

CITY OF DELAWARE
BOARD OF ZONING APPEALS
AGENDA

CITY COUNCIL CHAMBERS
1 S. SANDUSKY ST.
7:00 P.M.

REGULAR MEETING

MARCH 8, 2017

1. ROLL CALL
2. APPROVAL of the Motion Summary of the Board of Zoning Appeals meeting held on October 12, 2016, as recorded and transcribed.
3. ELECTION OF OFFICERS
4. REGULAR BUSINESS
 - A. 2017-0270: A request by Mr. Lawrence Ray for approval of a rear yard building setback variance from 40 feet to approximately 22 feet to construct a building addition on approximately 0.15 acres on property zoned R-3 (One-Family Residential District) located at 24 Winbeth Lane.
 - B. 2015-0213: Resolution of the request by Yoav and Schlomo Botach to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.
 - Anticipated Process**
 - a. Staff Presentation
 - b. Commission Action- vote to acknowledge receipt of court order
5. BOARD MEMBER COMMENTS AND DISCUSSION
6. NEXT REGULAR MEETING: April 12, 2017
7. ADJOURNMENT

BOARD OF ZONING APPEALS
MOTION SUMMARY
October 12, 2016

ITEM 1. Roll Call

Chairman Dick called the meeting to order at 7:00 p.m.

Members Present: Beth Fisher, Adam Vaughn, Todd Daughenbauh, Councilman George Hellinger, Vice-Chairman Paul Junk, and Chairman Matt Dick.

Staff Present: Lance Schultz, Zoning Administrator

ITEM 2. Approval of the Motion Summary of the Board of Zoning Appeals meeting held on June 8, 2016, as recorded and transcribed.

Motion: Vice-Chairman Junk moved to approve the Motion Summary for the Board of Zoning Appeals held on June 8, 2016 meeting, seconded by Mr. Vaughn. Motion approved by a 6-0 vote.

ITEM 3. REGULAR BUSINESS

A. 2016-2978: A request by Trimble Insurance for approval of a front yard building setback variance from approximately 20 feet to approximately 4 feet to construct a building addition on 0.314 acres on property zoned B-3 (Community Business District) located at 39 South Liberty Street

Chairman Dick swore in the following participants from the public:

Greg Trimble
39 South Liberty Street
Delaware, Ohio 43015

Kurt Trimble
243 Pennsylvania Avenue
Delaware, Ohio 43015

Mr. Schultz provided information on the proposed site plan and addition to the front of the building. Mr. Schultz discussed support of the project as the owners exhausted all other expansion options and that they have operated a viable and successful business since 1977. Mr. Schultz reviewed the conditions for approval.

APPLICANT:

Greg Trimble
39 South Liberty Street

Delaware, Ohio 43015

Kurt Trimble
243 Pennsylvania Avenue
Delaware, Ohio 43015

Mr. Greg Trimble discussed the growth in the business and staff and need for expansion to provide additional office space, as well as, a conference room.

Mr. Schultz discussed the engineer report regarding pedestrian traffic.

Motion: Ms. Fisher moved to approve application 2016-2978, along with all staff conditions, finding beyond a reasonable doubt that the decision factors for approval of a Variance according to Chapter 1128 of the Planning and Zoning Code are met, seconded by Councilman Hellinger. Motion approved by a 6-0 vote.

ITEM 4. BOARD MEMBER COMMENTS AND DISCUSSION

ITEM 5. NEXT REGULAR MEETING: November 9, 2016

ITEM 6. ADJOURNMENT

Motion: Mr. Daughenbaugh moved to adjourn the Board of Zoning Appeals meeting, seconded by Vice-Chairman Junk. Motion was approved by a 6-0 vote. The Board of Zoning Appeals meeting adjourned at 7:12 p.m.

Matt Dick, Chairman

Elaine McCloskey, Clerk

APPLICANT/OWNER

Lawrence Ray
24 Winbeth Lane
Delaware, Ohio 43015

REQUEST

2017-0270: A request by Mr. Lawrence Ray for approval of a rear yard building setback variance from 40 feet to approximately 22 feet to construct a building addition on approximately 0.15 acres on property zoned R-3 (One-Family Residential District) located at 24 Winbeth Lane.

PROPERTY LOCATION & DESCRIPTION

The property is on the southeast side of Winbeth Lane which is located on the south side of West Central Avenue just east of Elizabeth Street. The zoning of the property is R-3 (Single-Family Residential District) as are all the immediate surrounding properties.

BACKGROUND

The owner recently purchased the house in late 2016 as their retirement home. The owner is proposing two additions. Only one would need a variance. The 8'x24' (192 square feet) bathroom addition to the north side of the building would achieve compliance with the side yard setback of 8 feet. However, the 8' x 19' (152 square feet) kitchen addition to the rear yard would protrude 18 feet into the 40 foot rear yard setback (the addition would be 22 feet from the rear property line). The house as constructed in 1951 is 30 feet from the rear yard setback and apparently was constructed under different zoning setback requirements. Therefore, the house would only protrude 8 feet from the existing house and would be 22 feet from the rear property line. The owner indicated the rear addition would match the existing house in color and materials.

STAFF ANALYSIS

- **REAR YARD VARIANCE:** The R-3 zoning district requires a 40 foot rear yard setback while the owner is proposing a variance to be a minimum 22 feet of the east rear yard setback.
- **VARIANCE REVIEW:** In considering whether or not a Variance shall be granted, the Board of Zoning Appeals is required to consider certain factors to determine if a practical difficulty exists. As listed below, Section 1128.09(c)(1) of the Planning & Zoning Code sets forth these factors. Following each factor in italics is a brief Staff analysis.

1. Whether the granting of the Variance would be in accord with the general purpose and intent of the regulations imposed by this Ordinance and the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare.

The purpose and intent of the R-3 Ordinance is outlined in Section 1134.01 states:

- a) *To regulate the bulk and location of dwellings to obtain proper privacy and useable open spaces for each unit appropriate for the various districts.*
- b) *To regulate the density and distribution of population, avoid congestion, and provide adequate public services.*
- c) *To provide for proper location of institutions and other community facilities so as to increase the general convenience, safety and amenities.*
- d) *To carry out the following specific purposes:*
 - *The R-1, R-2 and R-3 Districts are established to primarily permit the development of low density and medium-low density single-family dwellings with a variety of lot sizes to meet different housing needs and characteristics expected by the residents and to recognize different location and land use characteristics in various parts of the City.*

Approval of the Variance is not in accordance with purpose and intent of the Ordinance and would be considered significant but would not likely be detrimental to the public welfare. However, the existing house was constructed in 1951 when the rear yard setback was 30 feet as currently constructed. The proposed addition would be setback 22 feet from the rear yard setback which is only a 8 foot addition

from the house and would likely not impact the adjacent resident because adjacent to the subject houses rear yard building addition is the deep side yard of the house to the east. In addition, there is a tree line and a grade change of approximately 8-10 feet adjacent to the property to the east.

2. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to non-conforming and inharmonious uses, structures or conditions.

The subject site lot area (0.15 acre or 6,969 square feet) is less than the 0.20 acre or 8,775 square foot minimum lot size in an R-3 district and is considered non-conforming lot (lot of record) and could be interpreted as an irregular lot. This smaller lot size is typical in this neighborhood.

3. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the Variance. Mere loss in value or financial disadvantage to the property owner does not constitute conclusive proof of practical difficulty; there shall be deprivation of beneficial use of land.

The house was constructed in 1951 per the Delaware County Auditor and will continue to be used as such with or without approval of this Variance.

4. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the Variance.

Although the request is not compliant with the rear yard setback requirements in the R-3 zoning district, the character of the neighborhood would not likely be "substantially altered" if the architecture of the new addition is compatible to the existing house which it appears to be and the adjoining property to the east would likely have minimal impact because the subject houses rear yard addition is adjacent to the deep side yard of the house to the east. In addition, there is a tree line and a grade change of approximately 8-10 feet adjacent to the property to the east

5. Whether the Variance would adversely affect the delivery of governmental services such as water, sewer, or trash pickup.

The delivery of governmental services, particularly emergency services, would not be impacted with approval of this Variance.

6. Whether the property owner purchased the property with knowledge of the zoning restrictions. Purchase without knowledge of restrictions in itself is not sufficient proof of practical difficulty.

The owner met with staff prior to purchasing the house and made revisions to their plans to minimize the extent of their additions to limit the variance request.

7. Whether special conditions or circumstances exist as a result of actions of the owner.

It is not likely any special conditions or circumstances occurred because of the actions of the owner.

8. Whether the property owner's predicament feasibly can be obviated through some method other than a Variance.

The owner could not construct an addition to the east without a variance because the subject house is setback 30 feet from the rear property which is located within the current rear yard setback of 40 feet and is considered a legal non-conforming lot (lot of record).

9. Whether there is evidence of Variances granted under similar circumstances.

Staff cannot recall approving a rear yard setback for an addition on a legal non-conforming lot in this part of the City for several years. The situation of this lot and history create a unique circumstance related to this lot.

10. Whether the granting of the Variance is necessary for the reasonable use of the land or building, and the Variance as granted is the minimum Variance that will accomplish that purpose.

The property is currently zoned for a single-family residence and will continue to be used as such with or without approval of this Variance. As a result, a Variance is not necessary for the reasonable use of the land.

11. Whether the proposed Variance would impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety or substantially diminish or impair property values of the adjacent area.

The variance would not likely have an impact on any of the aforementioned issues.

12. Whether the granting of the Variance requested would confer on the applicant any special privilege that is denied by this regulation to other lands, structures or buildings in the same district.

If the Board finds that the standards for approval of a Variance are met then no special privilege is granted.

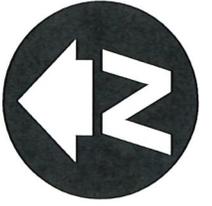
CONCLUSION

Staff would recommend approval of the subject variance if the adjacent residents do not have significant opposition for the following reasons: 1.) The subject site lot area (0.15 acre or 6,969 square feet) is less than the 0.20 acre or 8,775 square foot minimum lot size in an R-3 district and is considered a non-conforming lot (lot of record) and could be interpreted as an irregular lot; 2. The new addition is compatible in material and color with the existing house; 3. The subject addition would likely have minimal impact on the house to the east because the subject houses rear yard addition is adjacent the deep side yard of the house to the east. In addition, there is a tree line and a grade change approximately 8-10 feet adjacent to the property to the east.

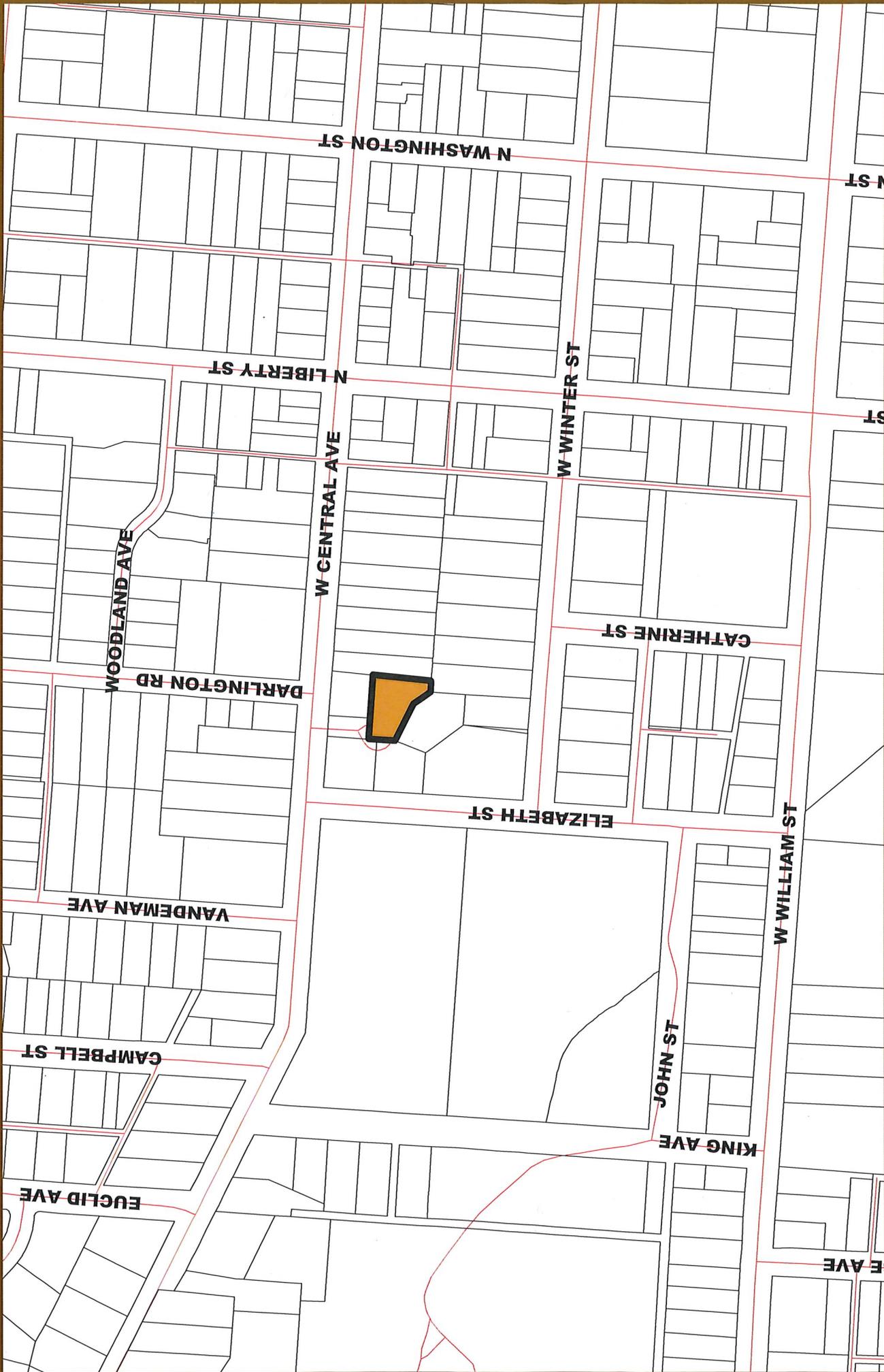
STAFF RECOMMENDATION – VARIANCE (2017-0270)

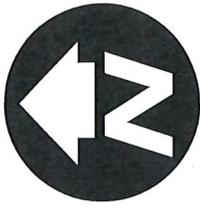
Staff recommends a request by Mr. Lawrence Ray for approval of a rear yard building setback variance from 40 feet to approximately 22 feet to construct a building addition on approximately 0.15 acres on property zoned R-3 (One-Family Residential District) located at 24 Winbeth Lane, with the following conditions that:

1. The proposed rear addition shall be setback a minimum of 22 feet from the rear property line to the east.
2. The house addition shall be compatible in material and color to the existing house.



2017-0270
Building Setback Variance
24 Winbeth Lane
Location Map





2017-0270
Building Setback Variance
24 Winbeth Lane
Aerial (2016)







RE: APPLICATION FOR VARIANCE

DATE: 2/7/17

PROPERTY : 24 WINBETH LANE DEL,OH 43015

TO WHOM IT MAY CONCERN,

WE LIVED IN DELAWARE ,OHIO A FEW YEARS BACK AND HAVE PURCHASED THIS HOME IN 2016 IN DELAWARE CITY AS OUR RETIREMENT HOME.

WE ARE PLANNING SOME IMPROVEMENTS TO THE PROPERTY FOR OUR PRESENT AND FUTURE USE AS WELL AS TO CARE FOR OUR AGING 90 YEAR FATHER (SUSAN'S FATHER) . HER FATHER IS NOT CURRENTLY RESIDING WITH US BUT IT IS APPARENT THAT WE WILL BE CARING FOR HIM SOON.

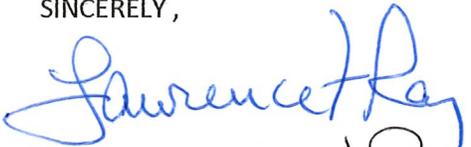
OUR PLANS ARE TO CONSTRUCT AN ADDITION TO NORTH SIDE EXTENDING THE BATHROOM AND MASTERBATH TO ACCOMODATE FUTURE NEEDS. THE PLANS FOR THIS WILL ACCOMMODATE HANDICAP ACCESS AS WELL. WE DO MEET ALL REQUIREMENTS , SETBACKS FOR THIS ADDITION.

THE VARIANCE APPLICATION WE ARE SUBMITTING IS FOR AN ADDITION TO EAST WALL WITH AN 8' (8'X19') EXTENSION TO EXISTING KITCHEN . WE SUBMITTED OUR SURVEY PLAN SHOWING THE LOCATION OF DESIRED ADDITION TO THE EAST AS WELL AS CURRENT PROPERTY LINES . THE EXISTING ROOM IS 30' FROM REAR PROPERTY LINE . WE UNDERSTAND THAT THE CURRENT REGULATIONS FOR REAR LOT LINE REQUIRE A MINIMUM OF 40'. WE HAVE ATTACHED AN AERIAL PHOTO OF OUR LOT WITH SURROUNDING LOTS AS WELL. WE BELIEVE THE LOCATION OF OUR PROPOSED ADDITION WILL NOT ENCROACH UPON ANY EXISTING BUILDINGS OR USE THEREOF. THE PROPOSED ADDITION WOULD BE 22' FROM THE REAR LOT LINE AND WILL REQUIRE YOUR CONSIDERATION FOR A VARIANCE .

THE KITCHEN ADDITION WILL BE A BONUS FOR US IN GENERAL USE OF THE HOME . WHEN CONSIDERING THE SPACE NECCESARY TO ACCOMMODATE CARING FOR SUSAN'S ELDERLY FATHER , WE WILL NEED ADDITIONAL SPACE IN KITCHEN AREA , NECESSARY DOOR WIDTH CHANGES TO FACILITATE THE CARE OF SUSAN'S FATHER SATISFACTORILY.

WE THANK YOU FOR YOUR CONSIDERATION OF THIS MATTER.

SINCERELY ,


Susan J. Ray



**CITY OF DELAWARE, OHIO
PLANNING & COMMUNITY DEVELOPMENT
MASTER APPLICATION FORM**



Project # _____

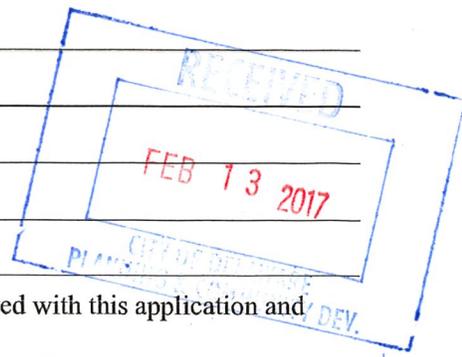
Case # 2017-0270

Planning Commission

- | | | |
|--|---|---|
| <input type="checkbox"/> Amended Final Development Plan | <input type="checkbox"/> Final Development Plan Extension | <input type="checkbox"/> Substitution of a Non-Conforming Use |
| <input type="checkbox"/> Amended Final Subdivision Plat | <input type="checkbox"/> Final Subdivision Plat | <input type="checkbox"/> Vacation-Alley |
| <input type="checkbox"/> Amended Preliminary Development Plan | <input type="checkbox"/> Final Subdivision Plat Extension | <input type="checkbox"/> Vacation-Easement |
| <input type="checkbox"/> Amended Preliminary Subdivision Plat | <input type="checkbox"/> Floodplain Permit | <input type="checkbox"/> Vacation-Street |
| <input type="checkbox"/> Annexation Review | <input type="checkbox"/> Lot Split | Board of Zoning Appeals |
| <input type="checkbox"/> Combined Preliminary & Final Development Plan | <input type="checkbox"/> Pre-annexation Agreement | <input type="checkbox"/> Appeal Administrative Decision or Interpretation |
| <input type="checkbox"/> Comprehensive Plan Amendment | <input type="checkbox"/> Preliminary Development Plan | <input type="checkbox"/> Conditional Use Permit |
| <input type="checkbox"/> Concept Plan | <input type="checkbox"/> Preliminary Dev Plan Extension | <input type="checkbox"/> Substitution of Equal or Less Non-Conforming Use |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Preliminary Sub Plat | <input checked="" type="checkbox"/> Variance |
| <input type="checkbox"/> Determination of Similar Use | <input type="checkbox"/> Preliminary Sub Plat Extension | |
| <input type="checkbox"/> Development Plan Exemption | <input type="checkbox"/> Rezoning | |
| <input type="checkbox"/> Final Development Plan | <input type="checkbox"/> Subdivision Variance | |

Subdivision/Project Name _____ Address 24 WINBETH LANE
 Acreage 0.35 Square Footage _____ Number of Lots 1 Number of Units 1
 Zoning District/Land Use _____ Proposed Zoning/Land Use R3 Parcel # _____

Applicant Name LAWRENCE F RAY Contact Person LAWRENCE RAY
 Applicant Address 24 WINBETH LANE DELAWARE OH 43015
 Phone 330 603 1073 Fax _____ E-mail larry.ray4207@gmail.com
 Owner Name LAWRENCE RAY Contact Person SAME
 Owner Address SAME
 Phone SAME Fax _____ E-mail SAME
 Engineer/Architect/Attorney MATHEW CAMPBELL SURVEYOR #8546 Contact Person SAME
 Address unknown
 Phone 614 785 9340 Fax _____ E-mail _____



The undersigned, do hereby verify the truth and correctness of all facts and information presented with this application and authorize field inspections by City Staff.

Lawrence F Ray _____
 Owner Signature Owner Printed Name
N/A _____
 Agent Signature Agent Printed Name

Sworn to before me and subscribed in my presence this 8 day of February, 2017.



Steven J D'Griffinkeed _____
 Notary Public



Date: March 2, 2017
To: Board of Zoning Appeals
From: Lance A. ^{LAS}Schultz, Planning and Zoning Administrator
CC: Dave Efland, Planning and Community Development Director
RE: 1 and 15 Flax Street and Steel Building – Case 2015-0213

2015-0213: Resolution of the request by Yoav and Schlomo Botach to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.

The above case was appealed in The Court of Common Pleas in Delaware County by applicant/owner (appellants) in March 2016 after the Board of Zoning Appeals denied the case on March 9, 2016 (see attached). The result of the court case was an "Agreed Order" (see attached).

The BZA must, by the requirements of the Court Order, acknowledge receipt of the Court Order so this effectively is then enter upon the BZA's minutes.



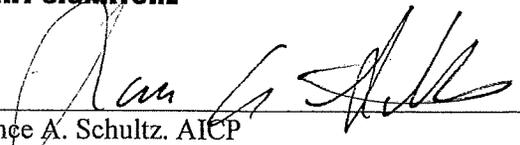
**CITY OF DELAWARE BOARD OF ZONING APPEALS
CERTIFICATE OF ACTION
CASE NO. 2015-0213 – 15 FLAX STREET**

- Certificate Date:** March 21, 2016
- Case Number:** 2015-0213
- Applicant:** Yoav and Scholomo Botach
2011 W. Pico Boulevard
Los Angeles, California 90019
- Request:** 2015-0213: A request by Yoav and Schlomo Botach to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.
- Public Hearing:** Notice of meeting posted on City of Delaware website, in the Delaware Gazette and residents within 300 feet were noticed by mail.
- Commission Action:** At the June 10, 2015 Board of Zoning Appeals public hearing, the applicant submitted and agreed to complete all the work they documented in the “Flax Street Property Improvement Plan” that achieves compliance with the 2000 International Property Maintenance Code and the minimum building and zoning requirements. The Board of Zoning Appeals held a public hearing on March 9, 2016 to discuss the status of the improvements. After a presentation by staff and comments from the applicant and the public on March 9, 2016, the Board of Zoning Appeals moved to deny the applicant’s appeal in this case and therefore to approve the decision of the code official requiring condemnation/demolition of the structures located on the subject property in application 2015-0213, finding beyond a reasonable doubt that the decision factors necessary to consider given in the 2000 International Property Maintenance Code have been answered sufficiently by the Code Official based upon the evidence presented.
Any person(s) aggrieved by the decision of the Board may appeal to the Court of Common Pleas of Delaware County within thirty (30) days after the filing of the Board's decision per Chapter 1128.07 (Decision of the Board).

CERTIFICATE OF ACTION - CASE NO. 2015-0213

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STAFF SIGNATURE



Lance A. Schultz, AICP
Planning and Zoning Administrator

This Certificate of Action is not a permit and does not authorize the commencement of any construction.
Contact the City of Delaware Inspection Division at 740-203-1600 regarding required permits for this project.
Retain this Certificate of Action for your project file.

**IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO**

YOAV BOTACH, et al.	:	Case No. 16 CVF 04 0206
	:	
Appellants	:	Judge Krueger
	:	
v.	:	
	:	
CITY OF DELAWARE BOARD OF ZONING APPEALS	:	
	:	
Appellee	:	

AGREED ORDER

This Agreed Order comes upon the stipulation and agreement of Appellants Yoav Botach and Schlomo Botach (“Appellants Botach”) and Appellee City of Delaware Board of Zoning Appeals (“Appellee”).

Appellants and Appellee stipulate and agree and, the Court, therefore, finds that YB Real Estate Properties III, LLC, as the current owner of the real property at issue, has satisfactorily completed work so as to render the subject property in compliance with the City of Delaware’s property maintenance code (2000 international property maintenance code) such that the violations outlined in the March 11, 2014 Notice to Appellants and subject to the March 21, 2016 Certificate Action underlying this Appeal are rendered moot.

Appellants and Appellee stipulate and agree and, the Court, therefore, finds that as to the violations of Property Maintenance Code § 108.1.3 and 303.13 as to windows at the subject property, Appellants installation of an outer wooden frame with Lexan panels covering existing windows complies with Property Maintenance

Code § 108.1.3 and 303.13 because said property is an unheated, ventilated commercial property.

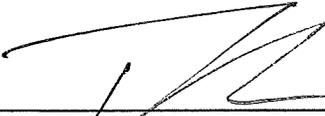
It is, therefore, ORDERED, ADJUDICATED and DECREED that this action is remanded to Appellee City of Delaware Board of Zoning Appeals with Appellee being ordered to note in the minutes that Appellant has satisfactorily completed work so as to render the subject property in compliance with the City of Delaware's Property Maintenance Codes such that the alleged violations outlined in the March 11, 2014 Notice to Appellants and the March 21, 2016 Certificate Action have been remedied and are, therefore, moot.

It is further ORDERED, ADJUDICATED and DECREED that a Certificate of Occupancy is to be granted by City of Delaware, Ohio, based upon City Plan Approval Nos. 2015-2395 and 2015-2554.

IT IS SO ORDERED.

Stipulated and Agreed:

PLUNKETT COONEY



David L. Van Slyke (0077721)
300 East Broad Street, Suite 590
Columbus, Ohio 43215
614/629-3000; 614/629-3019 fax
dvanslyke@plunkettcooney.com
Counsel for Appellants Botach

CITY OF DELAWARE, OHIO

 /DLV per e-mail

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