

Canal Winchester

*Town Hall
10 North High Street
Canal Winchester, OH 43110*



Meeting Minutes

Monday, June 10, 2019

7:00 PM

Planning and Zoning Commission

*Bill Christensen - Chairman
Michael Vasko - Vice Chairman
Joe Donahue - Secretary
Brad Richey
Joe Wildenthaler
Mark Caulk*

Call To Order

Time In: 7:00pm

Declaring A Quorum (Roll Call)

A motion was made by Joe Donahue, seconded by Mark Caulk that Joe Wildenthaler and Brad Richey be excused.

The motion carried by the following vote:

Yes: 4 – Vasko, Christensen, Donahue & Caulk

Excused: 2 – Richey & Wildenthaler

Approval of Minutes

May 22, 2019 Planning and Zoning Commission Meeting Minutes

A motion was made by Mike Vasko, seconded by Mark Caulk, that the May 22, 2019 Minutes be approved.

The motion failed by the following vote:

Yes: 3 – Vasko, Christensen & Caulk

Abstain: 1 - Donahue

Public CommentPublic OathAppeals

Property owner: Jason Gunnoe and Dawn Gunnoe

Applicant: Jason Gunnoe and Dawn Gunnoe

Location: 65 Franklin Street

Request: Appealing a Notice of Violation issued by the Planning and Zoning Administrator regarding bees being housed on the subject property.

Mr. Moore discussed that the property owner located at 65 Franklin Street is requesting an appeal to a Notice of Zoning Violation issued by the Planning and Zoning Administrator. The property owner was sent a notice on April 15, 2019 for being in violation of Chapter 1181.06(c) for having bees and associated bee hives on a residential property without an approver permit. Staff shared with the commission an aerial of the subject property.

Staff discussed that the definition for "Agriculture" notes the keeping of animals useful to humans and includes in that definitions are bees and apiary products. In 2017 City Council adopted a zoning amendment which modified Chapter 1181.06 to allow residences of a certain size and scale keep agricultural animals, including bees.

Dawn Gunnoe discussed with the commission that she is aware they have received a copy of the appeal packet ahead of time but wanted to go through a couple of main points. The applicant discussed that her understanding of the ordinance that was adopted was to regulate honey bees and their bee hives to protect neighbors from them becoming a nuisance. In that regard, this violation is a misinterpretation of that code. The pollinator house attracts mason bees and other solitary pollinators. Mason bees are non-aggressive non-stinging bees that are naturally around and live in most everyone's yard.

Mrs. Gunnoe noted that the structure was hung to give the mason bees a place to nest. They do not keep bees in the same way if you hang a bird house you are keeping a bird in your yard. This house gives the bees that are already there a place to nest. Mason bees are not honey bees. The Ohio Apiary law defines bees as being of the genus apis. Mason bees are of the genus osmia. Mason bees do not swarm, create a hive or product honey. People that are allergic to honey bees have no substantial evidence that they are allergic to mason bees as their sting is similar to a mosquito bite. Mason bees are different from carpenter bees in that they do not dig holes. A mason bee however, will live in a preexisting hole from a carpenter bee, similar to this bee house. Mrs. Gunnoe stated she has a ton more information but is here to answer any questions the commission may have.

Mr. Caulk asked staff if there are any specific definitions on record for keeping bees. Staff responded saying that the definition for 'Agriculture' notes that bees and apiary products are categorized as the keeping of animals useful to humans.

Mr. Caulk asked staff if there is a definition for keeping. Staff said there is not.

Mrs. Gunnoe noted that they have had the mason bee house for the last 4 years. The only reason anyone knew about it was the Facebook post. This structure is not a nuisance and nobody even knew it was around.

Mr. Donahue asked staff what the size of the property is. Staff indicated it is under a quarter acre.

Mr. Vasko noted that to be clear in the information provided mason bees do have a barbless stinger and they will or can sting people if provoked. The applicant indicated that they can. Male mason bees do not have a stinger but a female mason bee does. Vasko commented that the applicant made a statement earlier that mason bees do not sting but that is not completely accurate. Mason bees also have a venom that is different than honey bees and that the reaction from a mason bee sting is less severe. The applicant affirmed.

Mr. Vasko asked the applicant if they harvest and store the mason bee cocoons indoors during the winter months. The applicant indicated that they were aware people do that but they do not. The mason bee house they have was hung up so that the bees can naturally be out and about for the month they are alive then go back into the house and enclose themselves in for the following year.

Mr. Caulk asked if there is any maintenance with the structure. The applicant indicated that there is no maintenance. Every few years they throw it away and hang a new one to keep it clean and prevent parasites.

Mr. Vasko asked the applicant if they yield any product from these animals. The applicant indicated that the mason bees just pollinate the flowers planted in the yard. The applicant further noted that they have a raingarden in their yard that was paid for by the city and it attracts bees and butterflies.

Mr. Vasko asked the applicant if the structure they have on the wall falls under any of the structures defined in the Ohio Apiary laws. The applicant indicated to her best knowledge they do not because mason bees are solitary animals. Mrs. Gunnoe commented that Ohio does not dot define a mason bee as a bee.

Mr. Caulk asked how Ohio defines them different. The applicant indicated the state classifies a honey bee as being from the genus apis while a mason bee is from the genus osmia. Ohio discusses that bees that are regulated under the apiary laws are only from the genus apis.

Mr. Caulk commented that the structure they have allows the mason bees to congregate in a mass and would that be considered a hive. Mr. Christensen commented that a bunch of solitary animals would be a bunch of nests not a hive. The applicant added that they will live in the box until next spring when it gets 55 degrees again.

Mr. Christensen opened up the application for Public Comment.

Ashley Black discussed with the commission her concerns with the applicant's bee house. Mrs. Black stated she was the one who saw the post on Facebook and made the initial complaint. The bee house is near her back yard and where her family and children play. The structure attracts all sorts of pests with the different diameter holes, not just mason bees. While she is open to learning about mason bees she is still concerned that they animal at the end of the day is called a bee. There has been an increase in bees in the area but they can no comment if it is because of this structure specifically. The neighbor continued saying she would be more comfortable if the structure was relocated closer to her deck where it will affect her living space and not the surrounding neighbors.

Mr. Christensen asked the resident how often her kids have been stung by bees. Mrs. Black indicated each have had one bee sting since they have lived at this property. One was last Labor Day but based on the applicants testimony that may be out of season for mason bees to be flying around.

Mick Fields spoke to the commission about the neighbors appeal and brought with him a mason bee house for the commission to examine. Mason bees are only out and about for one month, and that timeframe has already passed. Mason bees are great pollinators and Mr. Fields comments he agrees with everything Mrs. Gunnoe says.

Mr. Fields stated that he used to have bee hives 30 years ago and has been stung by honey bees but never by a mason bee. He also discussed he was unaware that the bee house was on her property for the last 4 years as he did not know.

Kathleen Vasko commented that she is an adjacent neighbor to the applicant. When she received the notice about the appeal she had no idea they were even back there. Mrs. Vasko discussed she thinks it is wonderful the bee house is there and that she is getting the benefit of more mason bees in her yard because of it.

Mr. Caulk asked staff if there has been any research on any other types of animals that may be attracted to the mason bee house or any type of allergy reaction that could happen from being stung by a mason bee. Staff indicated that they have not.

Mr. Gunnoe indicated that the bee house they have has different diameter holes. The larger holes can attract carpenter bees which is good so they do not drill holes into the house. Carpenter bees also do not sting. Mr. Caulk asked if carpenter bees bore a hole or can they nest. Mrs. Gunnoe stated that if they find a hole available they can use it instead of making a new one.

Mrs. Gunnoe stated she had done a ton of research on mason bee and any allergic reactions and could not find anything online that pinpointed a mason bee to trigger a bee allergy.

Mr. Donahue asked staff what would happen if the commission does not agree on the appeal. Staff indicated as the chairman indicated at the beginning of the meeting it takes four positive votes to pass something. That would include the appeal. Donahue asked if the applicant would have the ability to appeal P&Z decision to City Council. Staff affirmed.

Mr. Caulk commented that the definition of keeping bees is important in this scenario. Staff affirmed and noted that the city cannot control wild animals but we can enforce if you purposefully are housing an animal.

Mr. Vasko commented that if you have an enforcement statute as this then it should be strictly construed. You cannot broaden the terms in the language more than how it is written. Chapter 1133 definition for Agriculture talks vaguely about bees and apiary products. City codes do not define what a bee is. Ohio Apiary laws do not define Mason bees as a bee in their definitions. The intent of regulating bees were to control animals that could become a nuisance to the neighbors. Our code does not support that Mason Bees are bees and the Ohio statute should be the proper interpretation. There have been no complaints about this specific bee stinging people. The city could should be clarified to show as such. Mr. Caulk agreed.

A motion was made by Joe Donahue, seconded by Mike Vasko to uphold the P&Z Administrators Notice of Violation.

The motion failed by the following vote:

No: 4 – Vasko, Christensen, Donahue & Caulk

Public Hearings

FS-19-002

Property Owner: Canal Investment Partners, LLC.

Applicant: Haley Welsh – Civil & Environmental Consultants, LLC

Request: Final Subdivision Application for Turning Stone, Phase 1.

Mr. Moore presented the application for Haley Welsh for the Turning Stone neighborhood located at Parcel ID 184-000747, 184-002764, 184-000748, 184-000749, 184-000739, 184-000738 & 184-0001616. The applicant is requesting approval for the Final Subdivision Plat for Turning Stone, Phase 1. Phase 1 will include 42 buildable lots and all 6 reserve spaces. The total number of acres that are to be developed are 10.66 acres.

Staff reminded the commission that the streets within the subdivision are private roads and the existing Conrad Alley is being upgraded to a full width public road for the entrance to the community. The subdivision follows the development text and conditions adopted with Ordinance 17-041. Some of those initial conditions were the public park be completed and dedicated to the city with phase 1 approval, the developer pay the school dedication fee, and that the connection road to Carriage Place be designed as emergency access only.

The Planning and Zoning Commission Approved the Final Development Plan FDP-18-001 in September 2018 for 76 Single Family Homes within two (2)

phases. Phase 1 is being requested for approval at this time with 42 lots that will have primary access from Conrad Drive. Phase 1 will also include six (6) reserve areas that include two wet detention ponds and Reserve 'A' which will be dedicated to the city as a public park.

Staff recommends the applicant's request for the Final Subdivision Plat #FS-19-002 be approved as presented and recommended to City Council for adoption with the following conditions:

1. The developer pay the school facilities dedication fee (\$55,575.00) as required by Section 1153.21 prior to releasing the plat for Phase 1.
2. The developer pay the \$2,500 fee for the speed feedback indicator sign prior to releasing the plat for Phase 1.

Mr. Vasko asked staff to clarify on the condition for the speed feedback sign. Staff discussed that Council had asked the applicant to dedicate money towards a speed feedback indicator sign to be on Pfeifer Drive when the connection to carriage place was still on the site plan. That condition was never removed when the vote happened to have the connection to Carriage Place be designed as emergency access. So the developer is paying for a sign on a road that has no immediate connection. However, it intent is to purchase a mobile sign to use throughout the community.

Mr. Vasko asked staff if there needs to be an additional condition on the plat recommendation that the park is completed prior to releasing the plat for Phase 1. The way the development text and ordinance is written it needed to be complete at the P&Z Process. Staff affirmed that is fine to add that as a third condition.

Mr. Christensen asked the applicant if there was anything he wanted to add.

Johnathan Wilcox stated he has no comments to add.

Mr. Donahue asked the applicant if they are in agreeance with the 3 conditions. The applicant affirmed.

A motion was made by Joe Donahue, seconded by Mark Caulk that FS-19-002 be approved and recommended to City Council with the following conditions:

- 1. The developer pay the school facilities dedication fee (\$55,575.00) as required by Section 1153.21 prior to releasing the plat for Phase 1.**
- 2. The developer pay the \$2,500 fee for the speed feedback indicator sign prior to releasing the plat for Phase 1.**
- 3. The developer complete the Public Park, Reserve 'A' prior to releasing the plat for Phase 1.**

The motion carried by the following vote:

Yes: 4 – Vasko, Christensen, Donahue & Caulk

CU-19-001

Property Owner: Waterloo Crossing LTD

Applicant: Henry C. Klover – Panda Express Inc.

Location: PID 184-003208

Request: Conditional Use from Section 1167.03(a) to allow for drive-up window service.

Mr. Moore presented the application for Henry Klover representing the applicant Panda Express for property located at Parcel ID 184-003208. The applicant is requesting a Conditional Use approval from the General Commercial zoning district to allow for a drive-up window service restaurant.

Staff discussed that the subject property is an approximate .722 acres to be carved out of parcel 184-003208 on the south side of Winchester Blvd. The property is also subject to the Commercial Overlay and the Waterloo Shopping Center Development Text. The applicant is requesting a conditional use for a drive thru at the proposed Panda Express restaurant.

A portion of the existing parcel is a green field while the remainder involves reorienting the existing parking area. A previous Site Development Plan approval for this site was for a Kay Jewelers back in 2017. The Kay Jewelers project only encompassed the greenfield site, not the existing parking.

The proposed building is 2,300 sq. ft. and features a drive thru component that wraps around the front of the building, along with having a discharge location in the north east corner of the site. The proposed site plan shows connection to three different locations on private drives within the shopping center. Staff shared a rendering showing the site plan in context of the aerial of the surrounding uses.

Staff discussed that the drive thru as proposed is creating a variance from the 25 foot build-to line of Winchester Blvd. The proposed wrap around drive isle, as indicated by the applicant is for orders that are not ready when the customer reaches the pick-up window and are then directed to drive back into the parking area to wait. Staff's concern with the drive-thru as designed because it is forcing a variance for the building location. As shown, the building is approximately 46 feet away from Winchester Blvd right-of-way.

The current site plan has three access points to the private drives. The fast west access lines up with the access drive of Walgreens. The north east access lines up with the curve and stub in the road. The south east access point is using an existing curb cut into the southern parking lot extension. Staff discussed that the main concern is the north east connection in how it is allowing for 7

different vehicles traveling in different directions to create an abnormal amount of conflict points. The applicant has noted in the application they do not have the ability to get the site design to work without the wrap around drive thru. Staff presented an early concept from the applicant showing that they could get a building, parking and drive thru to work without the need for a setback variance.

The Waterloo Shopping Center did have development text that was approved by City Council. While this property is not a planned district it has some tendencies that follow a planned commercial district with setbacks and signage indicated within the development text. Staff shared the most recent copy of the Waterloo Shopping Center Development site plan that was produced by the applicant. In those plans and all previous plans from its first conception, the particular site chosen for the Panda Express was shown to be a future parking expansion. Staff did point out that there were several sites indicated within the parking lots that were noted for future building development, but not the particular site being discussed.

Code section 1199.03(a)(2)(h) (Commercial Development Standards) of the Zoning Code states: "A drive thru, if deemed appropriate for the site by the Planning and Zoning Commission via a Conditional Use of the applicable zoning district, shall be designed as an integral part of the structure it serves. Features incorporated with a drive thru, including, but not limited to canopies, awnings and support posts, shall match the materials and color scheme of the building they are serving. Drive thru features shall not have any pick-up windows, ordering areas, signage, or other related items located on the front elevation of a building or located between the front of the building and a street right of way."

The development plans for the proposed Panda Express are overall compatible with the character of the Waterloo Crossing shopping center. However, the proposed conditional use of a drive thru does pose pedestrian access concerns. In this particular site, the drive thru causes the building to move away from the 25 foot build-to line creating a variance request. Panera Bread on West Waterloo Street has a similar situation where a drive-thru line that wraps in front of the building. However, this site has also been complimented by a large oversized patio in front of the building.

Panera Bread did request a conditional use for a drive thru at their site which was denied by Planning and Zoning Commission and later overturned by City Council. As part of the variance request to push the building back off the build-to line the applicant installed an oversized patio in front of the building.

Staff feels that the proposed drive thru (as designed) is not compatible with the surrounding outparcels in the Waterloo Crossing shopping center. The proposal creates many traffic conflict points on site and off as well as creating a situation where the building is being pushed away from the required build-to line. Therefore staff recommends the applicant's request for a Conditional Use for a drive thru be denied as presented. However, the emphasis is as presented the Conditional Use is not supported. Staff is suggesting that the application be tabled so the applicant can explore options to remove the drive-thru loop in front of the building.

Mr. Moore noted that the applicant has prepared their own PDF presentation and would like to share that with the commission.

Mr. Vasko if the applicant needs four positive votes to pass a motion. Staff affirmed. Vasko added that the applicant may want to consider tabling the application for when more members of the board are present.

Joseph Miller representing the applicant discussed that the applications before the commission are for a Conditional Use Permit, two Variance requests and a request for a Site Plan Approval. The presentation the applicants have prepared comprehensively addresses each of those requests.

Mr. Miller discussed that they can either discuss each item separately or as a whole. Mr. Christensen commented that they will discuss each item separately.

Mr. Miller discussed that the Conditional Use request will be presented by Henry Klover representing Panda Express.

Mr. Klover commented that Panda Express typically tries to utilize corners of existing Walmart out lots. The original plans that were created with dead end parking lots and drive-thru lanes are not acceptable to Panda Express and are not safe or convenient. If a customer does not find the site layout convenient they do not return. This is meant to be a usable site.

Mr. Klover discussed that the Walmart Site plan was always intended for additional out lots within the parking lot. The parking lot is deep enough to carve out lots out in the future.

The site is a narrow trapezoid. As is, you do not want to create dead end slots. The site is completely compatible with all of the sites that surround it. Would there be any benefit to the community if the site is there or not being there with everything around it. The answer is no. Mr. Klover went on to discuss the access to the site and how it is not unusual to have many converging points onto an access curb cut. Most parking lots are unrestricted other than painted

lines where you can drive in any direction at any time. The access that comes across from Walgreens lines up with an existing point. The one to the south is there so the lot is not at a dead end and that entire lot is being improved. The one to the north is to keep people in dead end roads and to give people the function to get out of there. All of these roads are private and if there is a traffic accident the police don't even show up due to it being on a private parking lot.

The setback will always be an issue because the site is a trapezoid. From a site standpoint the shape is a benefit because the site is lower than the street. A 25 foot gas easement moves through the site. If this site had a 50 foot setback like surrounding uses then they are in compliance but this site has a 25 foot setback. The setback variance is due to the site being lower and for an appropriate plan the building needs pushed back.

Mr. Miller jumped back in to discuss that the Conditional Use should be approved as it meets the criteria in Chapter 1145.03. The staff report does note that the use is compatible with surrounding uses. It is also worth noting that the applicant is entitled to equal protection under the law to be treated the same as similarly situated applicants and under due process they shall not be subject to arbitrary and capricious decisions then what are different than surrounding sites. Within the area are 25 businesses with drive-thru facilities and at least 11 of which are food service facilities. This application is no different.

Mr. Miller discussed that the development plan for the site shows a parking lot but the site is zoned General Commercial. A development plan does not change the code and how it applies to this site. The proposed Kay Jewelers was no different. A commercial restaurant is this sites highest and best use rather than for parking. A conditional use needs to be consistent with the 'area' not the property or development plan.

In regards to the access points, there is no evidence showing that three access points would adversely affect access or traffic flow and allows for a safer circulation. There is adequate spacing between each access point and the southern access point is not even on this out lot it is on an adjoining property. The O'Charley's in the same district has three access points.

Mr. Miller states that the staff report discusses that "the proposed use will not result in the natural loss or damage of any features to the property" and the drive thru loop does not allow as staff notes "for vehicles traveling in seven different directions to converge unrestricted." This drive-thru loop is substantially similar to what Panera Express has proposed and uses every day.

Mr. Christensen discussed that a fourth conflict point has been missed internal to the site. The fact that the drive-thru start location can be access from two

different travel directions is an issue. The applicant agreed that the drive-thru can be accessed by two different directions.

Mr. Caulk asked the applicant what they plan for drive-thru stacking and how that would affect the access to the site. Mr. Miller discussed that the site plan shows the drive thru lane is very long. Mr. Klover stated that the drive-thru lane shows it can stack 11 cars.

Mr. Caulk asked the applicant if a traffic study has been performed external to the site. The applicant indicated they have not done a traffic study. Caulk asked if they have done a traffic study internal to the site. The applicant indicated they have not.

Mr. Caulk asked how many cars they anticipate to stack during a rush. Mr. Klover indicated that he has done a similar presentation for another site in Chicago and they anticipate for 8 cars.

Mr. Vasko asked the applicant how long the average wait time is. Mr. Klover stated it is very quick. Panda Express's Orange Chicken is 50% of their sales. The food is made to order so if the product is depleting they make more so it is ready to go.

Mr. Caulk asked the applicant if people ever need to be waved on to go park and wait for food. The applicant stated that is a very rare occurrence and only happens for vegetables. Caulk commented that in earlier testimony the drive thru loop is needed to get people back into the lot to park and wait on food. The applicant states that is a possibility if you want fresh vegetables. However, oriental cooking is very quick.

Mr. Miller added that the application does say the drive thru loop is for customers to get back into the parking area to wait but it is also a vital component to the site circulation. Additionally, that access point makes the internal circulation better in that it relieves pressure from the south access point. A traffic study is not required for this site. Mr. Caulk noted that he understands it is not required but was asking if the applicant did one as part of the due diligence into look at the site.

Mr. Vasko asked how far back the order window is from the pick-up window. The applicant indicated it is 6 spaces back. Vasko asked if they do a pay window and then a pick-up window. The applicant indicated it is just one window. Vasko confirmed that the drive thru allows for 11 total cars and that includes the sixth car at the order board and the 1st car at the pickup window. The applicant affirmed.

Mr. Vasko if they have any average wait times for the orders at the window. Mr. Klover indicated that he does not and that is something that has never come up.

Mr. Klover indicated that the drive thru service layout is identical to the interior customer layout.

Mr. Vasko commented that the site design with the drive-thru lane being accessible from two different travel directions is a concern. In particular the site layout has a situation where if you enter from the south you completely turn around to enter the drive thru. Panera has something similar and it doesn't work well. Mr. Miller asked Vasko what doesn't work well. Vasko commented it is that you make a right turn to go immediately into another right turn.

Mr. Klover noted that at a Panera you get a buzzer to let you know when your food is ready. Panda moves much quicker than that.

Mr. Vasko stated that the double lane at the front of the store will inhibit the ability to create buildings with pedestrian access, to make buildings pedestrian friendly so that people walking along the sidewalk will have an easy access into a building. Panera only has the drive-thru loop in the front of the building, this site plan is calling for two driving lanes of traffic going to the front of the restaurant. This is inconsistent with the plans and streetscape design that the city is trying to get along Winchester Blvd. Mr. Miller discussed that there are many other businesses in the area in which you walk across a drive thru lane to get to the building entrance. Vasko acknowledged Miller's comment adding that Gender Road and Winchester Blvd have different streetscape plans.

Mr. Klover discussed that the sidewalk connection to the building requires a switchback ramp design which shows that pedestrian connectivity is not easy. In a perfect world everyone would be in an urban environment that includes sidewalks and people walking into the building. Mr. Vasko said he understands the natural site topography.

Mr. Christensen opened up the application for the Public Hearing.

A motion was made by Joe Donahue, seconded by Mike Vasko that the Public Hearing be closed.

The motion carried by the following vote:

Yes: 4 – Vasko, Christensen, Donahue & Caulk

Mr. Donahue asked the applicant if they were looking for a vote on the Conditional Use.

Mr. Vasko discussed that he is concerned one of the access points to the site are not on the Parcel to be owned by Panda Express. This is not a shared access drive situation, it is an offsite access. Staff discussed that typically the number of access drives are limited at two based on the parcel size. Staff discussed that the concern they have is the southern access drive is off site and is preexisting. This access drive is there weather they can reconfigure the existing lot or not. However, the bigger concern is how they are reconfiguring the existing lot to the south. The applicant is rearranging the parking spaces and in doing so they are removing a drive isle.

Staff further discussed the changes in the access drive as it related to the original plans for the shopping center. When the shopping center was developed a long discussion was had at a council level on the vehicular layout and reducing the number of curb cuts by creating drive isles to move traffic. This particular site was included during that discussion and through the information staff could find the number of access drives was limited in the shopping center design.

Vasko added that no matter how you look at it the site has three access points into the site. Staff affirmed and commented that the applicant may have kept this area off site because if they make the property include all of the existing parking then they would have gone over on the maximum number of allowable spaces requiring a parking variance.

Staff commented that this site does have road frontage on Winchester Blvd to create the out lot. To create an out lot, the parcel must have public road frontage.

Mr. Caulk asked staff if there are any concerns of cars stacking along the private drive between Walgreens and Panda Express looking to turn into the Panda site. Staff indicated that they are no concerned with that and have recommended to the applicant that the two drive isles line up. Previously they had the drive for Panda further south and it was requested by the city to be shifted north.

Mr. Miller commented that the southern access point could relieve any pressure to get into the site, although it is unlikely for the stacking to go all the way to Winchester Blvd. The parking that was existing to the south was an afterthought to Walmart while they disagree that it should always be open parking. If the commission is concerned about the access being off site there can certainly be cross access easements created. Vasko discussed he is more concerned about the responsibility for it as Panda is not going to maintain it but their customers are the ones who will use it. Who is going to maintain it and clean it up. Miller responded saying that the OEA takes care of the site and Vasko added that the sites that are further away from the primary user are not well maintained

because they do not feel they have responsibility for it. Drive out to Walmart parking lot now and view the open out lot areas and see all of the debris that is forgotten about because it is far away from the front door.

A motion was made by Joe Donahue, seconded by Mike Vasko that Conditional Use Application #CU-19-001 be approved as presented.

The motion failed by the following vote:

Yes: 1 – Donahue

No: 3 – Caulk, Christensen & Vasko

VA-19-005

Property Owner: Waterloo Crossing LTD

Applicant: Henry C. Klover – Panda Express Inc.

Location: PID 184-003208

Request: Variance to Chapter 1199.04(a) to allow for a building to exceed the build-to line.

Mr. Moore presented the application for Henry Klover representing the applicant Panda Express for property located at Parcel ID 184-003208. The applicant is requesting approval for a variance from Chapter 1199.04(a) of the Commercial Overlay District to allow for a building to be located further back than the established build-to line. The subject property and surrounding properties are zoned General Commercial. The applicant is showing a building that is setback 45.66 feet from the build-to line. Winchester Blvd. is identified in the thoroughfare plan as being a minor arterial which has a build-to line of 25 feet as identified in the zoning text for the Commercial Overlay District. Staff discussed that the build-to line can vary from 1-5 feet if the applicant provides a site amenity in front of the building such as an outdoor patio or added green space. The applicant is exceeding the required build-to line by 15.66 feet.

Staff discussed that the overlay notes if a site features a drive-thru that is deemed appropriate by Planning and Zoning Commission, the furthest away a building can be from the build-to line is 30 feet. With the conditional use being disapproved for the drive-thru the setback would be 25 feet.

Staff discussed the applicant's statements on why they believe the Variance should be granted. They start by saying that special conditions do exist which are not applicable to other lands in the same zoning district. The site has a very unique shape which necessitates pushing the building back from the build-to line. Keeping the building at the build-to line would result in the building encroaching in utility easements and create a dead end parking layout. Staff discussed that previously a Kay Jewelers was approved for this site and they were able to meet the setback for the district. Staff believes that special conditions do not exist that are applicable to other sites and that the orientation

of the site layout with the drive-thru lane is forcing the setback variance. Staff again noted that the applicant has produced a site plan in which they were able to meet the setbacks for the site by removing the drive thru in front of the building.

The applicant is stating that other surrounding uses do not meet the applicable build to line, providing examples. Staff discussed that the examples given were constructed prior to the commercial development standards and thoroughfare plan being adopted, which require the 25 foot build-to line on Winchester Blvd and a 50 foot build-to line on Gender Road. The shopping center also has a development text and accompanied site plan that shows there is a 50 foot building setback along the identified Meijer out lots along Gender Road. The subject site was not identified in that plan as having an identified setback so it reverts back to the overlay district.

The applicant discusses how there are special circumstances and conditions that limit how close the building can be placed to Winchester Blvd. build-to line. Staff again notes that there was a previous site development plan that was approved by P&Z that had a building meet the required build-to line. A variance is for the life of a property and not for the specific application. A variance should be granted when without a variance the property cannot be used in a similar manner as others within the same zoning district. With a previous site plan being produced that show a building can meet setbacks that condition has not been met.

The applicant has discussed that the site is desirable but the unique shape requires a variance to have a workable design. Staff notes that other surrounding properties also do not have the convenience of an access drive to be immediately at the termination of the site layout where they could eliminate the wrap around loop and push the building closer to the street.

The setback variance further removes the pedestrian connectivity. This site does have a unique grade challenge in which it requires a longer switchback ramp design to get from the public walk to the front entry. With the building being pushed back it further limits the pedestrian scale. The applicant has not justified the drive-thru loop in any means. Panera Bread provided a large patio in front of the building to justify the drive-thru and increasing the pedestrian scale that was lost.

With the proposed building orientation staff is concerned with vehicle conflict points and the removal of the pedestrian oriented design to the building. The setback of the building is being dictated by a drive thru loop which the applicant has the ultimate control to redesign or eliminate the layout to remove the need for the setback variance. Staff is recommending that the Variance Application

#VA-19-005 be denied as presented.

Mr. Klover discussed his PowerPoint presentation with the commission. The biggest hurdle with the site layout in removing the drive thru loop is the dead-end parking. If all of the spaces are taken then when you get to the end you need to back up to get out. Dead end parking stalls are avoided at all costs. The narrowness of the site creates the constraints.

Mr. Klover discussed that the previous Kay Jewelers was able to have the building in the northwest corner of the site. Kay Jewelers is not a restaurant establishment and does not have near the same requirement for parking. Nor do they have the same turnover.

Mr. Miller discussed that the two way parking at the front of the site provides for the most safe and internal circulation for the site. The build-to line when you consider a 1 story building could be 30 feet and they are asking for a variance to increase that to 45.66 feet. A literal interpretation of the zoning code would deprive the applicant of the ability to have safe circulation as well as a drive thru. The property should be allowed to develop in the safest and most efficient manner possible. Mr. Miller discussed other surrounding building setbacks and disagrees with staff in the statement that the development text stating the 50 foot setback applies to every out lot not just ones identified on the plan.

Mr. Christensen opened up the application for the Public Hearing.

A motion was made by Joe Donahue, seconded by Mike Vasko that this Public Hearing be closed.

The motion carried by the following vote:

Yes: 4 – Vasko, Christensen, Donahue & Caulk

A motion was made by Mike Vasko, seconded by Joe Donahue that Variance Application #VA-19-005 be approved as presented.

The motion failed by the following vote:

Yes: 2 - Donahue & Caulk

No: 2- Christensen & Vasko

VA-19-006

Property Owner: Waterloo Crossing LTD

Applicant: Henry C. Klover – Panda Express Inc.

Location: PID 184-003208

Request: Variance to Chapter 1199.03(d) to reduce the minimum percentage of window glass required on the front elevation.

Mr. Moore presented the application for Henry Klover representing the applicant Panda Express for property located at Parcel ID 184-003208. The applicant is requesting approval for a variance from Chapter 1199.03(d) of the Commercial Overlay District to allow for the front elevation of the building to have less than the 40% window glass required.

The applicant is requesting for a 2,300 sq. ft. building to be located along Winchester Blvd. The front façade features 3 primary building material comprised of brick, stone and a composite board band. The north elevation has the primary glass entry door and transom on the right hand side. Two additional windows accompany the front elevation for a total of 36.1% window glass including the front door. Zoning requires 40% window glass at a height of 2-10 feet with an unobstructed view of 4 feet into the building. These windows are to promote a pedestrian orientation and scale to the buildings.

Staff discussed that the applicant states the west façade is the buildings primary entry and features 71% window glass. The south elevation has no window glass and the east elevation has roughly 6% window glass.

The applicant has stated that special circumstances exist that do not apply to other buildings in the same zoning district and that their interior layout prohibits them from having a higher percentage of window glazing. Staff feels that the applicant's choice to not alter the interior floor plan is dictating the variance request. Staff further indicated that they had attempted to work with the architect on finding creative ways to add additional glass to the façade to be in compliance.

The applicant discusses that there are many buildings within the district that do not meet the current 40% window glazing requirement. Staff commented that out of the many examples provided only two of them were constructed or altered after the overlay zoning text was adopted. AutoZone for example was proposed to be altered to reduce the amount of window glass on the west elevation and the variance was denied as it further moved it away from the 40% window glass requirement.

The applicant wishes to keep the standard building design do to it matching a prototypical layout in which customers are familiar with. Staff would argue that the building should be designed around context of a communities design.

Staff further discussed the criteria for variance approval with the commission, sharing color renderings of the proposed building design. The applicant is proposing a building design that does not comply with minimum the 40% glazing requirement for the primary street elevation. With the reduction in window

glass, the building is further removed from the pedestrian design requirements established in the Commercial Development Standards. Staff is recommending that Variance Application #VA-19-006 be denied as presented.

Mr. Caulk asked the applicant how tall the building is. Mr. Klover indicated the building is 22-23 feet tall. Mr. Caulk asked how the figure the window glass percentage. The applicant indicated the draw a box around the building and subtract the window glass. Staff corrected the applicant and noted that the window glass is calculated between 2-10 feet of the building only so it is only that parameter of the building that needs to meet the sizing requirement.

Mr. Klover discussed that Panda has a very efficient layout. The western angle is the most important street view to the building. That view is what everyone is going to see going to the restaurant. Frosted glass would be a waste because it would detract from the building design.

Mr. Miller commented that staff has not articulated any basis for denial of the variance request. The store as designed is efficient and attractive. The west elevation has over 71% window glass. As Mr. Vasko stated earlier, if the code can be interpreted in different ways then you must go with the least restrictive. Code says you need a minimum of 40% window glass on the primary elevation, the primary street in this case would be from the west.

Staff added that the north elevation would need an approximate 15 sq. ft. of window glass to be at the 40% requirement. Mr. Miller commented that the building design should be taken into account rather than the substance of window size.

Mr. Christensen opened up the application for the Public Hearing.

A motion was made by Joe Donahue, seconded by Mike Vasko that this Public Hearing be closed.

The motion carried by the following vote:

Yes: 4 – Vasko, Christensen, Donahue & Caulk

A motion was made by Joe Donahue, seconded by Mike Vasko that Variance Application #VA-19-006 be approved as presented.

The motion carried by the following vote:

Yes: 4 – Vasko, Christensen, Donahue & Caulk

SDP-19-003

Property Owner: Waterloo Crossing LTD

Applicant: Henry C. Klover – Panda Express Inc.

Location: PID 184-003208

Request: Final Development Plan for Panda Express

Staff discussed that this application should be tabled as the site plan is indicating a building that does not meet setbacks and that has a drive-thru component, both of which were not approved this evening. Additionally, there are other site concerns indicated in the application such as the applicant needs to submit a variance for the parking lot lighting as designed and other general comments.

Mr. Klover acknowledged that the parking lot lighting will be revised to meet the code standards.

Mr. Miller commented that they do not oppose to table the application this evening.

Mr. Vasko commented that although not specifically not identified in the code, he disagrees with the comment that everyone is going to see the building from the northwest corner of the building. There will be a significant amount of traffic from the east and they won't be looking at the good side of the building. The side of the building they will see is this large uncharacterized brick wall. Frankly, from that angle it looks like an old WWII pillbox that would be there on D-Day. That is not impressive. The south and east angle both. These sides of the building need character. Vasko commented that he is not saying there needs to be a window, but there should be something to break apart the façade design.

A motion was made by Mike Vasko, seconded by Joe Donahue that Site Development Plan Application #SDP-19-003 be tabled.

The motion carried by the following vote:

Yes: 4 – Vasko, Christensen, Donahue & Caulk

Old Business

Staff updated the commission that the Winchester Veterinary Clinic submitted new architectural plans for review last week. The building design is primarily the same as before but they needed to change the plans due to changes in the project architect.

Villages at Westchester 13 is finalizing the plat with City Council now and will start construction of new homes soon.

Crossroads Church has started the building and the bridge. They anticipate having the road completed by Thanksgiving and the Church completed by

Easter. Mr. Donahue asked if the road will come all the way out by Masseys. Staff affirmed.

New Business

Staff discussed that they are looking for the final person to fill the vacancy at P&Z and hopefully that seat will be filled at the July meeting.

Staff discussed the future development within Canal Pointe Industrial Park. Mr. Vasko discussed the on street parking concerns in the industrial park.

Mr. Vasko discussed that Council should explore amending the zoning code definitions to include mason bees based on the appeal discussion this evening.

Adjournment

Time Out: 9:39 pm

A motion was made by Mike Vasko, seconded by Joe Donahue, that this Meeting be adjourned. The motion carried by the following vote:

Yes: 4 – Vasko, Christensen, Donahue & Caulk

Date

Bill Christensen - Chairman

Joe Donahue - Secretary