



## Board of Trustees Meeting

Tuesday, February 14, 2023

7:00 pm

Hyde Park Community United Methodist Church

### Agenda

#### 1. Welcome

Location of future meetings:

- March 13<sup>th</sup>: Hyde Park Community United Methodist Church, Little Theater

#### 2. Guests (please limit comments to 3-4 minutes each)

- Cincinnati Police Department, Officer Christine Barry
- Cincinnati Fire Department, Lieutenant Dan Coletta
- Hyde Park Library, Ben Lathrop
- Cincinnati Recreation Center, Blake Williams
- Hyde Park School, Jill Sunderman
- Withrow University High School, Resource Coordinator, Belinda Carson
- Springer School – New construction and renovation
  - Kirstin Eismin, Vice President of Institutional Advancement, Springer School
  - Brian Oldiges, AIA, Architect, SHP
- Other Guests

#### 3. Approval of Consent Agenda (Minutes, Officer Reports, Committee Reports)

#### 4. Officer Reports

*Reports have been posted to the HPNC website as part of the meeting packet.*

#### 5. Committee Reports & Representatives

*Reports have been posted to the HPNC website as part of the meeting packet.*

#### 6. New Business

A. HPNC Zoning Committee Update – Gary Wollenweber, Chair (25- 30 minutes)

##### **2739 Observatory – Demolition and New Construction**

- Introduction and requested variances – Gary Wollenweber
  - Urban Design Overlay District demolition approval
  - Side-yard setback variance
  - Rear-yard setback variance
  - Building height variance
- Hearing Information
  - **Thursday February 16, 2023 @ 9:00 am**
  - Zoning Board of Appeals
  - 805 Central Ave, Suite 500, Cincinnati, Ohio 45202

- Presentation by Peter Horton (Terrex), Mike Wentz (Wentz Design), James Smith
- Q&A from HPNC Trustees, neighbors, and the community
- Discussion and consideration of HPNC motions

#### B. Update from Nominating Committee

- Accepting applications for an open trustee position
- Candidate information form available on left side of HPNC website. See "[HPNC Applications for Board of Trustees](#)."

#### C. Remembering Carl Uebelacker

- HPNC is sad to report that long-time HPNC trustee Carl Uebelacker passed away on February 2, 2023.
- For more than four decades, Carl was a passionate and fierce advocate for Hyde Park.
- On June 13, 2017, at HPNC's Annual Meeting, HPNC recognized Carl's many contributions. At that meeting, then-Council Member Amy Murray shared a proclamation from then-Mayor John Cranley proclaiming the day "Carl Uebelacker Day."
- HPNC and its trustees express their thanks to Carl and extends its sympathies to Carl's family.

### 7. Old Business

#### A. HPNC Website Improvements, Alex Schutte (10 minutes)

- Update on website improvements.
- Discuss potential expansion of google group, including non-trustee committee chairs.

#### B. Nominations for HPNC Vice President to fill remainder of term until next officer elections in June 2023.

### 8. Adjourn



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### **Traffic and Safety—Some Good News**

- Please see the Traffic & Safety report for full details, but some good news in the last month includes:
  - **Observatory Ave. re-striping confirmed.** There will be a dedicated parking lane on each side of Observatory between Madison and Edwards. Also working w/ DOTE to reconfigure Observatory/Edwards intersection as part of this. Work will hopefully begin this spring.
  - **Crosswalk across Erie (at Mooney) confirmed.** Awaiting full details on signage, lighting, etc.
  - **Linwood interventions confirmed.** Details still being worked by Mt Lookout Community Council, but some combination of re-striping, speed cushions, and/or signage will be installed. Primary focus will be on section of Linwood just north of MTL Square, but hopefully funding will allow for improvements all the way up to Observatory.
- HPNC knows much work remains to be done, including seeking increase enforcement on key roads in Hyde Park. HPNC will be initiating conversations with CPD.

### **HPNC Trustee and Committee Openings**

- Zoning Committee, Vice Chair opening
  - We are still seeking **trustee** and **non-trustee** committee members.
- HPNC Trustee opening
  - Accepting applications for an open trustee position.
  - Candidate information form available on left side of HPNC website. See "[HPNC Applications for Board of Trustees.](#)"
- If you would like to join a committee, please email [hpncpres@gmail.com](mailto:hpncpres@gmail.com).

### **City of Cincinnati / Connected Communities Engagement Sessions**

The City of Cincinnati is planning community engagement sessions around the ongoing “Connected Communities” work and we want to continue hearing from you! “Connected Communities” is the name given to a series of potential policy changes, and the process involved in crafting those changes, related to land-use that will help Cincinnati grow into a more accessible, people-focused, diverse, healthy, and connected community for all. More information can be found on the Department of City Planning and Engagement’s website here: <https://www.cincinnati-oh.gov/connected-communities/>.

Please join us for one of our upcoming engagement sessions, which are open to all.

**Each session is planned to be the same event, so you only need to attend one.**

The list of upcoming sessions and where to register for each can be found here and below: [Upcoming Events - City Planning \(cincinnati-oh.gov\)](#)

**Tuesday, February 21, 2023**

*6:00 PM - 8:00 PM*

Pleasant Ridge Recreation Center

5915 Ridge Avenue, Cincinnati, OH 45212

**Thursday, February 23, 2023**

*6:00 PM - 8:00 PM*

Virtual Engagement Session

Online via Zoom

**Wednesday, March 1, 2023**

*6:00 PM - 8:00 PM*

Lincoln Recreation Center

1027 Linn Street, Cincinnati, OH 45203

The direct link for registration can be found here: <https://bit.ly/ConnectedCommunitiesRegister>

We look forward to continued community engagement around these important topics!

City of Cincinnati Department of City Planning and Engagement

**Coffee with Cincinnati Police Chief Teresa A. Theetge**

- 3/15/23 @ 9-10am
- The Cheesecakeery Coffee house, 4825 Whetsel Ave, Cincinnati, OH 45227.
- Meet and Greet with Cincinnati Police Chief Teresa A. Theetge and members of the CPD command staff.

**COFFEE  
WITH THE  
CHIEF** 

**MARCH 15, 2023**  
9:00 AM - 10:00 AM

**THE CHEESECAKERY  
COFFEE HOUSE**  
4825 Whetsel Ave  
Cincinnati, OH 45227

**Meet and Greet  
Cincinnati Police Chief  
Teresa A. Theetge, and members  
of the CPD command staff**

**LET'S TALK  
COMMUNITY,  
COLLABORATION  
& CURRENT  
CPD EVENTS.**



**BUILDING RELATIONSHIPS, ONE CUP AT A TIME.**

### **Updates from Office of the Fire Chief, Cincinnati Fire Dept**

Home fires occur more in the winter months than any other time of the year.

Follow these heating tips to help prevent winter fires and to stay safe this winter season:

- Keep anything that can burn at least 3 feet from all heat sources including fireplaces, wood stoves, radiators, space heaters or candles.
- Never use your oven to heat your home.
- Turn space heaters off when leaving the room or going to bed. Check your space heater for cracked or damaged cords and plugs. Plug space heaters directly into wall outlets, don't use an extension cord or power strip.
- Maintain heating equipment and chimneys by having them cleaned and inspected each year by a professional.

Be fire smart with electricity in your home.

- There are approximately 45,000 home electrical fires each year.
- Half of all home electrical fires involve home wiring or lighting equipment.

- Plug only 1 heat-producing appliance (like a coffee maker, space heater or microwave) directly into a wall outlet at a time.
- Extension cords should only be used temporarily. Have an electrician install additional wall outlets where you need them.
- Peak months for electrical fire deaths are November through March.
- Home electrical fire deaths peak between midnight and 8 a.m.

#### Smoke Alarms Installation

- Please sign-up to have the Cincinnati Fire Department install smoke alarms in your home. We have smoke alarms that have been earmarked for the homes of students who attend Cincinnati Public Schools. For all others, we have smoke alarms available from the American Red Cross.
- Remember smoke alarms saves lives, so sign-up today to have the Cincinnati Fire Department install smoke alarms in your home. Members of the community can also call our Fire Prevention Bureau at 357-7585.
- *Smoke Alarm request link is below:*
  - <https://www.cincinnati-oh.gov/fire/fire-prevention/fire-prevention-forms/smoke-alarm/>

#### Duke Energy Toolkit - Winter Bill Assistance/Resources

Some customers may need assistance paying their bills:

- In Ohio, natural gas customers who qualify may receive a one-time \$500 credit on their bill. More information is available: <https://www.duke-energy.com/info/unindexed/ohio-bill-help>.
- Customers may find a variety of other assistance programs by visiting <https://www.duke-energy.com/home/billing/special-assistance>.

Many will be looking to weatherize their homes this winter. Feel free to share these easy video tutorials and the attached Weatherization Tips fact sheet with your stakeholders:

- Installing weatherstripping:  
[https://s3.amazonaws.com/cms.ipressroom.com/264/files/20214/20210422\\_DukeE\\_FID-DIY\\_Weatherstripping\\_FINAL.mp4](https://s3.amazonaws.com/cms.ipressroom.com/264/files/20214/20210422_DukeE_FID-DIY_Weatherstripping_FINAL.mp4)
- Caulking around doors and windows:  
[https://s3.amazonaws.com/cms.ipressroom.com/264/files/20214/20210422\\_DukeE\\_FID-DIY\\_Caulking\\_FINAL.mp4](https://s3.amazonaws.com/cms.ipressroom.com/264/files/20214/20210422_DukeE_FID-DIY_Caulking_FINAL.mp4)

See [this social media post](#) that you may wish to tag and share, which links to the many tools available to help manage higher energy bills. Individuals may also find this article with tips to save helpful: <https://illumination.duke-energy.com/articles/9-habits-to-help-you-save-energy-this-winter>

We've recently seen an uptick in scam activity. Please find a PDF version of our Scam Awareness fact sheet attached, which can be very helpful in preventing individuals from falling victim to one the many utility scams. They can also watch this video to learn how some scammers operate: <https://youtu.be/fL3mNwJP0ks>



## HPNC Committee Reports

February 2023

### Education – David Hapner

Clark Montessori HS is thrilled to have Church of the Redeemer (CoR) engage as a Partner in Education, providing secular instruction Monday-Thursday, 3:00 PM-5:00 PM, featuring college planning, health and wellness, tutoring/homework help. This engagement began as a way for students to warm up in the cold weather while awaiting buses on Paxton or Erie and evolved into a safe place for snacks, drinks, and community service opportunities.

### Treasurer Report and Neighborhood Support Program – Norm Lewis

- HPNC's 2023 NSP proposal was reviewed and accepted by Invest. Waiting execution of contract until after HPNC January meeting minutes are submitted and contract documents are signed. NSP spending allowed after contract is executed.
- HPNC's Annual Interest Grant paperwork was submitted before the January 31 deadline. This will allow a 2023 AIG payment to be issued to us (usually about \$600).
- HPNC received 6 memberships and we spend \$413.44 of the remaining NAF funds. Probably we will have to return about \$1800 of unspent NAF funds.
- See attached spreadsheet of spending.

#### HPNC Financial Report January 1, 2023 – February 12, 2023

#### RECEIPTS

	Membership 12/23/22	19.11
	Membership 1/6/23	19.11
	Membership 1/9/23	19.11
	Membership 1/11/23	19.11
	Membership 1/12/23	19.11
	Membership 1/17/23	19.11
<b>TOTAL</b>		<b>\$114.66</b>

#### DISBURSEMENTS

1/20/23	paypal	Dyndot -webname registration	21.98
2/1/23	1513	45/46 – NAF- raffle prize	213.44
2/3/23	1512	Awakenings-NAF-affleprize	200.00
<b>TOTAL</b>			<b>\$435.42</b>



DOTe recently completed its 2023 funding process for Traffic and Safety initiatives, approving 26 projects out of 60+ submissions from across the City. HPNC's submission to the program – HP Square between Edwards and Michigan – unfortunately did not make the cut for funding. The full list of approved projects can be found here:

<https://www.cincinnati-oh.gov/dote/safety/street-calming/major-streets/fy23-pedestrian-safety-community-priority-requests/>

### **Observatory Ave.**

Fortunately, DOTE has secured additional funding in 2023 for traffic-calming project adjacent to schools and recreation areas. Each neighborhood council across the City was allowed to select one location to receive the funding. For HP, we submitted Hyde Park School as our focus area given the history of pedestrian/traffic challenges on Observatory. With the special DOTE funding, Observatory Ave. – from Edwards, heading west toward Madison – will be re-stripped to designate a parking lane of each side of the street. The exact length of coverage is still TBD, but DOTE remains hopeful that the funding will cover the cost from Edwards all the way to Madison.

The benefits of this plan are significant and include:

- 1) **Clearly delineating that Observatory is one lane of traffic in each direction** (vs. today where it is assumed by many motorists to be 2 lanes in each direction). The assumption of 2 lanes leads to excessive speeding and “jockeying” of cars trying to pass one another
- 2) **Moving cars further away from the sidewalks** (thus making it safer for pedestrians)
- 3) **Providing parking for HP School families and Observatory Residents**

Additional project details will be shared when available. The soonest the work can begin would be April, though DOTE will be managing similar projects across the City, so timelines could be very fluid.

### **Erie Ave. (at Mooney)**

DOTe has also approved the installation of a crosswalk on Erie Ave. at the intersection of Mooney. The project will include (per DOTE): “a painted crosswalk on the east leg, installation of overhead and side-mounted crosswalk signs, and installation of new curb ramps.” I don’t yet have details on whether the installation will include flashing lights of any variety. The installation is scheduled to occur this spring.

### **Linwood Ave.**

Lastly, while not officially within Hyde Park, we did receive additional good news as Linwood Ave. was submitted by the Mt. Lookout Community Council for DOTE funding in 2023 and that the request was approved. The specifics of the project are still being discussed between MLCC and DOTE but will likely include some combination of speed cushions, re-stripping, and/or signage... starting at Mt Lookout Square and heading north up Linwood toward Observatory. The exact distance of coverage is still TBD, though likely won’t reach all the way to Observatory.





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**New Zoning Business**

**2739 Observatory** (SE Corner Michigan/Observatory – The Zoning Committee has met twice with Peter Horton of Terrex working for owners of 2739 Observatory. At the most recent meeting on December 5, Peter was joined by the James Smith, owner. A three family condo development is proposed. Three variances, front setback, rear setback and height, demolition and new construction permit under the new “contributing structures” addition to the Urban Design Overlay District will be required to proceed. The public hearing before the Zoning Board of Appeals is on February 16, 2023.

The following summarizes the activities and position of the Hyde Park Neighborhood Council (HPNC) Zoning Committee on 2739 Observatory as of February 9, 2023.

- Property acquired by current owner James Smith on October 12, 2021.
- November 23, 2021. The ZC Chairman answered query regarding use of the property. The following is my reply, *“Your property at 2739 Observatory is in RMX residential zoned district (not commercial use, not office use, except for medical office use that is grandfathered if the use has been continuous since 2003 or earlier. (I believe the answer is yes) It goes back to prior zoning code when it was common for a doctor to have office at his/her residence. A portion of your property is supposed to be maintained as a residence. So allowable signage is limited to what is allowed in residential districts and any office use with visitors/patients/clients, other than home occupations must have a medical connection (private nurses, psychology counselling, health coach, etc.).”*
- March 4, 2022 Second contact regarding use of the property, this time by Vicky Meadows-of Keller-Williams). The following is my summary. *“Last night I spoke to Vicky Meadows, Keller-Williams, and her client the new owner of the property. The transfer occurred 10/12/2021. They want to expand the office use throughout the entire building and were directed by City Zoning (no name was recalled) to ask HPNC for an opinion. The medical office use in the rear of the building is a legally established (prior to 2003) non-conforming use and I believe it would take a use variance to expand. The expanded use would be real estate marketing & property management personnel by persons who do not live on the premises. New signs larger than what is permitted in RM districts would be additional variance. Parking for office use may need variances too. I told them HPNC historically was opposed to any expansion of commercial/office uses in R districts but I would ask zoning committee. I said we not only had to be concerned about current owners use, but also any future owners use of variances because variances stay with the property, not the owner. I then got the familiar story that the selling realtor (not Vicky) had mis-represented the property as “RMX=residential mixed use” and owner could not afford to operate w/o expanding. He said he could tear down and subdivide and build two or three SF homes which does not look possible (see below).”*
- First HPNC Zoning Committee meeting with Peter Horton and Michael Wentz November 9 at RWA. A very preliminary plan for 3 new condos was presented.
- Second HPNC Zoning Committee meeting with Peter and James Smith December 6 at RWA. A revised plan for 3 new condos was presented. We were told one rear yard setback variance would be

required. The Applicant was strongly encouraged to meet with neighbors before presenting meeting with HPNC Trustees regular monthly meeting on the second Tuesday of the month. Applicant opted to postpone potential December meeting presentation.

- The Applicants presentation before HPNC Trustees was initially scheduled for the regular monthly meeting on January 10 but the invitation was withdrawn because the Applicant had not yet met with neighbors.
- Neighbor meeting with Applicants January 18 (HPNC Zoning Committee did not participate)
- Application for 3 variances and demolition uploaded to CAGISdocs folder on January 21, 2023.
- Zoning Committee meeting with six neighbors January 31 at RWA.
- The Applicants presentation before HPNC Trustees is currently scheduled for the regular monthly meeting on February 14.

The Zoning Committee has not made a recommendation to HPNC Trustees supporting or opposing the four items of relief requested. The Zoning Committee may make a recommendation before or at the meeting on February 14. The HPNC Trustees may also vote and make a recommendation to Zoning Board of Appeals on one or all of the four items at that meeting.

The January 9 letter from Dinsmore attorney Betsy Emmert has two passages and three references to HPNC Zoning Committee and HPNC. There are two references that are technically correct, but are worded in a manner that could be easily misinterpreted. The third reference is incorrect.

Page 1 (Reference 1): "The Applicant **has also worked collaboratively** with the Hyde Park Neighborhood Council Zoning Committee to receive their support for the relief required for the following sections of the Zoning Code of the City of Cincinnati (the "Code"):"

*Comment #1. This says "has also worked" .... "to receive" but does NOT say received. So this is technically correct, but a reasonable person reading quickly might read this and assume the Zoning Committee has actually provided their support. It is unclear what "Zoning Committee support" would mean either since it is the vote of the HPNC Trustee that carries meaning in City processes.*

Page 3 (Ref 2 and 3): "The Applicant **has collaborated** with the Hyde Park Neighborhood Council ("HPNC") to develop the Project in manner that is harmonious with the surrounding area and the Code. The Applicant has met with the HPNC on three separate occasions, including two meetings with the zoning committee and **one meeting with the council as a whole**. These efforts resulted in changes to the design reflecting the recommendations of the zoning committee and broader community."

*Comment #2. This says "has collaborated" .... "to develop". Again, this is technically correct, but a reasonable person reading quickly might read more into this than they should. The Zoning Committee has met with the Applicants representatives on two occasions, viewed their presentation, identified missing information, and provided constructive criticism and recommendations. There was no endorsement of the project by the Zoning Committee because as of the last meeting December 6, the abutting and immediate neighbors were unaware of the project.*

*Comment #3. The next to last sentence says they met with the “council as a whole”. We considered having them to come to January meeting, but that did not happen.*

With regard to Item 1 – Urban Design Review for demolition, The HPNC Zoning Committee met multiple times in Spring of 2022 and rated each property address in UD#4 and UD#11 (using Auditors ownership records) in three categories:

- 1) Siting (e.g. setback),
- 2) Form (e.g. height, width & mass) and
- 3) Character (e.g. architectural style, interest, appeal).

There are CN-P, OL and RMX zoning districts in the Hyde Park square UD#4 overlay. 2739 Observatory is located in a RMX district. It was determined to be properly sited, with its form appropriate considering RMX development regulations and contributing to the UD overlay. We also rated its bungalow style architecture as contributing to the UD overlay.

The Zoning Committee recommendations were discussed at the May 10, 2022 meeting of the HPNC Trustees. After discussion, a motion to adopt the Zoning Committee recommendations was passed by the Trustees.

This information was conveyed to Maria Dienger, City Planner, in a May 16, 2022 letter with multiple Excel tables summarizing our work rating all structures in UD#4 or UD#11. To date, we have had no opportunity to meet with Ms. Dienger or any other City representative to discuss any of our ratings.

As far as a recommendation of the Zoning Committee for this project, the feeling of neighbors present at the January 31 meeting with the neighbors was to oppose the height variance because the building is the scale of the building is much larger than the adjacent buildings; to oppose the rear yard setback variance because the rear yard would just be too small for such a tall building, and that the rear yard must accommodate the potentially noisy air conditioners, and to oppose the three required curb cuts from a traffic safety and elimination of on street parking.

The neighbors have hired land use attorney Sean Suder to represent their opposition to the project. Mr. Suders opposition brief is attached as separate .pdf document. Mr. Suder asked the ZC Chairman for a summary of HPNC activities. The February 9, 2023 letter is attached. The City Staff report is also attached.

The Zoning Committee has not made a recommendation as of this writing. The Zoning Committee chairman recommends supporting the neighbors in their opposition for the reasons in the opposition brief.

### **Springer School – Variances**

There will be a presentation regarding variances for an addition to the building. Variances for building height and number of parking spaces are required. There are two abutting single family residences and one abutting multifamily residential structure. The school is contacting the neighbors, the progress and any opinions are unknown. The Zoning Committee is reviewing the documents. The hearing date is unknown. There is no recommended action for Trustees at this time.

**3536 Bayard** - HPNC has been contacted by Kurt Zobrist, President, Zobrist Design Group, Inc. and the neighbors regarding the demolition of existing residence, splitting the lot, and building 2 new identical homes.

The neighbors are opposed to the lot split and two new homes and have hired attorney Peter Koenig to represent them. No date for Planning Commission hearing is known. There is no recommended action for Trustees at this time.

**Hyde Park Country Club Golf Fence along Wasson Way.** Nick Spadiccini and Andy Corn (RWA Architects) met with the Zoning Committee on January 26, 2023. They shared their concern about safety from golf balls entering the trail from the driving range. An 80 feet tall fence along Wasson Way is proposed to protect the trail users. A variance is required. There is no recommended action for Trustees at this time.

### **Old Business**

No other applications for hearings before the Zoning Hearing Examiner are visible in CAGISdocs.

**Sandwich Sign Ordinance** – No new information on action by City to approve use in HP Urban Design overlay district.

**Hyde Park Flats 3460 Michigan (2741 Erie)** – excavation complete, the material has been relocated to library parking lot as fill, new parking lot has been paved and is in use for construction vehicles.

**Hyde Park School (3401 Edwards)** – Construction has started, the steel frame for where new classroom addition will be is going up

### **Urban Design District Contributing Structure Review – HPNC Recommendations**

While there has been some clarifying communication with Maria Dienger-Planner, and she hopes to complete them, there has been no date or time proposed for the meeting to discuss the City's evaluation and recommendation for contributing structures addendum.

### **Virtual Zoning Hearing Instructions**

In accordance with orders issued by state and local officials and applicable guidance concerning COVID-19, this hearing will be conducted using video-conferencing technology. This hearing will be closed to in-person attendance to comply with social distancing requirements. The link above will allow you to join this hearing using the Zoom website. It is important that each participant familiarize themselves with the Zoom video-conferencing technology **BEFORE** joining the hearing. Participants are strongly encouraged to visit the following link to join a test Zoom meeting - <https://zoom.us/test>. The test Zoom meeting will allow participants to ensure that all audio and video components are working properly on your computer or device. All desktop/laptop computers, tablets, and smartphones with internet access can join and participate in the hearing. Participants may also visit the Zoom Support Center to learn more about Zoom video-conferencing – [link](#).

### **Important Disclaimers**

- Applicants and/or Owners may choose to **opt out** of the video-conferencing option. If an Applicant and/or Owner elects to opt out, the hearing will be placed on hold until in-person hearings resume. If you are an Applicant and/or Owner that would like to opt out of the video-conferencing option, please reply to this email immediately.

- Please be mindful of your environment when participating in the hearing. All participants must ensure that they eliminate background noise and distractions during the hearing. All participants are required to dress appropriately.
- Please avoid using virtual backgrounds during the hearing. If you have used virtual backgrounds in previous Zoom meetings, please ensure that they are turned off prior to joining this hearing.
- In the event of any technical difficulties or unforeseen circumstances, the Hearing Examiner reserves the right to continue or postpone this hearing at their discretion.
- The Hearing Examiner reserves the right to remove any participant from the hearing at their discretion.

If you have additional questions or would like more information about these process changes, please reply to this email or visit [www.cincinnati-oh.gov/boards](http://www.cincinnati-oh.gov/boards).



## Board of Trustees Meeting

Tuesday, January 10, 2023

### Meeting Minutes

Meeting at Hyde Park Community United Methodist Church called to order by President, S. Hassell at 7:03 p.m.

February's meeting will be held at the HP Community United Methodist Church.

*In Attendance:* J. Buening, B. Frappier-Schirmang, D. Hapner, S. Hassell, N. Lewis, S. Mullin, A. Schutte, B. Smyth, B. Whitney, G. Wollenweber, and V. Woodham.

*Advance Notice of Absence:* A. Edwards, T. McEvoy, T. Roe, and A. Rusche.

#### Guests:

**Cincinnati Police Department, District 2 Officer Christine Barry and Sergeant Sellers** distributed the neighborhood crime report. During the period, no Part 1 violent crimes were reported. However, the report included 3 burglaries/breaking entering (non-violent crimes), 7 personal thefts, and 2 auto thefts. On January 2 cash was stolen from a safe at the Bangkok Bistro; on January 30 a purse was stolen from a residence on Regal, and a wallet was stolen from a residence on Raymar (door was unlocked). Officer Barry can be reached at 979-4480. [Christine.Barry@cincinnati-oh.gov](mailto:Christine.Barry@cincinnati-oh.gov). Captain Danita Pettis can be reached at: 979-4444 [Danita.pettis@cincinnati-oh.gov](mailto:Danita.pettis@cincinnati-oh.gov). Police non-emergency line 765-1212.

**Cincinnati Fire Department, Captain Scott Sewell** introduced himself as the new Captain of Station 46 in Hyde Park Square.

**Hyde Park Library—Manager, Ben Lathrop** shared that the branch is hosting a check-out challenge for adults. Participants can get a library tote bag with a promotional coffee mug and complete a bingo card to win YMCA passes and restaurant gift cards. The check-out challenge starts on January 16 and runs through February. Visit the temporary location at 3764 Paxton Avenue. Contact the branch at (513) 369-4456.

**Oakley Recreation Center—Blake Williams** No updates on the Center's rebuild to share. CRC is hiring personnel for summer camps and aquatics programs. Applicants between ages 14-17 will earn \$11.50/hr. and will be paid for training and aquatics certification. AARP is offering tax prep

services for seniors by appointment only in February on Thursdays between 9-3. Summer camp applications are available online beginning February 2, and spaces will be filled by lottery. The summer program will accommodate 80-90 kids.

**Hyde Park School—Principal, Jill Sunderman** shared that the new exterior stairs from the cafeteria to the playground have been completed and steel beams have been for the second and third floor and temporary walls have been put into place for the addition. The addition is scheduled to open in August of 2023 for the new schoolyear and the gym to be completed after that. The school is hosting a fundraiser at the Brew House on January 18 from 4-9 pm with a portion of sales to be donated to the PTO. The annual spring celebration fundraiser will take place on April 22 at Mad Tree with a silent auction and party.

**Clark Montessori—Dave Hapner LSDMC Chair** thanked The Church of The Redeemer for their tutoring of Clark students and providing a warm place for students waiting for busses after school hours.

1. **Approval of Consent Agenda**

G. Wollenweber moved to approve the Consent Agenda. Second by B. Whitney. All in favor. Motion carried.

2. **Old Business**

- a. **HPNC Website Improvements** A. Schutte shared a detailed summary of the present challenges with our website and webhosting platform. He and T. McEvoy have been researching options and communicating with other non-profit membership organizations/community councils that have had success with Wild Apricot. Our present platform requires a multitude of steps for communications, updates, and is generally an outdated system that is not user friendly. Wild Apricot, while more costly, has many functions that would be helpful to our operations and require little ongoing management. Wild Apricot has a calendaring system, auto-generated renewal notices, fundraising capabilities, financial report generation, and capability for varying levels of membership, a log-in portal for members, creating registration for events, and enabling forums and blog posts/newsletters.

Our current webhosting platform is \$440/yr. and Wild Apricot is \$2,000/yr. A 10% discount applies for an annual subscription (vs. monthly) and a trial period without charge is available for learning its functionality and capabilities so long as the site is not “live” and is accessible to 50 “members” or less.

Board members asked if other platforms were researched, and if there were less expensive options with more capabilities than what we currently use. Our current membership database has 535 members and with even half paying annual \$20 dues, we would cover the entire cost of Wild Apricot.

- b. **Neighborhood Support Program (NSP) Budget** N. Lewis The annual NSP contract runs from 1/1-12/31. Community engagement is an important component of the budgeting process. The annual proposal must be approved before HPNC is able to spend NSP funds. The proposed NSP Budget attached to the meeting packet documents modifies the proposed NSP budget as proposed at the 12/11/2022 meeting, and allocates an additional \$100 to each of the following: Wasson Way, Hyde Park School, Withrow High School, Clark Montessori, Hyde Park Community United Methodist Church, and 55 North.

N. Lewis moved, ***“To approve the proposed 2023 NSP Budget as attached to the meeting packet for the 1/10/2023 HPNC monthly meeting.”*** Second by D. Hapner. 1 abstention, 4 against, 17 in favor. Motion carried.

- c. **HPNC 2023 Budget** N. Lewis prepared the proposed overall budget for the HPNC, and it is attached to the meeting packet. N. Lewis moved, ***“That the HPNC adopt the 2023 Budget as proposed and attached to the meeting packet for the 1/10/2023 HPNC meeting.”*** Second by A. Schutte. All in favor. Motion carried.
- d. **Neighborhood Activation Fund (NAF)** N. Lewis reported that we are still waiting for HPSBA to submit receipts from the purchase of gift cards for their raffle. Some of the NAF funds will be returned to the City because they will not be spent prior to the end of January 2023.

### 3. **New Business**

a. **Residential Tax Abatement (RTA) Reform**

S. Hassell encouraged residents and Trustees to read the President’s Report with information and updates on the RTA reform that will be proposed this week. The topic will be discussed at our February meeting.

b. **Resignation of Todd Roe**

S. Hassell reported that Todd Roe has stepped down from the Board. His work travel schedule does not afford him the time to actively participate in our monthly meetings. Good news, Todd has agreed to stay on as Chair of our Traffic and Safety Committee. We appreciate Todd’s years of service on our Board!

The Nominating Committee will begin the process of recruiting new candidates to fill the vacancy. Residents and Trustees, please spread the word about the vacancy and encourage interested candidates to submit a Candidate Information Sheet (available on our website).

**Adjourn:** Without objection the meeting was adjourned at 8:06 p.m.

Sybil Mullin, Recording Secretary



## HPNC Financial Report - 2023

HPNC budget 2023		Budget	Jan/Feb	March	April	May	June	July	August	September	October	November	December	Total
	Revised Jan 8, 2023													
<b>BEGINNING OPERATING BALANCE</b>		20472.37	20472.37	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,472.37
<b>RECEIPTS</b>														
	NSP - 2023	9,872												0.00
	Membership	1,500	114.66											114.66
	Halloween Event	300												0.00
	Fundraiser	0												0.00
	Invest In Neighborhoods	630												0.00
	Miscellaneous Donations	500												0.00
	NAF funding	0												0.00
	TOTAL RECEIPTS	12,802	114.66	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	114.66
<b>DISBURSMENTS</b>														
	<i>To Be Submitted to NSP</i>													
	<i>Newsletter</i>													
	- Mailing	50												0.00
	- Printing	50												0.00
	-membership	400												0.00
	<i>HPNC Expenses</i>													
	- Intern	400												0.00
	- Web Hosting Fees	2,300												0.00
	ost	200												0.00
	- D/O Insurance	0												0.00
	- Halloween Event	400												0.00
	- Annual Meeting	400												0.00
	<i>Community Grants</i>													0.00
	- Withrow	600												0.00
	-----Clark	600												
	- Wasson Way	600												0.00
	- Hyde Park East	600												0.00
	- Hyde Park School	600												0.00
	- HydeParkChurch IHN	500												0.00
	- Knox Church	0												0.00
	- HPCOA (55 North)	600												0.00
	- Ault Park Fireworks	1,500												0.00
	NSP Subtotal	9,800	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	<i>Not Submitted to NSP</i>													0.00
	<i>HPNC Expenses</i>													0.00
	- Ault Park Advisory Council	50												0.00
	- Meet & Greet	100												0.00
	NAF projects	2,200	413.44											0.00
	Website Host fees	200	21.98											
	TOTAL DISBURSMENTS	12550.00	435.42	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>ENDING OPERATING BALANCE</b>		20,724	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,151.61	20,587.03

Attachments for Zoning Issue at  
**2739 Observatory**

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**APPLICATION FOR WRITTEN ADMINISTRATIVE DECISION  
ZONING BOARD OF APPEALS PUBLIC HEARING  
STAFF REPORT**

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APPLICATION #: **Z-4076-2023**  
APPLICANT: Dinsmore & Shohl LLP  
OWNER: 2739 Observatory LLC  
ADDRESS: 2739 Observatory Ave  
PARCEL: 004600050004  
ZONING: RMX Residential Mixed | Urban Design Overlay  
COMMUNITY: Hyde Park  
REPORT DATE: 2.3.2023  
HEARING DATE: 2.16.2023  
STAFF REVIEW: Matt Lascheid, Zoning Plan Examiner

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**Details of Zoning Relief Required:**

1. **Sec. 1437-07 part B – Urban Design Overlay Review for Demolition and New Construction**– The proposed demolition and new building construction in the Hyde Park Square Business District Urban Design Overlay requires Urban Design Review.
2. **Sec. 1421-21(a) – Special Exception** – The required front yard setback is the average front yard setback of properties on the same block face that share the same zoning classification. The required front yard setback for this property is 33.7ft. A Special Exception is required to permit the proposed front yard setback of 29ft.
3. **Sec. 1405-07 Variance** – The required rear yard setback is 20ft. A variance of 6.6ft is required to permit a rear yard setback of 13.4ft.
4. **Sec. 1405-07 Variance** – The maximum permitted height is 35ft. A variance of 4ft is required to permit a height of 39ft at the rear of the building.

**Existing Conditions:**

The subject property features a one-story building which is used as both an office and an apartment. The vernacular building is one story and approximately 3,200sf with a small parking lot in the rear, accessed from Michigan Ave. At the southern edge of the Hyde Park Business District, this structure is surrounded by a mix of single-family, two-family, multi-family, mixed-use, and institutional buildings. Please see the following images of the subject property.



*Subject property outlined in red. Adjacent properties along Observatory are zoned RMX and share a variety of residential and commercial uses. Properties to the south along Michigan Ave are zoned SF-6 and are Single Family residences.*



*View of the subject property- looking south from Observatory Ave.*

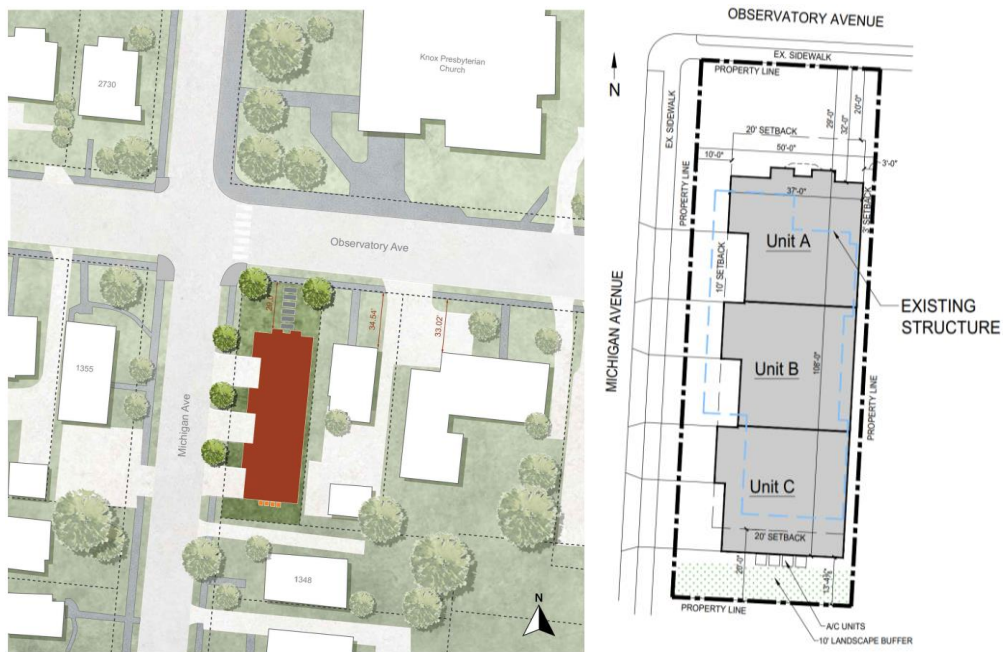




*View of the subject property- looking east from Michigan Ave.*

### **Proposed Conditions:**

The proposed project is the construction of 3 attached townhomes. Each unit is three stories tall with a primarily brick front façade, gabled roof, front-facing pedestrian entrance and 2-car garage. The new structure would replace the existing building, and has been designed with a similar footprint and setbacks, but increased height and unit count. Please see the following site plans and elevations.



*Rendered Site Plan (left) and Site Plan showing proposed units and existing structure (right). The building maintains a consistent setback along Observatory Ave, with a pedestrian front entrance along this elevation. Driveways from Michigan Ave lead to 2-car garages on the ground floor of each unit.*



Front Elevation - Michigan



Side Elevation - Michigan



Front Elevation - Observatory



Rear Elevation

*The drawings above show the proposed elevations. Façade materials along the front elevations are brick with James Hardie fiber cement plank lap siding and board & batten siding. Hardie plank siding comprises the rear elevations.*

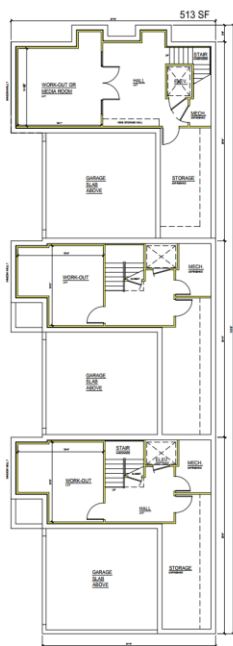


*Michigan Ave façade*



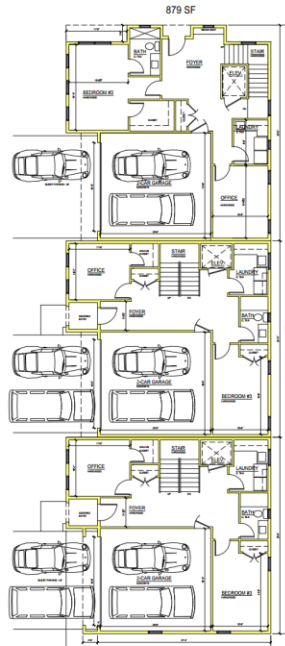


*Observatory Ave facade*



Foundation Plan

Scale: 1/8" = 1'-0"



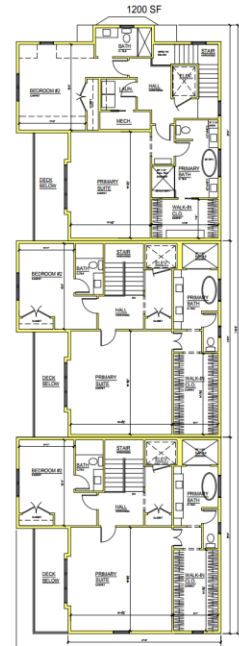
Lower Level Plan

Scale: 1/8" = 1'-0"



First Floor Plan

Scale: 1/8" = 1'-0"



Second Floor Plan

Scale: 1/8" = 1'-0"

*Floorplans*

### **Applicable Zoning Code Sections:**

- 1437: Urban Design Overlay District
- 1445: Standards for Variances; General Standards, Public Interest and Conditional Use
- 1443: Zoning Hearing Examiner Procedures
- 1409: Commercial District Regulations

## **Urban Design Review**

The Applicant is requesting approval based on the requirements of § 1437-09 (Development Standards in Urban Design Overlay Districts). Development within individual UDO Districts must comply with the standards prescribed below that the ordinance that establishes the UDO District declares applicable to that district. These standards are intended to implement policies in adopted urban design plans. Whenever the standards conflict with the development regulations of the underlying district, these standards supersede those regulations.

- (a) *Signs and Signage Standards:* No signage is proposed in this application – N/A
- (b) *Awning Standards:* There are no awnings planned for the project – N/A
- (c) *Mechanical Equipment and Utility Standards:* Any new mechanical equipment will remain concealed from view from the street or adjacent buildings. The proposed rooftop mechanical equipment is screened by metal panels. While creating compliance with this standard, the screening panels exceed the permitted height limit.
- (d) *Replacement Window Standards:* New construction, not replacement windows - N/A
- (e) *Exterior Renovation or Alterations of Existing Structures:* N/A
- (f) *Eating and Drinking Establishments:* N/A
- (g) *Franchise Establishments:* N/A
- (h) *New Construction:* The proposed new building shall conform to the new construction standards:
  - New buildings shall be compatible with their surroundings. Architectural style, bulk, shape, massing, scale and form of new buildings and the space between and around buildings shall be consistent with the area, and should be in harmony with neighboring buildings.
  - New buildings shall respond to the pattern of window placement in the district. The designs of new buildings shall avoid long unrelieved expanses of wall along the street by maintaining the rhythm of windows and structural bays in the district. The preferred pattern of ground floor windows is open show windows, with inset or recessed entryways; and landscaping, lighting and other amenities equivalent to those existing in the district.
  - Buildings shall de-emphasize secondary rear or side door entrances to commercial space, unless the entrances are associated with public parking areas.



- New buildings and proposed uses shall be consistent with the goals, objectives, and guidelines of the applicable urban design plan or other applicable community plans approved by City Council.

Staff Analysis:

- The proposed new building is a stand-alone building on a corner of a mixed-use street (Observatory) and a residential street (Michigan). As such, it is visible on all four sides and should be designed with compatible massing, setbacks, and design features as buildings already within the district.
- The proposed 3-unit townhome structure is three stories and 35' tall. Although taller than the existing 1-story house, this height is more compatible with other 2-3 story buildings along Observatory and within the Hyde Park Business District. The building's footprint and setbacks are similar to those of the existing building and other mixed-use buildings along Observatory. The proposed building features traditional design features which help harmonize with the surrounding neighborhood, including vertical proportions, a gabled roof, brick and siding, consistent fenestration, bay windows, dormers, divided lite windows with sills and lintels, and front-facing pedestrian entrances. Garage entrances have been located on the secondary elevation.



*Adjacent buildings along Observatory are 2 – 3 stories tall and feature a variety of mixed, single-family, and multi-family uses.*

- The Hyde Park Square Neighborhood Business District Urban Design Plan (1984) established that “immediately adjacent to the business district, predominately multi-family (at least two-family) housing exists”, that “office and/or multi-family situations should be encouraged in the area immediately adjacent to an existing, vital commercial area,” and that “the opportunity for providing a zone of investment for multi-family housing appears to be north of the Square...The other opportunity, south of the Square along Observatory, is zoned R-5, but it appears assemblage problems and the limited size of the lots inhibit development.” Additionally, long-range land use / zoning strategies included “encourage growth of commercial and residential uses through higher density development and more efficient utilization of space within the urban design plan boundary,” “provide zoning with a transition from retail commercial to office to high-density housing to low density housing,” and “promote high-density housing patterns within close, walking proximity to the Square. The Square will benefit from a strong resident-dependent population.” The

proposed 3-unit residential building is in line with the goals of the Hyde Park Square Neighborhood Business District Urban Design Plan.

- (i) *Demolition:* The proposed demolition is conforming with the demolition standards:

An existing building may only be demolished if the owner of the building, or a person authorized by the owner of the building, demonstrates that one of the following standards is met:

1. The building does not contribute to the physical character and economic vitality of the district, which is determined by weighing the following factors:
  - (i) whether the building is identified as a contributing building or noncontributing building by the applicable urban design plan or other applicable community plans approved by City Council;
  - (ii) whether the building is recommended for demolition by the applicable urban design plan or other applicable community plans approved by City Council;
  - (iii) whether the building's architectural style, bulk, shape, massing, scale, form, and setbacks are consistent with the predominant characteristics of the district;
  - (iv) whether the building is iconic or specially associated with the district;
  - (v) whether the demolition of the building will negatively impact the district streetscape; and
  - (vi) whether the building is obsolete, damaged, in a state of disrepair, dilapidated, or unsanitary, and whether its condition was caused by the owner or his or her predecessors through deliberate action or willful neglect.
2. The demolition of the building will facilitate the construction of a new building or the establishment of a use that will contribute to the physical character and economic vitality of the district, which is demonstrated by evidence that the owner, or a person authorized by the owner, has:
  - (i) obtained final approval to construct a new building or change the use of property pursuant to the requirements of subsection (h) above;
  - (ii) obtained all building permit approvals necessary to commence the new construction or effect the change in use; and
  - (iii) certified via affidavit or sworn testimony as to his or her intent and capacity to diligently pursue the construction of the new building or change in use if demolition of the building is approved.

Staff Analysis:

- There is no formally adopted list of contributing / non-contributing buildings in Hyde Park. Staff acknowledges that Hyde Park is working on such a plan, and that the Community Council has noted this building as contributing. No review of a contributing/noncontributing buildings list has occurred by City Planning Commission or City Council.
- While the existing building's style and setbacks conform to the Observatory Ave streetscape, is it inconsistent with the predominant height, bulk, shape, and massing along the streetscape. It is a residential building at the periphery of the business district and urban design overlay, and is not consistent with the predominant characteristics of the overall district.
- The building is at the edge of the urban design overlay district and is not significantly referred to within the 1984 urban design plan. Its demolition will not negatively impact the district and its streetscape.
- The existing building is vernacular in style; it is not iconic, nor is it obsolete or damaged.
- Staff recommends approval of the demolition of the existing building under 1437-09(i)(D1) as the building does not contribute to the physical character and economic vitality of the district.
- As previously noted, Staff acknowledges that a preliminary analysis of contributing and non-contributing status provided by the Hyde Park Neighborhood Council notes this building as contributing. Further engagement of the community council by City Planning staff is planned to develop a final contributing list, and Staff does not concur that this building is considered contributing. Still, if the building was determined to be contributing, Staff would maintain the recommendation of approval as consistent with 1437-09(i)(D1) as "The demolition of the building will facilitate the construction of a new building or the establishment of a use that will contribute to the physical character and economic vitality of the district."

#### **Analysis of Proposed Height Variance, and Rear Setback Variance:**

The key question about this proposal is- will the proposed 4' height variance and 6.6' rear setback create any negative or adverse impacts on the adjacent properties and neighborhood?

- The proposed building is designed to be 35' tall. A setback variance is required because height is measured from the base of the building at the front (Observatory Ave) elevation to the average of the highest peak (rear gable), and the grade increases to the rear of the property. The building has been designed to follow the 35' maximum height; a variance for this building is only necessitated by the topographic change beneath it, an obstacle outside the property owner's control.



*Michigan Ave Elevation. The Zoning Code measures height as the vertical distance between the two red lines above, and does not consider the change in topography.*

- The proposed height of 3 stories is consistent with other residential and mixed-use buildings along Observatory Ave and within the Hyde Park Business District, and 35' is the maximum permitted height in the RMX District. No negative or adverse impacts are anticipated by the proposed variance.
- The proposed building is designed to be 13.4' from the rear property line. The minimum rear yard setback is 20'. A variance of 6.6' is required. The property is located on a corner yard, although the two rear units are designed to face Michigan Ave, making this rear setback functionally similar to a side yard. The required side yard setback in the RMX district and adjacent SF-6 districts are 3' and 7' respectively. Additionally, a 10' landscape buffer has been provided to further buffer this proposal from existing adjacent single-family homes to the south. Staff feels that the subject setback functions similarly to a side-yard setback, and that a variance of 6.6' to create a setback of 13.4' will not create any negative or adverse impacts on neighboring properties.

Based on a review of the zoning code, the information provided by the applicant and the existing conditions; it appears that a strict interpretation of the code- as applied to the requested variances- are unreasonable and results in a practical difficulty in the use of the site for 3-unit residential building.

Per Section 1445-15 Variance standards the following questions must be answered:

***Was a condition giving rise to the request for the variance created by the owner or any predecessor in title?*** Yes, the proposed height of the building and rear setback design was created by the owner as per their proposed new construction.

***Is the variance contrary to the intent and purpose of this Code?*** No, the proposal is compatible with the intent and purpose of the RMX district and urban design overlay zoning requirements due to the urban context. The variances requested are minimal; the proposed building features similar setbacks and height as surrounding properties.

**Is the variance detrimental or injurious to the public health, safety and general welfare?** No, the proposed variances are not detrimental to the general welfare of the public or the surrounding neighborhood. The design is compatible with the neighborhood.

**(a) Owing to special circumstances or conditions pertaining to a specific piece of property, would the strict application of Code result in unreasonable or practical difficulties?** Yes, a strict application of the code would result in unreasonable or practical difficulties in that the rear unit of the 3-unit building would not be offered the same height as the front unit. Additionally, the rear of the building would be required to be further from the south property line than other existing properties along Michigan Ave.

**(b) Is it necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same district or vicinity?** Yes, the variances and approvals as outlined are necessary to allow the new construction and to preserve or enjoy a substantial property right of the applicant that is also possessed by owners of other property in the city's jurisdiction. The streetscape views provided above illustrate that the height is compatible and consistent with the height of properties in the vicinity. The proposed rear setback is similar to or greater than setbacks between other properties along Michigan Ave.

### **Analysis of Special Exceptions for a reduced front yard setback**

An application for a special exception may not be approved unless the Zoning Board of Appeals determines that the proposed special exception is appropriate in the location proposed based on the following standards and, where applicable, the special standards for specific special exceptions. A special exception may be granted only if the Board makes all of the following findings:

*(a) Compliance with Code and District Purposes.*

*a. The proposed work will be consistent with the purposes of the Cincinnati Zoning Code and the RMX Zoning District.*

- i. The proposed new construction would have a front setback of 29ft along Observatory Ave, which is 4.7ft less than the required 33.7ft front yard setback. The intent of the RMX district is to create, maintain, and enhance areas of the city that have a mix of lot sizes and house types at moderate intensities (one to three dwelling units). The minimal variance would help create a more walkable streetscape. Front setbacks along this block vary and although the proposed setback is less than the average, the minimal difference would not appear noticeable or out-of-place.*

*(b) No Substantial Impairment of Property Value.*

*a. The proposed development will not substantially diminish or impair the value of property within the neighborhood.*

- i. The special exception to allow a reduced front setback would have a minimal visual impact and would not diminish or impair the value of adjacent properties. Locating the building further north, as proposed, helps to increase the rear yard setback to the south.

*(c) No Undue Adverse Impact.*

- a. *The proposed development will not have an adverse effect on the character of the area or the public health, safety and general welfare. The proposed Special Exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accord with applicable district regulations.*
  - i. The reduced setback has been designed to prioritize walkability and the urban character of the area, and would not have an adverse effect on the public health, safety, or general welfare of the neighborhood.

*(d) Compliance with Other Standards.*

- a. The proposed development complies with all other standards imposed on it by the Cincinnati Zoning Code with the exception of the required Special Exception requested herein.
  - i. The property is otherwise in conformance with the Zoning Code, with the exception of the relief requested herein.

*General Standards; Public Interest*

Below is analysis of the relevant consideration factors for the requested zoning actions, utilizing Section 1445-13, General Standards; Public Interest. This proposal is of value to the public interest, as it enhances:

- **(A) Zoning**, the proposal conforms to the underlying zoning district regulations and is in harmony with the general purposes and intent of the Cincinnati Zoning Code.
- **(D) Traffic**, the traffic volumes generated are projected to be minimal and similar to the existing use of the property.
- **(H) Neighborhood Compatibility**, the proposal is generally compatible with the predominant development pattern of the urban design district and will not have a material net cumulative adverse impact on the neighborhood. It is consistent with the Hyde Park Business District UDO Plan.
- **(J) Adverse Effects**, it appears that the proposal will not create any adverse effects on the surrounding properties and neighborhood.
- **(L) Economic Benefits**, the proposal provides construction jobs during construction and would increase the residential population and customer base surrounding the Hyde Park Business District.

- **(P) Public Benefits**, the public benefits realized would include an investment for new development in the neighborhood, as well as new housing for future residents/ taxpayers/consumers.

### **Consistency with Approved Plans:**

The proposed work would be consistent with the policy principle in *Plan Cincinnati (2012)* to revitalize existing centers of activity as outlined on page 86. As previously noted, the proposed development is consistent with the *Hyde Park Neighborhood Business District Urban Design Plan (1984)* in providing additional housing options surrounding the business district and utilizing design features in harmony with the existing buildings.

### **Recommendation:**

1. **Sec. 1437-07 part B – Urban Design Overlay Review for Demolition and New Construction– APPROVE** - The proposed demolition and new building construction in the Hyde Park Business District Urban Design Overlay.
2. **Sec. 1421-21(a) – Special Exception – APPROVE** - The required front yard setback for this property is 33.7ft. A Special Exception is required to permit the proposed front yard setback of 29ft.
3. **Sec. 1405-07 Variance - APPROVE** – The required rear yard setback is 20ft. A variance of 6.6ft is required to permit a rear yard setback of 13.4ft.
4. **Sec. 1405-07 Variance - APPROVE** – The maximum permitted height is 35ft. A variance of 4ft is required to permit a height of 39ft at the rear of the building.

### **Findings:**

1. The proposal adequately balances the desire of the Hyde Park Business District Urban Design Plan for additional housing units around the perimeter of the Business District, and the need to harmonize with surrounding low-density residential and mixed uses.
2. The demolition proposed is for a building which does not significantly contribute to the physical character and economic vitality of the district.
3. The demolition of the building will facilitate the construction of a new building that will contribute to the physical character and economic vitality of the district.
4. The new building is compatible with its surroundings, architectural style, bulk, shape, massing, scale, form, and the space between buildings is consistent with the area and in harmony with neighboring buildings.
5. The proposed building design is compatible with the Urban Design Overlay and meets the intent of the city zoning code requirements.
6. The proposal does not appear to have any adverse impacts on nearby properties.

**BEFORE THE ZONING BOARD OF APPEALS  
CITY OF CINCINNATI**

**In re: 2739 Observatory Avenue,                   : Case No. Z-4076-2023**  
**Cincinnati, Ohio 45208                         :**

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**BRIEF OF PARTIES OF RECORD MATTHEW WALSH, SARA CHESTER,  
DENNIS OKIN, SUSAN OKIN, JAMES BROWN, MARY VERTUCA,  
MATTHEW BERLAGE, SHARON BERLAGE, AND JEFFREY MCSHERRY  
IN OPPOSITION TO APPLICATION FOR ZONING RELIEF**

---

Sean S. Suder (0078535)  
J.P. Burleigh (0101560)  
SUDER, LLC  
455 Delta Avenue, Suite 203  
Cincinnati, Ohio 45226  
513-694-7500  
[sean@ssuder.com](mailto:sean@ssuder.com)  
[jp@ssuder.com](mailto:jp@ssuder.com)  
*Counsel for Parties of Record Matthew Walsh,  
Sara Chester, Dennis Okin, Susan Okin,  
James Brown, Mary Vertuca, Matthew Berlage,  
Sharon Berlage, and Jeffrey McSherry*

Betsy Emmert (0098982)  
Mike Huber (0101582)  
Martine Dunn (0030146)  
DINSMORE & SHOHL LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202  
[betsy.emmert@dinsmore.com](mailto:betsy.emmert@dinsmore.com)  
[michael.huber@dinsmore.com](mailto:michael.huber@dinsmore.com)  
[marty.dunn@dinsmore.com](mailto:marty.dunn@dinsmore.com)  
*Counsel for Applicant 2739 Observatory LLC*



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Section 1421-21(a) – page 13

Section 1445-15 – pages 14-17

### **Caselaw**

*Barensfeld v. Coventry Township Bd. of Zoning Appeals*, 9th Dist. Summit C.A. No. 17308, 1996 Ohio App. LEXIS 98 (Jan. 17, 1996) – page 15

*Barry v. City of Bay Vill.*, 8th Dist. Cuyahoga No. 104999, 2017-Ohio-7244, ¶ 24 (Aug. 17, 2017) – page 17

*Duncan v. Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692 (1986) – page 15

*ProTerra, Inc. v. City of Cleveland Bd. of Zoning Appeals*, 2020-Ohio-6739, 164 N.E.3d 1086, (8th Dist.) – page 15

*Ketchel v. South Russell Planning Commn.*, 11th Dist. Geauga No. 1333, 1987 Ohio App. LEXIS 6370 (Mar. 31, 1987) – page 16

## **I. INTRODUCTION**

2739 Observatory LLC (the “Applicant”) is seeking to totally transform the corner of Michigan and Observatory Avenues in Hyde Park by demolishing a structure of a single-family residential scale and replacing it with an approximately 11,000 square foot multi-unit residential building. While new housing is generally positive for the City of Cincinnati, the scale, massing, height, and situation of the proposed building are not compatible with the existing development pattern at the subject property, 2739 Observatory Avenue, Cincinnati, Ohio 45208 (the “Property”), or on surrounding properties. In fact, the Applicant is seeking approval for a development that is 129% taller than the existing structure, has 267% more building area than the existing structure, is 38% closer to the adjacent single-family residence than the existing structure, and is generally significantly more massive and bulkier than any other residential uses in its immediate vicinity, including a 14-unit apartment building two parcels to the east.

The Applicant has asked the Zoning Board of Appeals (the “Board”) for a plethora of relief from the literal application of the Cincinnati Zoning Code (the “Zoning Code”) to accommodate a building that is simply too massive and bulky for the lot and is incompatible with the scale of surrounding development. They do so without having engaged with surrounding property owners of the neighborhood in any meaningful way, as explained in the Motion for Continuance filed on even date herewith. For this reason and for all the reasons contained in this brief, the following parties of record (collectively, the “Concerned Neighbors”) respectfully ask the Board to deny the application as presented:

1. Matthew Walsh and Sara Chester, who own the real property located at 1348 Michigan Avenue, Cincinnati, Ohio 45208;

2. Dennis Okin and Susan Okin, who own the real property located at 1344 Michigan Avenue, Cincinnati, Ohio 45208;
3. James Brown and Mary Vertuca, who own the real property located at 1347 Michigan Avenue, Cincinnati Ohio 45208;
4. Matthew Berlage and Sharon Berlage, who own the real property located at 1339 Michigan Avenue, Cincinnati, Ohio 45208; and
5. Jeffrey McSherry, who owns the real property located at 1342 Michigan Avenue, Cincinnati, Ohio 45208.

To be clear, the Concerned Neighbors do not oppose the use of the Property for multi-unit residential purposes. But the proposed new construction would *double* the height and *triple* the building area of the structure on the Property—a disproportionate increase in scale, massing, and height that would seriously harm the single-family scale and development pattern of Michigan Avenue south of Observatory Avenue and impair the Concerned Citizens’ property values. Further, there appears that there will be no public benefit in approving the requested approvals and relief. Simply put, the Applicant has failed to meet its burden in proving that it is entitled to any of the approvals and relief requested.

## II. ARGUMENT

### A. **The Applicant has not satisfied the requirements under Section 1437-09(i) of the Zoning Code for demolition in an Urban Design Overlay District.**

Demolition of existing buildings is prohibited in an Urban Design Overlay District unless the applicant can satisfy one of the two standards outlined in Section 1437-09(i) of the Zoning Code. Because the Applicant has not made even a colorable attempt to satisfy either standard, the Board has no authority to authorize demolition of the existing building on the Property.

On page 4 of its letter in support of the application (the “Emmert Letter”), the Applicant states clearly that it is seeking demolition approval under the second standard, namely, that “demolition of the building will facilitate the construction of a new building or the establishment of a use that will contribute to the physical character and economic vitality of the district . . .”<sup>1</sup> But the Applicant cannot satisfy the criteria for this standard, which reads on to require evidence that the owner has:

- (i) obtained final approval to construct a new building or change the use of property pursuant to the requirements of subsection (h) above;
- (ii) obtained all building permit approvals necessary to commence the new construction or effect the change in use; and
- (iii) certified via affidavit or sworn testimony as to his or her intent and capacity to diligently pursue the construction of the new building or change in use if demolition of the building is approved.<sup>2</sup>

None of these requirements have been met. The Applicant has not obtained final approval for construction of the proposed building, has not obtained building permits, and has not submitted a sworn affidavit of intent to diligently pursue construction. For these reasons, the Applicant’s request for demolition approval is not yet ripe, and the Board is without authority to authorize demolition before the Applicant has met the above requirements.

Further, the Board cannot authorize demolition under the first standard of 1437-09(i) either. For one thing, the Applicant did not request demolition under that standard, which only applies when “[t]he [existing] building does not contribute to the physical character and economic vitality of the district . . .”<sup>3</sup> The Applicant did not cite to this standard anywhere in its application.<sup>4</sup> And although the Applicant claims that the Department of Planning & Engagement considers the

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<sup>1</sup> Emmert Letter at 4 (quoting Zoning Code § 1437-09(i)).

<sup>2</sup> Zoning Code § 1437-09(i).

<sup>3</sup> *Id.*

<sup>4</sup> Emmert Letter at 4.

existing building to be non-contributing, this cursory statement does not satisfy the fact-intensive inquiry required under the first standard of 1437-09(i). Whether a building contributes to the physical character and economic vitality of the district “is determined by weighing the following factors,” none of which the Applicant addresses in any way:

- (i) whether the building is identified as a contributing building or noncontributing building by the applicable urban design plan or other applicable community plans approved by City Council;
- (ii) whether the building is recommended for demolition by the applicable urban design plan or other applicable community plans approved by City Council;
- (iii) whether the building's architectural style, bulk, shape, massing, scale, form, and setbacks are consistent with the predominant characteristics of the district;
- (iv) whether the building is iconic or specially associated with the district;
- (v) whether the demolition of the building will negatively impact the district streetscape; and
- (vi) whether the building is obsolete, damaged, in a state of disrepair, dilapidated, or unsanitary, and whether its condition was caused by the owner or his or her predecessors through deliberate action or willful neglect.

Without any argument or evidence from the Applicant to address the above factors, the Board is likewise without authority to authorize demolition under the first standard of Section 1437-09(i).

For these reasons, the Applicant has failed to make even a *prime facie* case for demolition, and the Board must therefore reject the demolition request out of hand.

**B. The Applicant’s proposed new construction is incompatible with the neighborhood, in violation of Section 1437-09(h).**

New construction is not permitted in Urban Design Overlay Districts unless the proposed design is compatible with the neighborhood. Section 1437-09(h) states quite clearly:

- N1. New buildings shall be compatible with their surroundings. Architectural style, bulk, shape, massing, scale and form of new buildings and the space between and around buildings shall be

consistent with the area, and should be in harmony with neighboring buildings.

The Applicant has designed a high-end looking building. The problem is the size: the development, in its current form, is entirely too large in its bulk, massing, and scale compared to surrounding structures. Consider the below tables, using data from Google Maps and CAGIS, which compare the proposed structure to existing structure on the Property and three other adjacent buildings.

<b>Dimension</b>	<b>Existing Structure – 2739 Observatory</b>	<b>Adjacent Single-Family Structure – 2741 Observatory</b>	<b>Adjacent Apartments (14 units) – 2745 Observatory</b>	<b>Adjacent Single-Family Structure – 1348 Michigan</b>	<b>Average of Existing Structures</b>	<b>Proposed Structure (3 units) – 2739 Observatory</b>
<b>Height (ft.)</b>	17	28	24	28	24.25	39
<b>Front Yard (ft.)</b>	36	35	32	32	33.75	29
<b>Side Yard (ft.)</b>	3	12	12	21	12	3
<b>Rear Yard (ft.)</b>	21.6	67.5	35	63	46.775	13.4
<b>Building Area (sq. ft.)</b>	3,000	2,082	8,500	2,780	4,090.50	11,000

<b>Dimension</b>	<b>% Change from Existing Structure at 2739 Observatory</b>	<b>% Change from Average of Existing Structures</b>
<b>Height (ft.)</b>	129%	38%
<b>Front Yard (ft.)</b>	-19%	-16.38%
<b>Side Yard (ft.)</b>	0%	-300%
<b>Rear Yard (ft.)</b>	-38%	-249.07%
<b>Building Area (sq. ft.)</b>	267%	63%

The numbers speak for themselves. The Applicant has asked the Board to approve a proposed development that would double the height and triple the building area on the Property.

If approved, the development will tower over the adjacent residences by over ten feet. The largest building on the block is also a multifamily development—the 14-unit structure at 2456 Observatory. But even that building is not nearly as tall or as massive as the 3-unit development that the Applicant has proposed. And in addition to being taller and larger than any adjacent residential building, the proposed development would also feature the smallest rear and side yards in the vicinity—pushing this massive development far too close to abutting properties and structures.

The incompatibility of the proposed development is most obvious with respect to 1348 Michigan, owned by Concerned Neighbors Matt Walsh and Sara Chester. The Applicant proposes to push the development up just 13.4 feet away from the lot line with 1348 Michigan, creating a miniscule rear yard that is unprecedented in the surrounding neighborhood. And of course, in this tiny rear yard is where all four of the development’s air conditioning condensers would go, just feet away from the 148 Michigan property.

The Applicant likely realizes just how absurd its requests are, which would explain why the application omits any meaningful analysis of compatibility with the neighborhood. The Applicant merely provides an unsubstantiated conclusory statement that “[t]he design of the new construction is compatible with its surrounding area [and] the proposed project will also be compatible with its surroundings in terms of scale,” without offering any specific arguments or evidence support these conclusory assertions.<sup>5</sup>

The substantial value of the Concerned Neighbors’ property lies in the largely single-family character of Michigan Avenue south of Observatory Avenue, a residential street marked by

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<sup>5</sup> Emmert Letter at 4.



buildings with two full stories plus a third-floor “attic.” See, for example, the below picture from Google Street View of the homes at 1344 to 1342 Michigan Avenue.



The Concerned Citizens bought property on Michigan Avenue in reliance on the overall character remaining the same—and this proposed development would disrupt that character by cramming an oversized building into a lot where it simply should not fit. Such a massively disproportionate design would sabotage the overall character of the street and the Concerned Citizens’ property values which depend on that character.

Section 1437-09(i) clearly speaks of compatibility not just in terms of architectural style but also in relation to bulk, massing, and scale. Regardless of the materials the Applicant proposes, the overall size and spatial configuration of the development would be grossly out of character with the neighborhood. As evidenced by the significant administrative relief that the Applicant needs in order to build the proposed development, this is not a project that the Zoning Code anticipates for the Property. Because the design is wrong for the Property and the surrounding neighborhood, the Applicant’s request for new construction does not conform to Section 1437-09(h) and must be denied.

**C. Administrative relief from the Zoning Code is not in the public interest under Section 1445-13 of the Zoning Code.**

Pursuant to Section 1445-13, no variance or special exception may be granted absent a finding that “the proposal conforms with all applicable laws, ordinances and regulations and is in the public interest.” In analyzing whether a proposal is in the public interest, several factors must be considered, which here weigh heavily against the application. The text of each factor is reproduced below for convenience.

- (a) *Zoning.* The proposed work conforms to the underlying zone district regulations and is in harmony with the general purposes and intent of the Cincinnati Zoning Code or the Land Development Code, as applicable.

Two of the purposes of the Zoning Code are to “[p]reserve the character and quality of residential neighborhoods” and to “[f]oster convenient, harmonious, and workable relationships among land uses.”<sup>6</sup> As already explained, the proposed development would disrupt the character of the neighborhood and be disharmonious with adjacent residences, particularly 1348 Michigan.

- (b) *Guidelines.* The proposed work conforms to any guidelines adopted or approved by Council for the district in which the proposed work is located.

As there are no applicable guidelines for the Property, this factor is not applicable and cannot support a finding that the application is in the public interest.

- (c) *Plans.* The proposed work conforms to a comprehensive plan, any applicable urban design or other plan officially adopted by Council, and any applicable community plan approved by the City Planning Commission.

A core goal of the Hyde Park Square Neighborhood Business District Urban Design Plan (the “Plan”) “is to “maintain a residential architectural character in the areas immediately adjacent to the business district.”<sup>7</sup> The Plan anticipates that some of this transition area would be used

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<sup>6</sup> Zoning Code § 1400-03(b)-(c).

<sup>7</sup> *Hyde Park Square Neighborhood Business District Urban Design Plan*, CITY OF CINCINNATI (Oct. 1984), <https://www.cincinnati-oh.gov/sites/planning/assets/File/Hyde%20Park%20Square%20NBD%201984.pdf>, at 6.

interchangeably for either residences or office space—as at the Property in question, where the existing building is residential in character but used for office space.<sup>8</sup> But the Plan emphasizes that “[a]s the properties convert the use will change, but most will remain, architecturally, speaking, essentially the same.”<sup>9</sup> The Plan even lists as a Housing goal, “Maintain architectural character of residential buildings now used for office purposes.”<sup>10</sup> The clear vision of the plan is that, even if the use of these buildings change, the overall feel of the buildings would remain constant to passersby.

As explained above, the architectural character of the proposed new construction is entirely incompatible with the neighborhood. Doubling the height and tripling the building area of the Property does not constitute maintaining the architectural character, no matter what materials and other design choices the architect make. The sheer size of this proposed development would disrupt the largely single-family character of the block, and is therefore in conflict with the Plan’s goal of preserving the architectural character.

Further, although the Concerned Neighbors do not oppose the use of the Property for townhomes, the Plan specifically calls for multi-family development “north of the Square” and states that “there are no immediate plans for multi-family development east or west.”<sup>11</sup> Thus, even if a 3-unit development is appropriate for the Property in some form, the Applicant cannot claim that the proposed development conforms to the Plan. To the extent that the Plan speaks to development at the Property, the clear intent is that the overall architectural character remain the same, which simply will not occur if the Applicant is permitted to replace the existing structure with one several times taller and more massive.

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<sup>8</sup> *Id.* at 6-7.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 27.

<sup>11</sup> *Id.* at 14.

- (d) *Traffic.* Streets or other means of access to the proposed development are suitable and adequate to carry anticipated traffic and will not overload the adjacent streets and the internal circulation system is properly designed.

Michigan Avenue is a major artery leading to and from Hyde Park Square, and the Concerned Neighbors already face significant competition for the on-street parking spaces adjacent to their homes. Cutting up the Property with driveways along Michigan Avenue will reduce the supply of off-street parking, thus making it even more difficult for the Concerned Neighbors and their guests to park on Michigan Avenue.

- (e) *Buffering.* Appropriate buffering is provided to protect adjacent uses or properties from light, noise and visual impacts.
- (f) *Landscaping.* Landscaping meets the requirements of Chapter 1423, Landscaping and Buffer Yards.

The most severe light, noise, and visual impacts will fall on Matt Walsh and Sara Chester, who reside at 1348 Michigan Avenue, directly abutting the Property to the south. Although the application calls for “10’ landscape buffer” along the lot line between the Property and 1348 Michigan, the details of this buffer are absent. Although landscaping plans are usually not submitted until a developer applies for building permits, here the details of the landscape buffer are inextricably linked to the public interest.

The application calls for all four of the air conditioning condensers to be crammed between the buffer and the wall of Unit C—as close to 1348 Michigan as possible. Without a detailed plan for how the Applicant will minimize the noise of these units, the Board must assume that Walsh and Chester will be adversely affected by such noise. Further, without a detailed plan to screen the visual impact of the massive proposed development, the Board must assume that the new construction will visually dwarf the building at 1348 Michigan by over ten feet. These adverse impacts will have a deleterious effect on Walsh and Chester’s use and enjoyment of their property

and threaten to decrease their property value. The Board cannot conclude that the application is in the public interest in the face of such adverse impacts to adjacent property owners.

- (g) *Hours of Operation.* Operating hours are compatible with adjacent land uses.

As the proposed development is a residential use, this factor is not applicable and cannot support a finding that the application is in the public interest.

- (h) *Neighborhood Compatibility.* The proposed work is compatible with the predominant or prevailing land use, building and structure patterns of the neighborhood surrounding the proposed development and will not have a material net cumulative adverse impact on the neighborhood.

For all the reasons already explained, the proposed development is grossly out of scale for the neighborhood and poses significant adverse impacts.

- (i) *Proposed Zoning Amendments.* The proposed work is consistent with any proposed amendment to the zoning code or the Land Development Code then under consideration by the City Planning Commission or Council.

The Applicant has identified no proposed zoning amendment that would affect the Property. Thus, this factor is not applicable and cannot support a finding that the application is in the public interest.

- (j) *Adverse Effects.* Any adverse effect on the access to the property by fire, police, or other public services; access to light and air from adjoining properties; traffic conditions; or the development, usefulness or value of neighboring land and buildings.

For all the reasons already explained, the proposed development is grossly out of scale for the neighborhood and poses significant adverse impacts.

- (k) *Blight.* The elimination or avoidance of blight.

Because the current building is not blighted in any way, nor does the Applicant allege as much. Thus, this factor is not applicable and cannot support a finding that the application is in the public interest.

- (l) *Economic Benefits.* The promotion of the Cincinnati economy.
- (m) *Job Creation.* The creation of jobs both permanently and during construction.

While the development of any property creates at least some temporary job opportunity, such short-term benefit is not a significant contribution to the Cincinnati economy. And as the end product here is residential, not commercial, the finished development will likely have no net positive effect on the City's overall economic health. If anything, taking valuable suburban office space offline, at a time when demand for office space outside of the Central Business District is growing, would negatively affect the City's economy. Again, the Concerned Citizens do not oppose a 3-unit development in principle; but, for the above reasons, the Board cannot conclude that such a development is in the public interest based on the possibility of economic benefits or job creation.

- (n) *Tax Valuation.* Any increase in the real property tax duplicate.
- (o) *Private Benefits.* The economic and other private benefits to the owner or applicant.

While the Applicant states that it “anticipates a major increase in the real property tax duplicate,” this is not guaranteed.<sup>12</sup> What is indisputable is that the development, if approved, “will create private benefits to the owner.”<sup>13</sup> But nearly any real estate development will enrich the property owner and provide the potential for increased tax revenue. These factors alone—in the fact of every other factor weighing against the application—cannot support a finding that the development is in the public interest.

- (p) *Public Benefits.* The public peace, health, safety or general welfare.

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<sup>12</sup> Emmert Letter at 11.

<sup>13</sup> *Id.*

In the face of modest private gain by the Applicant, the Board must consider the significant adverse impacts to the broader community. The public welfare is not served by cramming a massive development into a lot and a neighborhood that will not accommodate it, merely for the purpose of enriching the Applicant and potentially gaining tax revenue for the City.

**D. The Applicant has not satisfied the standards in Section 1445-19 of the Zoning Code for a special exception for the front yard setback.**

The Applicant has requested a special exception for a front yard setback of just 29 feet, even though the application of Section 1421-21(a) requires a front yard setback of 33.7 feet based on the average front yard setbacks of properties on the same block face sharing the same zoning classification. Section 1445-19 provides four standards, each of which must be satisfied before a special exception may be granted. Because the Applicant has satisfied none of them, the Board must deny the special exception.

- (a) *Compliance With Code and District Purposes.* The proposed development will be consistent with the purposes of this Code or the Land Development Code, as applicable, and the district where the use is located.

As already explained, a core purpose of the Hyde Park Square Neighborhood Business District, as expressed in its Plan, is to preserve the architectural character of the buildings in the transition area between Hyde Park Square and the predominantly single-family residential areas surrounding the square. The proposed development's scale and massing, which are so disproportionate for the Property and the neighborhood, are not consistent with this goal. The fact that the *use* of the Property is permitted by right means nothing, where the actual structure in which the use will be carried out is grossly incompatible with the neighborhood.

- (b) *No Substantial Impairment of Property Value.* The proposed development will not substantially diminish or impair the value of property within the neighborhood in which it is located.

By disrupting the character of Michigan Avenue south of Observatory, the proposed development will also undermine the property values for nearby owners who bought into the street in reliance on the Zoning Code's front yard setback restrictions.

- (c) *No Undue Adverse Impact.* The proposed development will not have an adverse effect on the character of the area or the public health, safety and general welfare. The proposed special exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accord with applicable district regulations.

As already stated, the proposed development poses significant adverse impacts to the overall character of the neighborhood, to neighboring property values, and to nearby residents' use and enjoyment of their property.

- (d) *Compliance With Other Standards.* The proposed development complies with all other standards imposed on it by this Code or the Land Development Code, as applicable.

As the Applicant has not satisfied the requirements for new construction or demolition in an Urban Design Overlay District, the Board cannot grant the special exception.

**E. The Applicant has not satisfied the standards under Ohio law and in Section 1445-15 of the Zoning Code for a variance for either the rear yard setback or height.**

The Applicant has asked this Board for variances to allow a height of 39 feet and a rear yard setback of 13.4 feet—a request which, if granted, would allow the proposed development to tower 11 feet over the adjacent building at 1348 Michigan with as minimal room as possible between the two buildings. Although the Applicant cites to the standards in the Zoning Code for the requested variances, its analysis of these factors is lacking: under Ohio law and Section 1445-15 of the Zoning Code, the Applicant is not entitled to either variance.

Section 1445-15(a) allows for a variance if the Applicant can prove the following:

Owing to special circumstances or conditions pertaining to a specific piece of property, the strict application of the provisions or requirements of this Code or the



Land Development Code, as applicable, are unreasonable and would result in practical difficulties.<sup>14</sup>

“Practical difficulties” is a term of art in Ohio zoning law, referring to the minimum showing that an applicant must make in order to justify administrative relief from a zoning regulation’s area requirement, such as height or setback.<sup>15</sup> In assessing whether an applicant has proven practical difficulties, courts use the balancing test from *Duncan v. Middlefield*.<sup>16</sup> The so-called “*Duncan* Factors” include the following considerations:

- (1) whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (2) whether the variance is substantial;
- (3) whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (4) whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
- (5) whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) whether the property owner's predicament feasibly can be obviated through some method other than a variance;
- (7) whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.<sup>17</sup>

The Applicant failed to even mention *Duncan*, let alone analyze the *Duncan* Factors.<sup>18</sup> On its own, this is reason to deny the variances, as the Applicant has failed to analyze the requirements under Ohio law for an area variance.<sup>19</sup> But this Board should also deny the variances because, on the merits, fair application of the *Duncan* Factors weighs against the Applicant.

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<sup>14</sup> Zoning Code 1445-15(a).

<sup>15</sup> *Duncan v. Middlefield*, 23 Ohio St.3d 83, 85, 491 N.E.2d 692 (1986).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 86.

<sup>18</sup> See generally Emmert Letter (failing to cite *Duncan* at any point).

<sup>19</sup> *Barensfeld v. Coventry Township Bd. of Zoning Appeals*, 9th Dist. Summit C.A. No. 17308, 1996 Ohio App. LEXIS 98, \*2 (Jan. 17, 1996) (“The BZA appealed to this court, which reversed and remanded because Barensfeld had requested an area variance and the common pleas court failed to consider the factors applicable to area variances enumerated in the syllabus of *Duncan v. Middlefield*.”); *ProTerra, Inc. v. City of Cleveland Bd. of Zoning Appeals*, 2020-Ohio-6739, 164 N.E.3d 1086, ¶¶ 36 -37 (8th Dist.).

*(1) whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;*

The Property is already in use as office space, and the Applicant has offered no evidence or argument that this use does not yield a reasonable return. Instead, the Applicant spuriously argues that it should have the right “to develop the Property as a high-end housing option that is desirable and aligns with the surrounding residential offerings.”<sup>20</sup> This is insufficient as a matter of law, as “a higher profit is not the test of a reasonable return” under *Duncan*.<sup>21</sup>

*(2) whether the variance is substantial;*

The variances will allow the Applicant to replace the existing building with a new development that is twice as high and three times as massive. These are substantial variances, which cannot be granted based on the Applicant’s mere hope to make a higher return on the Property.

*(3) whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;*

As already stated, the proposed development is not compatible with the neighborhood. If approved, it would substantially alter the character of the neighborhood and impair the value of surrounding property.

*(5) whether the property owner purchased the property with knowledge of the zoning restriction;*

The Applicant knew, or should have known through publicly available information, that the Property is subject to the height and setback requirements in the Zoning Code. There is no change in circumstances here to justify a deviation from these requirements for the Applicant.

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<sup>20</sup> Emmert Letter at 8.

<sup>21</sup> *Ketchel v. South Russell Planning Commn.*, 11th Dist. Geauga No. 1333, \*3, 1987 Ohio App. LEXIS 6370 (Mar. 31, 1987).

*(6) whether the property owner's predicament feasibly can be obviated through some method other than a variance;*

It is not at all clear that the Applicant has a predicament at all: the Property is currently in use. The only difficulty seems to be that the Applicant feels that a 3-unit townhome development would be more profitable, but that does not rise to the level of practical difficulty.

*(7) whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.*<sup>22</sup>

The Zoning Code has height and setback requirements for good reasons, including to maintain aesthetic consistency across a block face, to protect neighborhood character and property values, and to allow for adequate light and air circulation. These valid purposes cannot be undermined by the one property owner's desire for more buildable area. As one court has held, "It would be going against the spirit of the reason for the [] setback to allow more because somebody wants more."<sup>23</sup>

For all these reasons, the Applicant cannot satisfy the practical difficulties test under Section 1445-15(a), which incorporates the *Duncan* Factors by reference.

And it is even more obvious that the Applicant cannot satisfy Section 1445-15(b), which only applies if "[t]he variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same district or vicinity."<sup>24</sup> The only substantial right that the Applicant can articulate is "the right to develop [] property in a manner that will result in a reasonable rate of return on investment."<sup>25</sup> The Applicant cites no legal authority for this purported right, likely because it does not exist under the law.<sup>26</sup>

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<sup>22</sup> *Id.* at 86.

<sup>23</sup> *Barry v. City of Bay Vill.*, 8th Dist. Cuyahoga No. 104999, 2017-Ohio-7244, ¶ 24 (Aug. 17, 2017).

<sup>24</sup> Zoning Code § 1445-15(b).

<sup>25</sup> Emmert Letter at 8.

<sup>26</sup> *Id.*

And again, the Applicant has offered no evidence the current use of the Property for office space does not yield a reasonable return.

Thus, the Board should deny the variance requests because Applicant has failed to meet its burden.

### **III. CONCLUSION**

For all reasons contained herein, the Board is without authority to grant any of the approvals and relief requested by the Applicant. The Applicant cannot meet the requirements of Section 1437-09 for new construction or demolition. None of the requested relief is in the public interest. And the Applicant has failed to satisfy the standards for special exceptions and variances. The Board must therefore deny the application in as a whole.

Respectfully submitted,



Sean S. Suder (0078535)  
J.P. Burleigh (0101560)  
SUDER, LLC  
455 Delta Avenue, Suite 203  
Cincinnati, Ohio 45226  
513-694-7500

[sean@ssuder.com](mailto:sean@ssuder.com)

[jp@ssuder.com](mailto:jp@ssuder.com)

*Counsel for Parties of Record  
Matthew Walsh, Sara Chester,  
Dennis Okin, Susan Okin,  
James Brown, Mary Vertuca,  
Matthew Berlage, Sharon Berlage,  
and Jeffrey McSherry*

### **CERTIFICATE OF SERVICE**

I hereby certify that the above Brief of Parties of Record Matthew Walsh, Sara Chester, Dennis Okin, Susan Okin, James Brown, Mary Vertuca, Matthew Berlage, Sharon Berlage, And Jeffrey McSherry in Opposition To Application For Zoning Relief was served upon the following persons by email service, this 9th day of February, 2023:

Betsy Emmert (0098982)  
Mike Huber (0101582)  
Martiné Dunn (0030146)  
DINSMORE & SHOHL LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202  
[betsy.emmert@dinsmore.com](mailto:betsy.emmert@dinsmore.com)  
[michael.huber@dinsmore.com](mailto:michael.huber@dinsmore.com)  
[marty.dunn@dinsmore.com](mailto:marty.dunn@dinsmore.com)  
*Counsel for Applicant 2739 Observatory LLC*



Sean S. Suder (0078535)

To: Cincinnati Zoning Board of Appeals

Subject: 2739 Observatory

Date: February 9, 2023

This letter is to clarify the activities and position of the Hyde Park Neighborhood Council (HPNC) Zoning Committee on 2739 Observatory as of February 9, 2023.

- First HPNC Zoning Committee meeting with Peter Horton and Michael Wentz November 9 at RWA
- Second HPNC Zoning Committee meeting with Peter and James Smith December 6 at RWA. The Applicant was strongly encouraged to meet with neighbors before presenting meeting with HPNC Trustees at
- The Applicants presentation before HPNC Trustees was initially scheduled for the regular monthly meeting on January 10 but the invitation was withdrawn because the Applicant had not yet met with neighbors.
- Neighbor meeting with Applicants January 18 (HPNC Zoning Committee did not participate)
- Zoning Committee meeting with six neighbors January 31 at RWA.
- The Applicants presentation before HPNC Trustees is currently scheduled for the regular monthly meeting on February 14.
- The Zoning Committee has not made a recommendation to HPNC Trustees supporting or opposing the four items of relief requested. The Zoning Committee may make a recommendation before or at the meeting on February 14. The HPNC Trustees may also vote and make a recommendation to Zoning Board of Appeals on one or all of the four items at that meeting.

The January 9 letter from Dinsmore attorney Betsy Emmert has two passages and three references to HPNC Zoning Committee and HPNC. There are two references that are technically correct, but are worded in a manner that could be easily misinterpreted. The third reference is incorrect.

Page 1 (Reference 1): "The Applicant **has also worked collaboratively** with the Hyde Park Neighborhood Council Zoning Committee to receive their support for the relief required for the following sections of the Zoning Code of the City of Cincinnati (the "Code"):"



*Comment #1. This says "has also worked" .... "to receive" but does NOT say received. So this is technically correct, but a reasonable person reading quickly might read this and assume the Zoning Committee has actually provided their support. It is unclear what "Zoning Committee support" would mean either since it is the vote of the HPNC Trustees that carries meaning in City processes.*

Page 3 (Ref 2 and 3): "The Applicant **has collaborated** with the Hyde Park Neighborhood Council ("HPNC") to develop the Project in manner that is harmonious with the surrounding area and the Code. The Applicant has met with the HPNC on three separate occasions, including two meetings with the zoning committee and **one meeting with the council as a whole**. These efforts resulted in changes to the design reflecting the recommendations of the zoning committee and broader community."

*Comment #2. This says "has collaborated" .... "to develop". Again, this is technically correct, but a reasonable person reading quickly might read more into this than they should. The Zoning Committee has met with the Applicants representatives on two occasions, viewed their presentation, identified missing information, and provided constructive criticism and recommendations. There was no endorsement of the project by the Zoning Committee because as of the last meeting December 6, the abutting and immediate neighbors were unaware of the project.*

*Comment #3. The next to last sentence says they met with the "council as a whole". We considered having them to come to January meeting, but that did not happen.*

With regard to Relief Item 1 – Urban Design Review for demolition, The HPNC Zoning Committee met multiple times in Spring of 2022 and rated each property address in UD#4 and UD#11 (using Auditors ownership records) in three categories;

- 1) Siting (e.g. setback),
- 2) Form (e.g. height, width & mass) and
- 3) Character (e.g. architectural style, interest, appeal).

There are three (CN-P, OL and RMX) zoning districts in the Hyde Park square UD#4 overlay. 2739 Observatory is located in a RMX district. It was determined to be properly sited, with its form appropriate considering RMX development regulations and rated "contributing" to the UD overlay. We also rated its bungalow style architecture as "contributing" to the UD overlay.

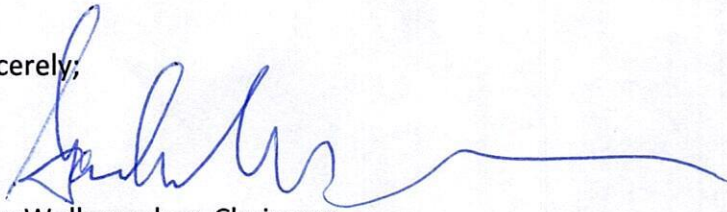
The Zoning Committee recommendations were discussed at the May 10, 2022 meeting of the HPNC Trustees. After discussion, a motion to adopt the Zoning Committee recommendations was passed by the Trustees.

This information was conveyed to Maria Dienger, City Planner, in a May 16, 2022 letter with multiple Excel tables summarizing our work rating all structures in UD#4 or UD#11. To date, we



have had no opportunity to meet with Ms. Dienger or any other City representative to discuss any of our ratings.

Sincerely;

A handwritten signature in blue ink, appearing to read 'Gary Wollenweber', followed by a long horizontal flourish.

Gary Wollenweber, Chairman  
HPNC Zoning Committee



## Attachments for Zoning Issue at **3536 Bayard**



Boundaries  
Based on State Plane Coordinate  
System Ohio South Zone (NAD83).

Vertical Datum:  
Based on 1985/2011 as Established  
by 020717-05 GPS Observations  
Collocated to City of Cincinnati  
Control Monument

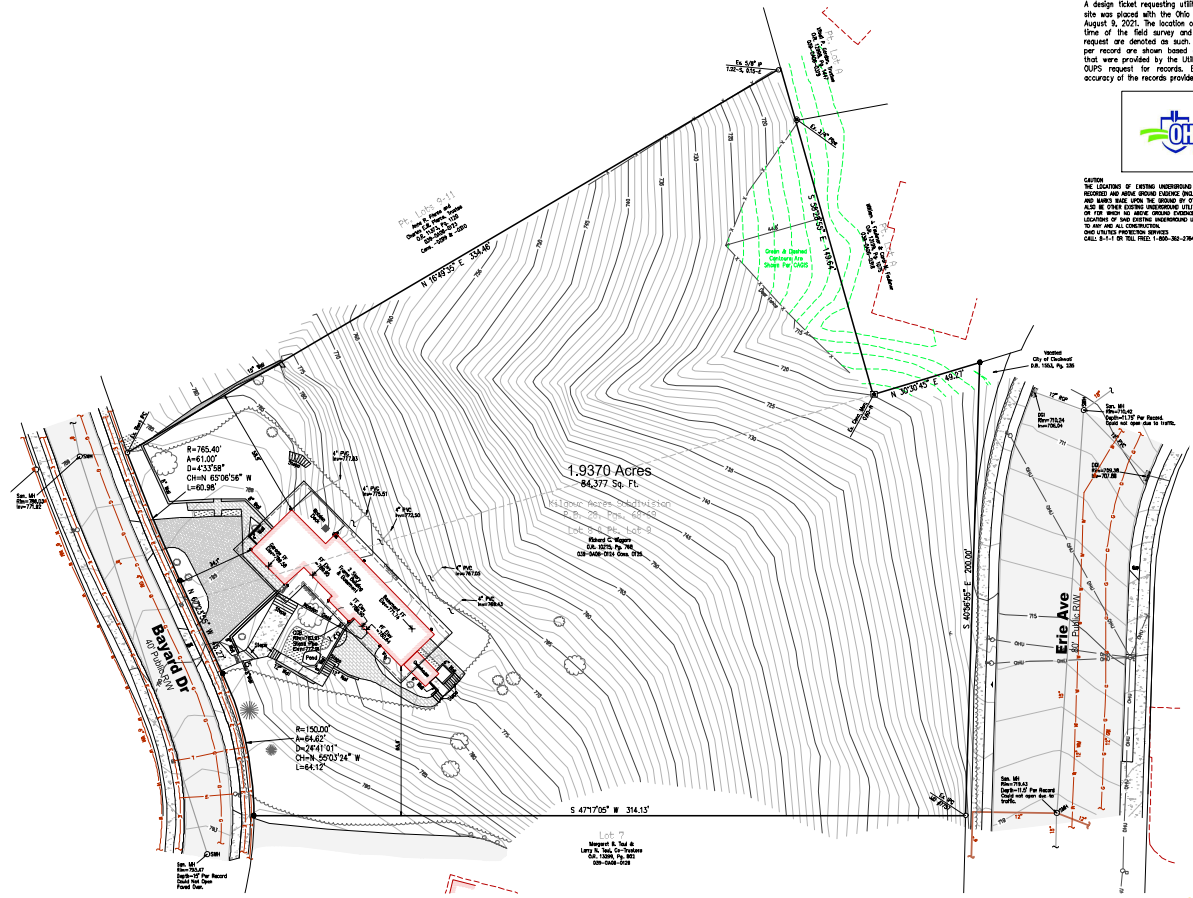
LEGEND

- Power Pole
- Traffic Pole
- Light Pole
- Telephone Box
- Electric Box
- Cable Box
- Gas Valve
- Gas Meter
- Split
- Double Gate Valve
- Catch Basin
- Drainage
- Sanitary Manhole
- Channel
- AT Conditioning Unit
- Sign
- Canter Tree
- Decorative Tree
- Overhead Utilities
- Storm/Drainage Sewer
- Storm/Drainage Sewer Per Record
- Electric Per Record
- Gas Per Record
- Water Per Record
- Telephone Per Record
- Fence
- Gateway
- Building Extents
- Building Extents Per CADS
- Concrete
- Asphalt
- Gravel
- Plaster
- Fluor
- Wall

Survey Reference  
• Survey of Adams, Kentucky, dated August 28, 1885, recorded October 1, 1887  
• Survey of Lake Avenue, Columbus, TN, 1885

\* Details of record as shown herein.

- Monument Legend
- Indicate Existing Concrete Monument
  - Indicate Set 5/8" x 20" Iron Pin and One
  - Indicate Existing Iron Pin
  - Indicate Existing Pipe



A design ticket requesting utility records and field markings for this site was placed with the Ohio Utilities Protection Service (OUPS) on August 8, 2021. The location of markings which were present at the time of the field survey and provided a response to the OUPS request are denoted on such. Underground utilities noted as being per record are shown based on our interpretation of the records that were provided by the Utility Companies who responded to the OUPS request for records. Bending Surveying cannot verify the accuracy of the records provided.



CAUTION  
THE LOCATION OF EXISTING UNDERGROUND UTILITIES SHOWN ON THIS PLAN ARE BASED UPON THE LOCATION AND INFORMATION PROVIDED BY THE UTILITY COMPANIES WHO RESPONDED TO THE OUPS REQUEST. BENDING SURVEYING, INC. HAS CONDUCTED VISUAL SURVEYS OF THE SITE AND HAS NOT CONDUCTED ANY OTHER INVESTIGATION TO VERIFY THE LOCATION OF EXISTING UNDERGROUND UTILITIES. THE LOCATION OF EXISTING UNDERGROUND UTILITIES SHOWN ON THIS PLAN ARE BASED UPON THE LOCATION AND INFORMATION PROVIDED BY THE UTILITY COMPANIES WHO RESPONDED TO THE OUPS REQUEST. BENDING SURVEYING, INC. HAS CONDUCTED VISUAL SURVEYS OF THE SITE AND HAS NOT CONDUCTED ANY OTHER INVESTIGATION TO VERIFY THE LOCATION OF EXISTING UNDERGROUND UTILITIES. THE LOCATION OF EXISTING UNDERGROUND UTILITIES SHOWN ON THIS PLAN ARE BASED UPON THE LOCATION AND INFORMATION PROVIDED BY THE UTILITY COMPANIES WHO RESPONDED TO THE OUPS REQUEST. BENDING SURVEYING, INC. HAS CONDUCTED VISUAL SURVEYS OF THE SITE AND HAS NOT CONDUCTED ANY OTHER INVESTIGATION TO VERIFY THE LOCATION OF EXISTING UNDERGROUND UTILITIES.

OCCUPATION  
(As Shown On Plot)

Topographic Survey  
Evans  
Bayard Dr.  
Section 27 Town 4 F.R. 2  
City of Cincinnati  
Hamilton County, Ohio

AYR GJB 1" = 20'  
08/26/2021 21161  
Project Number

**Bending Surveying**  
GPS Surveying • 3D Laser Scanning  
741 Main Street • Cincinnati, OH 45203 | www.bendingsurveying.com  
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