variance request, so reviewed staff's findings. Mr. Weiskircher reminded the commission updated plans were submitted last fall when the commission approved the 60' conservation easement off Deep Hollow.

Mr. Shulman asked what differs in the drawings they have before them. Mr. Doolin indicated more details, including the setbacks. Mr. Weaver indicated they also added a right-of-way to take care of maintenance issues, moved the property line a bit for even acreage and to balance the two lots, and to provide a solid building footprint. Mr. Kendell originally had a concern with the front yard variance on Lot 2; however, as Mr. Weiskircher pointed out, they did the same for the Schrecks. Mr. Weiskircher indicated during his review, he was surprised how many variances were granted when Fairforest was developed. Given the topography of this area, the variance request for the front and rear yards are not unique. Mr. Kendell asked if there was any concern with the two curb cuts. Mr. Doolin indicated the south entrance will also be used by Lot 2, a common area. Mr. Weaver noted Lot 2 also has access to Deep Hollow. Mr. Doolin noted given the topography and configuration, this plan gives a greater option and better utilization of the property. He noted it was difficult to save some of the trees but the potential buyer will have more to work with. Mr. Shulman questioned the curb cut regulations. Mr. Weiskircher explained the subdivision regulations address that issue, and also noted the subdivision regulations specifically discourage access easements.

STANDARDS FOR VARIANCES

- A. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

PRELIMINARY STAFF FINDINGS:

- Lot 2 – Front Yard: A 70' front yard setback will further reduce the size of the building envelope on what is already a lot with significant topographic challenges. The 60' setback request is consistent with the variance request granted earlier this year to the Schrecks at 245 Park Road.
- Lot 2 – Rear Yard: Attempting to comply with the 60' rear yard setback requirement will further reduce the size of the building envelope for this lot.
- Lot 3 – Rear Yard: Attempting to comply with the 60' rear yard setback requirement will further reduce the size of the building envelope for this lot.
- Vehicular Access Easement: Since there is another means of ingress and egress to the property available, it does not appear that a second access point is necessary.

PLANNING COMMISSION FINDINGS: Sustained.

- B. The conditions upon which a petition for a Variance is based are unique to the property for which the Variance is sought and are not applicable, generally, to other property within the same zoning classification.

PRELIMINARY STAFF FINDINGS:

- Lot 2 – Front Yard: While the topographic conditions on this lot are not dissimilar to other lots in the immediate area, previous development within this immediate area have been made possible by front and rear yard variances.
- Lot 2 – Rear Yard. Several other lots in this area have had variance requests approved due to severe topographic conditions in this immediate area.
- Lot 3 – Rear Yard. The requested 10' variance is not inconsistent with variances previously granted for properties on Fairforest Circle.
- Vehicular Access Easement. There do not appear to be any conditions in this application which are unique and justify the variance request.

PLANNING COMMISSION FINDINGS: Sustained.

- C. The purpose of the Variance is not based primarily upon a desire to make more money out of the property.

PRELIMINARY STAFF FINDINGS:

- Lot 2 – Front Yard: The primary purpose of the variance is to create a reasonable building envelope.
- Lot 2 – Rear Yard. The purpose of the variance is to maximize the size of the building envelope.
- Lot 3 – Rear Yard. The purpose of the variance is to maximize the size of the building envelope.
- Vehicular Access Easement. The purpose of the variance is for the convenience of the homeowner to be able to continue to use the existing south driveway entrance to 245 Park Road.

PLANNING COMMISSION FINDINGS: Sustained.

- D. The alleged difficulty or hardship is caused by this Ordinance and has not been created by any person presently having an interest in the property.

PRELIMINARY STAFF FINDINGS:

- Lot 2 – Front Yard: Although the variance is directly related to the applicant's desire to subdivide the property, the conditions driving the variance request have not been created by the applicant.
- Lot 2 – Rear Yard. Although the variance is necessitated by the property owner's desire to subdivide the property, the hardship is related to existing topographic conditions.
- Lot 3 – Rear Yard. The hardship is related to existing topographic conditions.

- Vehicular Access Easement. The alleged difficulty is created by the property owner's desire to maintain the south driveway entrance to his property.

PLANNING COMMISSION FINDINGS: Sustained.

- E The property in question cannot yield a reasonable return if permitted to be used only under the regulations of district in which it is located.

PRELIMINARY STAFF FINDINGS

- Lot 2 – Front Yard: Due to topographic conditions, even without the proposed variance, this will be a challenging lot to develop.
- Lot 2 – Rear Yard. It will be very difficult to have a sufficiently sized building envelope and thus an economically viable lot without the proposed variance.
- Lot 3 – Rear Yard. This is an irregularly shaped lot and the variance request is needed to maximize the size of the building envelope.
- Vehicular Access Easement. Since there is another driveway entrance to the property, a second entrance is unnecessary and therefore should not impact the value of the property.

PLANNING COMMISSION FINDINGS: Sustained.

- F The granting of the Variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

PRELIMINARY STAFF FINDINGS

- Lot 2 – Front Yard: The granting of a 10' front yard variance should not be injurious to property in the immediate area.
- Lot 2 – Rear Yard. The granting of the variance will not directly impact the public welfare nor impact other property in the area.
- Lot 3 – Rear Yard. The granting of the variance will not directly impact the public welfare nor impact other property in the area.
- Vehicular Access Easement. The granting of the variance creates a situation which is expressly prohibited under the subdivision regulations.

PLANNING COMMISSION FINDINGS: Sustained.

- G. The proposed Variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, the danger of fire, or danger to persons or property, nor will it create unreasonable noise, create a substantially adverse aesthetic appearance or substantially diminish or impair property values within the neighborhood.

PRELIMINARY STAFF FINDINGS:

- Lot 2 – Front Yard: It is anticipated that the lot will eventually be developed with an upscale home - consistent with other properties in the area. When the lot is developed, it should not impair an adequate supply of light to adjacent property nor substantially create congestion of the public streets.
- Lot 2 – Rear Yard. The granting of a 10' rear yard variance should not diminish or impair property values within the neighborhood.
- Lot 3 – Rear Yard. The granting of a 10' rear yard variance should not diminish or impair property values within the neighborhood.
- Vehicular Access Easement. The granting of the variance will not diminish or impair property values within the neighborhood.

PLANNING COMMISSION FINDINGS: Sustained.

- H. The shape, topography, or other conditions of the land is such that it is extremely difficult to comply with the regulations generally applicable to the property.

PRELIMINARY STAFF FINDINGS:

- Lot 2 – Front Yard: The topography of the area is very challenging thus making it difficult to comply with the R-1 zoning setbacks for the R-1 District.
- Lot 2 – Rear Yard. The shape and topography of the lot make it difficult to comply with the R-1 setbacks.
- Lot 3 – Rear Yard. The shape and topography of the lot make it difficult to comply with the R-1 setbacks.
- Vehicular Access Easement. There are no slopes or topography issues which make it difficult to comply with the regulations.

PLANNING COMMISSION FINDINGS: Sustained.

- I. The applicant must show that the Variance requested will not be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvements permitted in the vicinity; will not materially impair an adequate supply of light and air to properties and improvements in the vicinity; will not substantially increase congestion in the public streets due to traffic or parking or increase the danger of flood or fire; will not unduly tax public utilities and facilities in the area; or will not endanger the public health, safety or welfare.

No yard, setback, or lot area or width Variance may be granted unless any structure subsequently placed on the lot, and the result of any changes in existing structures, must be of such appearance, size and location that it will not have an adverse impact upon the value of other residences in the immediate vicinity and on approximately the same size lots and, while recognizing the diversity of Oakwood housing, is reasonably compatible with the appearance, size and location of such other residences on such lots.

Plans for any structure to be placed upon, or improved or expanded upon, a lot granted such a Variance must be submitted in advance for approval by the BZA, and no structure may be erected except in accordance with plans approved by the BZA on the basis of meeting these conditions and the other standards required for Variances. In considering the plans, the BZA must give notice and hold a public hearing in the same manner as described above in this Section.

PRELIMINARY STAFF FINDINGS:

- Lot 2 – Front Yard: The proposed 10’ variance request is consistent with the front yard variance approved for the Schreck property (249 Park Road) earlier this year.
- Lot 2 – Rear Yard. The rear yard variance request will not impact the general public or other property in the immediate area.
- Lot 3 – Rear Yard. Similarly, the rear yard variance request for Lot 3 will not impact the general public or other property in the area.

PLANNING COMMISSION FINDINGS: Sustained.

Therefore, it was moved by Mr. Shulman and seconded by Mr. Kendell that whereas the Planning Commission has heard and considered the evidence presented by the applicant and other interested parties, and has heard and reviewed the staff’s preliminary findings, the Commission concurs with the staff’s findings; and based on the foregoing, the Planning Commission finds that the variance standards set forth in Oakwood Ordinance Section 1006.7 are each met; and wherefore, the Planning Commission approves application #06-11, the application filed by William Siedling for: 1) front yard; 2) rear yard; and 3) driveway variances associated with a proposed subdivision of the property at 245 Park Road, and known as lot #3934, be approved based on plans and information previously submitted and in compliance with all applicable city rules and regulations. Upon a viva voce vote said motion was declared duly carried and it was so ordered.

The Planning Commission adjourned. The public meeting concluded at 9:25 p.m.

CHAIR

ATTEST:

CLERK