

**TOWN OF NORMAL ZONING BOARD OF APPEALS  
REGULAR MEETING THURSDAY, MAY 20, 2010, 5:00 P.M.  
CITY HALL COUNCIL CHAMBERS  
100 E. PHOENIX AVE.  
NORMAL, IL**

**Members Physically Present:**

Mr. Anderson, Ms. Hood, Mr. Blakney, Mr. Schaab, Ms. Brand and Mr. Penn

**Members Absent:**

Mr. Palmgren

**Others Present:**

Corporation Counsel, Steve Mahrt, Town Engineer, Gene Brown, Inspections, Director of Inspections, Greg Troemel, Town Planner, Mercy Davison and Office Associate, Sheila Elgin

**Call to Order:**

Chairman Anderson called the meeting to order at 5:00 p.m. and noted a quorum was present.

**Approval of Minutes:**

Minutes of the March 18, 2010, meeting were approved as submitted. Motion to approve carried 6-0.

**Public Hearings:**

- a. 10-05-04-V: Variances at the Southwest corner of Main Street and Osage for the following:**
- 1. Front Yard and Corner Side Yard Setbacks**
  - 2. 20% Green space Requirements**
  - 3. Parking Lot Setback**
  - 4. Parking**
  - 5. Transitional Yard**
  - 6. Landscaping Distribution**
  - 7. Dumpster Location**

Ms. Davison said that the landscaping plan for the property was on the board along with the prints previously distributed. She said that the property was south of Noodles and Pot Belly's. The property along Osage has been vacant for many years.

The property along Kingsley is owned by the Baptist Church and has been vacant for a couple of years. The developer has entered into a contract to purchase the property. In 2006 and 2008 proposals were approved but the property was not developed. They were for mixed use buildings with variances similar to the current proposal. The current proposal has a second building that will be student oriented. The landscaping plan includes a green roof if possible.

Mr. Doug Reichl, Tartan Realty Group, 30 W. Monroe, Chicago, IL, Mr. Derek McPherson, McPherson Design, 9 Heartland Dr., Unit C, Bloomington, IL, Mr. Will Kreitzer, Tartan Realty Group, 30 W. Monroe, Ste. 1000, Chicago, IL, and Mark Elder, SAMI, 608 Kingsley, Normal, IL, were sworn in by Chairman Anderson.

Mr. McPherson said that there were two buildings. There will be two retail spaces on the first floor of the east building facing Main Street with apartments above. There will also be tenant amenities such as an exercise room, restrooms, mechanical space and circulation space on the first floor. The upper four floors will have 6 units per floor with 22 bedrooms per floor. The west building will have parking on the first floor. The four floors above will each have 7 units on each floor with a total of 112 bedrooms. They are requesting a variance for 70 parking spaces, but are hoping to get more spaces in. Mr. McPherson showed the elevations and site plan for the proposed development.

Mr. Reichl said that they had been here before with other proposals. He said that Tartan Realty's specialty is retail, but the market has evolved. In 2008 the building was too expensive. They previously had proposed retail on all of the first floor. Retail space created the need for parking. They have eliminated the middle retail and segregated the parking. The property is in close proximity to campus and ISU is tearing down dorms. They plan to overcome any potential parking problems and expect students to use remote parking. University certified housing requires a minimum of 200 bedrooms so the development was designed to meet that minimum requirement.

Mr. Blakney asked how they limited the number of parking permits and what the ratio of students with to students without cars was. Mr. Elder said that 503 S. Main and 604 Dale are multi-use buildings. They assign spaces by the lease. He said that this is a good location for foot traffic. Mr. Blakney asked if he ever told them there is no parking available. Mr. Elder said that they are told in advance the number of parking spaces that they have per apartment. There is also remote parking.

Mr. Schaab asked how many beds there were per bedroom. Mr. Reichl said that there are 52 total units. The front building has four, 4-bedroom and two, 3-bedroom units per floor. The back building is all 4-bedroom units. Mr. McPherson said that there is one bed per bedroom.

Chairman Anderson asked how the parking was monitored. Mr. Elder said that the tenants are issued stickers and they are monitored and towed. They do not use assigned stalls. The tenants can call for towing themselves.

Mr. Blakney asked about the parking. He said that there is some under the building and some out. He asked if there was any stacked parking. Mr. Reichl said that they could maybe get one more stall with stacked parking, but it is a marketing issue. They feel that this is the best solution. He said that there is also the possibility of car companies that provide cars when needed so the students don't have to bring them.

Ms. Hood asked about security. Mr. Elder said that there would be cameras inside and outside and access control. They have security people walk their properties from about 9:00 p.m. until 2:00 a.m., depending on any special activities.

Chairman Anderson asked why they were planning on meeting the LEED standards but not applying for certification. Mr. Reichl said that it was their intention, but they haven't gone through with all the modeling, so they did not want to make that commitment. They did a project at Indiana University for the University and it was the first LEED certified building for the University.

Mr. Blakney said that ISU was tearing down dormitories and asked if there were going to be changes in residential requirements for incoming freshmen. Ms. Davison said that as far as we know they are not planning on changing the requirements for freshmen and possibly sophomores. There have also been requests for proposals for Cardinal Ct. Mr. Blakney said that Cardinal Ct. was state property and we will not be dealing with it. Ms. Davison said that presuming that they don't sell it off, we probably would not.

Ms. Davison said that 70 spaces as Mr. McPherson stated instead of 73 spaces as in her report would be the appropriate number of parking spaces.

Mr. Blakney said that he felt that this was a nice looking project and it will compliment the Pot Belly's across the street. He said that it will be a nice change from the eyesore that the corner is now.

Mr. Dan O'Day, Peoria, IL, was sworn in by Chairman Anderson. Mr. O'Day said that he was representing Jeff Tinervin and his two companies, First Site and Illinois Construction. Mr. O'Day said that they were not against the project and his client is an expert in student housing here. He said that there are no setbacks and there is no green space that people can see from the street. He asked who is going to see the top of the roof and enjoy the green space there. He said that Mr. Tinervin doesn't think that it is right that there will be students that don't need parking spaces. He said that a few months back they came to Mr. Tinervin and asked him to get involved in the project. He has provided documentation to the Town Attorney showing that Mr.

Tinervin is actually 57% owner, or his companies are, of this project. He said that he has not signed the application. He said that the Baptist Association is the owner of the other property and they have not signed the application. Also the lender for the Baptist Association has a paragraph in the mortgage for the property that they have to approve in advance any zoning provision changes. He said that they had not signed the application. He said that Mr. Tinervin does not agree with Mr. Reichl that this is the best project that they can have. He said that the right signatures should be required. He said that there aren't any owner's original signatures on the application. There is an architect's original signature and Mr. Reichl's photocopy signature and there are none of the other owner's signatures.

Mr. Schaab asked if Mr. Tinervin was 50% owner of the project. Mr. O'Day said he was 57-1/2%. Mr. Schaab asked how much the Baptist Church owned. Mr. O'Day said that the Baptist Church had a simple title to the back, Osage part. They have not signed the application, nor has their lender. The mortgage has language (provided to Corporation Counsel) that says and changes in zoning provisions have to be approved by them first. Mr. O'Day said that there had been two sets of zoning variations previously approved for the property that evaporated. This is the third set that will have been approved without asking the bank or Baptist Association to sign off on them and they think it is wrong. If Mr. Tinervin is allowed to come back into the project like he was asked to be that got it off the ground, he will get the right approvals and there won't be anyone coming back saying unfortunately it is the best that they can do.

Mr. Schaab said that there were questions unanswered.

Mr. Reichl said that Mr. Tinervin has some dispute that is on-going. He said that they are the simple title holders to the front piece. They have been under contract for probably two years, making option payments and are prepared to purchase the back third of the property from the Baptists. They are in good contract with that. In relation to the signatures, they have been through the process two other times for that parcel. They have always been agreement with doing this. It may be a signature issue, but what is being alleged about Mr. Tinervin having any ownership is a completely false statement. This is a dispute that has been going on, but he has no standing here as far as Mr. Reichl is concerned.

Chairman Anderson said that the ownership was in question and they wanted to make certain of who the owner was.

Mr. O'Day said that the application was signed by the architect. The architect is not the owner. He said that there seems to be a copy signature of Normal Main LLC, that would be Mr. Reichl's signature. He said that Normal Main LLC is the simple owner of the Main Street side. The back part is the Baptist Church's is not Normal Main. He believes that Tartan Realty says that they have an option to buy this from the

Baptist Church, but the Baptist Church is the fee simple owner of that property. Tartan has not signed the application, Normal Main did. Also, National City is the lender, and there will be a merger effective June 16 between PNC and National City. No one has National City or PNC to sign off on this and that provision in the mortgage is a reasonable effort by National City to protect its security interest. That will be recorded for years. The applicant has about 15% of job done on signatures and that is before you get to the issue of whether Mr. Tinervin is right about his partnership on this property. They have filed a lawsuit in the chancery court in McLean County and do have attached in their complaint exhibits that show Mr. Tinervin proposing a percentage of 57 ½ percent and they do have in the same materials, which were given to Corporation Counsel, something coming back from Mr. Reichl saying they agree with their percentages.

Mr. Schaab asked Mr. O'Day about saying earlier that Mr. Tinervin owned 57 ½% and now he stated that Tartan owns the front property and has options to buy, so how does Mr. Tinervin fit into this. Mr. O'Day said that Mr. Tinervin has a letter saying the property will be put into a partnership where Mr. Tinervin's companies, First Site and Illinois Construction, would own a total of 57 ½ %. But even you ignore Mr. Tinervin's asserted interest in the lawsuit, there is a clearly a recorded interest by the bank and clearly a fee simple interest by the church that has not been asked to sign. He said that he did not know how you would get the bank to sign right now until after June 16.

Mr. Mahrt said that Mr. O'Day's advice to disregard Mr. Tinervin's claim is good advice because it is simply an allegation and it will take a court decision to determine his interest in this property. We do know what the recorded interest is according to the land records and the Baptist Church owns the back portion and Tartan Realty owns the front portion, the east side. The bank does have a mortgage in connection with the church property. One of the conditions, if the Board chooses to approve the variance request, is that the mortgage holder give consent for the zoning change. With regard to the application, he understands that Mr. Reichl has authority from the church to initiate any changes on behalf of the church. If they want to condition approval on proper documentation to that effect, that would be appropriate. An alternative would be to defer this until such documentation is presented.

Mr. Blakney said that they would be approving the variance for the project. The project would not start until all properties are clear, so is this a concern of the Zoning Board. Mr. Mahrt said that in order to comply with our own process, we would want the proper signatures on the application. Because we are now aware of the mortgage holder's interest, we would also want documentation of their consent. Given the pending lawsuit, the project may be detained.

Mr. Reichl said that in order for the project to go forward and to stay on schedule, the sensitivity of when the student housing project is delivered is paramount. If it is

deferred, it will put them behind. They are fee simple owner of the front and have the Baptists' support. They have been coming in here for two years and this is the first time that this has been alleged. He asked that the Board vote and let them sort the rest through due process.

Mr. Penn asked if they condition their approval on that they get letters of consent. Mr. Mahrt said that he was suggesting that the conditions be consent from the mortgage holder and also documentation that Mr. Reichl has authority to act on behalf of the church.

Mr. Kritzer said that if the Baptists still own the property, they could get the lender's consent, but they may close on the land and would not need their consent. Mr. Reichl said that it is their intent to move forward.

Mr. Chuck Smalley, 725 Osage St., Normal, IL, was sworn in by Chairman Anderson. Mr. Smalley expressed concerns regarding parking.

There was no one else to speak regarding the application and the public hearing was closed.

Mr. Blakney moved, seconded by Mr. Schaab, to approve the variation with waivers including the four staff conditions and documentation that Tartan has authority to sign the application from the Baptist Church.

Ms. Brand noted that parking would probably always be an issue along Main Street.

Mr. Blakney asked about parking for students in dormitories. Ms. Davison said that there is no restriction at ISU for people who have cars. People who live in Atkin-Colby have a lot but there are nowhere near 1500 spaces there. People are able to get passes for remote parking.

Ayes: Mr. Schaab, Mr. Blakney, Ms. Brand, Mr. Penn and Mr. Anderson

Nays: Ms. Hood

Motion declared carried.

**b. 10-05-03-V: Variance for parking at 804 S. Main St. (McDonalds)**

Mr. Bob Dobski, 14 Worthington Ct., Bloomington, IL, was sworn in by Chairman Anderson. Mr. Dobski said that McDonalds is getting ready to change their look. (Mr. Dobski submitted a picture.) They will remove the red mansard roof. The McDonalds at 804 S. Main St. will be in a pilot program and will receive funding. The store needs improvements. They want to add a side by side drive through. Seventy two percent of their business is drive through. They have other side by side drive throughs at other stores and they see a two to three percent increase when

adding the side by side. They will get a new cooler and increase their stock room to handle the increase in business. They are requesting a decrease in parking to put in the second drive through.

Chairman Anderson asked if they were removing 9 or 10 spaces. Ms. Davison said that they will end up with 38 spaces. Mr. Dobski said that there was one space in front of the coral doors that may not have been counted. Mr. Penn asked if there were two spaces in front of the coral doors. Mr. Dobski said that there were.

Mr. Dobski said that traffic backs up on Main St. during peak hours and they hope this will eliminate most of that. They saw an increase in drive through sales at the Oakland store when they added another drive through. Sales shifted from indoors to the drive through.

Mr. Blakney asked if, in addition to the change in parking, they were going to build an addition to the back of the building. He asked if this was going to be enlarged or was that for the cooler. Mr. Dobski said that it would be pushed out a little bit. Mr. Blakney asked if the existing curb would still be for the inside drive through.

Mr. Ron Gosh, Preferred Contractors, 7801 Hale, Manito, IL, was sworn in by Chairman Anderson. Mr. Gosh said that they won't be pushing anything back, but they will be shrinking the curb.

Mr. Blakney asked if there would be any other service windows added. Mr. Gosh said no. Mr. Dobski said that the windows will stay the same.

Mr. Blakney asked Mr. Dobski if he knew the ratio of the business of the drive-through versus walk-in traffic. Mr. Dobski said that they were at about 72% drive through now, so 28% is walk in. They have seen two to three percent increase in drive through traffic at other stores with side by side drive throughs, so they expect 25% walk in and 75% drive through.

Mr. Blakney asked if there were any times that parking were a problem. Mr. Dobski said it could be during parent's weekend or graduation. They have a lot of foot traffic.

Mr. Schaab asked how the number of parking spaces compared to the store on College Ave. Mr. Dobski said that he did not know. Mr. Troemel said that he did not know the number of spaces on College Ave., but there were more at the College facility.

Mr. Penn asked where employees parked. Mr. Dobski said that the majority of employees were students that walk. Otherwise they use the parking lot. They have not had a problem with parking.

Ms. Hood asked about the landscaping. Mr. Dobski said that they will work it out. They will be adding an island with flowers and shrubs between the drive through lanes.

Chairman Anderson said that he has seen the drive through traffic backed up onto Main St. and the two lanes would help with stacking. Also the College Ave. location would need more parking due to playground and spending more time in restaurant.

Mr. Penn moved, seconded by Ms. Hood, to approve the variation with the condition of including additional landscaping as recommended in the staff report.

Ayes: Mr. Schaab, Ms. Hood, Mr. Blakney, Ms. Brand, Mr. Penn and Mr. Anderson

Nays: None

Motion declared carried.

**c. 10-05-05-A: Appeal of Zoning Code Administrator's Code Interpretation**

Mr. Mahrt explained that this is an appeal of Mr. Troemel's interpretation of the Zoning Code. The applicant is challenging decisions that he made recently interpreting the code in connection with the 1010 S. Main St. Special Use Permit. This is the Tinervin project at the University Cinemas. The Board recommended approval and Council ultimately approved the Special Use. The applicant is challenging Mr. Troemel's interpretation of the code with regard to the Parking Impact Zone and building height. The code says that any property owner aggrieved by the decision of the Building Commissioner or Zoning Administrator may appeal that decision. This is in the form an administrative hearing. The applicant is entitled to present evidence as to why he or she thinks the Commissioner made an improper decision. The Board also has the code language provided. The Board's duty is to determine whether or not a mistake was made by the Commissioner by his interpretation of the Code in that he misinterpreted or misunderstood the facts giving rise to his interpretation. The Board has the authority to either affirm, modify or reverse his decision. The Board's decision is final and anyone aggrieved with the Board's decision would have to file an appeal with the circuit court in order to have it overturned. Mr. Troemel's written statement is his response to the applicant's appeal.

The Board may allow the applicant to present her testimony as to why she thinks Mr. Troemel's interpretation of the Code was incorrect. The Board may then ask questions of the applicant and Mr. Troemel may be allowed to make additional statements and he would be open to questioning by the Board or the applicant. The Board may also open it up to others in the audience if they choose. This is an appeal between Ms. Embry and Mr. Troemel.

Ms. Kristie Embry, 1007 S. University St., Normal, IL, was sworn in by Chairman Anderson.

Mr. Brian Hug, 11 Bailey Ct., Bloomington, IL, was sworn in by Chairman Anderson.

Mr. Hug submitted copies of the code section regarding the Parking Impact Zone to the Board. He said that they also had a power point presentation that will be referred to.

Ms. Embry said that there were two issues of the appeal. The first is the Parking Impact Zone. She said that the ordinance states that the PIZ borders go through various places around the Uptown area of the Town of Normal. The ordinance was amended in September, 2008. The ordinance established the border at Church St. She said that this makes sense since south of Church St. on University where she lives all of the homes are single-family. It also makes sense because when the PIZ was passed, the only business in the area was University Cinemas. The Cinemas have an extremely large parking lot. Under the purpose provision of the PIZ, the purpose is: "the Parking Impact Zone is an area of the Town of Normal in which, due to density and use, there exists greater parking needs than is customary in other areas of the Town. Restrictions regarding location, size and construction of parking in these areas are eased to facilitate a greater number of parking spaces." She said that parking restrictions in these areas are eased to facilitate a greater number of parking spaces and this would be important in response to Greg Troemel's report.

Ms. Embry said that the remainder of the Parking Impact ordinance is dedicated to describing parking and allowing parking in various areas not otherwise allowed under your ordinance. There is one provision that does not seem to fit into a parking ordinance. That is the provision allowing a four story building in the R3-A zone. It is also in the PIZ. Rather than deal with parking, this provision increases the number of units in an apartment and increases the size of parking and increases density overall of the use of the land. Under normal circumstances, building heights are limited to two stories in R3-A zone and buildings in the B1 zone located on lots within 100 feet of single family residential zoned are limited to two stories. She showed a plat of her neighborhood. She said there are many lots laid out and streets laid out in the subdivision. Church St. is the northern most street on the plat. North of Church St. the trend of development is for medium density, multi-family use. South of Church St. the trend has remained for single-family use. She pointed out the areas on the plat map. She said that she had asked Greg Troemel why the PIZ map included the land south of Church St. She said that he told her that the Engineering Dept. had included that some time ago. He did not indicate that it was his decision. He also admitted that there had been no hearings or proceedings before the Planning Commission or Zoning Board to make the change. She said that she would have attended if there had been hearings. Since no hearings were held, she and her neighbors were denied their due process rights. She said that she intends to attend any hearings to extend the PIZ as Greg has recommended. She suggested that the hearing recommended by Greg precede the actual rezoning of that parcel into the PIZ. The purpose and intent of a

zoning ordinance is to maintain property values by avoiding conflicting issues. The application of the PIZ to this property is inconsistent with the intent of the zoning ordinance. She pointed out the PIZ on the overhead map. She said that normally in B1 and R3A zoning, building height is limited to two stories when adjacent to single-family residential property. However, under an interpretation of the ordinance by Mr. Troemel, the height is increased to 45' or 4 stories. She showed the University Cinemas property and the adjacent residential properties on the map.

She said that her neighborhood is the only one immediately adjacent to B1 in the PIZ. This means that four stories may tower over her home and the homes of her neighbors and cast shadows from early in the afternoon. She said that she has worked very hard to build a beautiful backyard. She showed pictures of her backyard. She said that most of her neighbors are long term residents and have made their backyards into sanctuaries as well; some with extensive landscaping and some with pools. None of them will see the sun from early afternoon.

Ms. Embry said that if you look at the PIZ map, no other property in Normal is similarly situated. Mr. Troemel suggested in his report that two other properties were divided by the PIZ. She showed the areas on the overhead map. She said that these are extremely small parcels, especially in comparison with the subject property. They are not 3.2 acres. She said that basically, Mr. Troemel has administratively included in the PIZ approximately 2.5 acres. She showed the written description of the Parking Impact Zone. Mr. Hug showed a map from the McLean County GIS that he said was more accurate. They outlined the written description with the zoning map. Mr. Hug said that the language of the ordinance was in conflict with the map. Ms. Embry reviewed the Cypress and Cypress Alley area.

Ms. Embry said that a justification that has been done before does not apply. She said that there is no reason for the Zoning Administrator to interpret the code when the code already includes the land mentioned. She noted language in section 15.5-2; "amendments to such maps shall be by ordinance duly adopted by the corporate authority." Also, under rules for interpretation, "where uncertainty exists with respect to boundaries of districts shown on the zoning map, the following rules shall apply: #1 Boundaries indicated at approximately following the centerlines of streets, highways or alleys shall be construed to follow such center lines; #2 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines. She suggested that Mr. Troemel's interpretation of allowing a developer to use the PIZ differs from merely applying setbacks to a parcel of land. In any other situation the land owner would have to come in before the Zoning Board of Appeals for rezoning. She suggested that this is why the first application to develop this property last August was submitted, specifically because the proper way to impose this new height requirement on a neighboring residential neighborhood is through rezoning.

Ms. Embry said that this is an issue because of the impact of a four story building on her back yard. She showed a picture of a house next to a four story building. She also showed a picture using photo shop depicting what a four story building would look like from her back yard. She said that Mr. Troemel suggested that his interpretation of the code is the most restrictive. She said that she disagrees and that by interpreting the code as he had, he has increased the density of the use of the property by allowing apartments four stories high over the existing business. They can expect business traffic, which they already have, and then they can expect apartment traffic from more apartments that could be built if the height were limited to two stories. With the increased height and increased density of apartments you may also add more parking spaces, contrary to Mr. Troemel's report. The limitation of .75 parking spaces per bedroom is just a way of calculating parking spaces, but does not decrease the density nor constitute a more restrictive interpretation of the code. Normally an apartment is limited to two parking spaces no matter how many bedrooms it has. If an apartment has four bedrooms, it is limited to two parking spaces. However, under Mr. Troemel's interpretation of applying .75 to a four bedroom apartment increases parking spaces to three, not to two, and therefore, it is not more restrictive.

Ms. Embry said that Mr. Troemel had indicated that the map had changed some years ago. This would have been before the planned improvement of the University Cinemas into apartments. The calculation back then on a B1 parcel doesn't make sense. Mr. Troemel's interpretation must be consistent despite the use. He has based his interpretation on the Special Use Plan and not by any set standard established by this body or by the Town Council. She suggested that Mr. Troemel's interpretation is not the most restrictive, not consistent with the Town's ordinances and should not be upheld. The interpretation of the ordinance includes acres of land not previously authorized by the Town Council into the PIZ because of its tremendous impact. Zoning is a legislative decision and should not be done administratively, but through a proper zoning hearing with notice and an opportunity to be heard. Mr. Troemel's interpretation should not stand. The matter should be sent back for a proper rezoning if that is what the Town wants.

Ms. Embry said that her second issue is the interpretation of the ordinance to allow a four story building in B1 property in the PIZ. Since the PIZ is not even really applied to this property, we should not even get to this point. In the PIZ and other portions of the ordinance there are safeguards to protect the residential nature of other properties. Specifically, the PIZ states "that unless specifically set forth in this section, all other zoning codes shall remain in full force and effect in the PIZ." Mr. Troemel's interpretation cites that specific provision. Additionally, the R3-A section limits medium density, multiple family properties to two stories, as does the B1 section of the zoning ordinance. Repeatedly the code protects those of us who live near uses that are more intense. Allowing interpretations of the code to bootstrap other provisions not specifically mentioned in the PIZ allows just what happened here; the

construction of a four story unit immediately adjacent to single family residences. Under the B1 protection, buildings within 100' of single family residential properties cannot exceed two stories. To get to the four stories, Mr. Troemel applied the B1 Special Use provision that says multi-family should be built according to the restrictions applied in the R3-A. Again, normally R3-A buildings are limited to two stories. So in B1 apply the restrictions in R3-A then put in the PIZ to get to the four stories. This backdoored getting a four story building into a B1 zoned area. Surely the Town Council did not intend this result. In fact if you were to look at the hearing on the ordinance that allowed multi-family in B1, you would find that the zoning administrator promised that the protection of the R3-A would still apply to single-family residences within 100' of B1 zoned properties. This is a significant decision that eliminates all protection of the B1 and R3-A standards as applied to nearby residential properties. Until this bootstrap interpretation was applied, we the neighbors had a right to rely on the protections of the zoning ordinance. This bootstrap legal argument denies them the right to protect their homes and disintegrates the ordinance as a whole that the zoning administrator can interpret the ordinance to the detriment of the person protected by the ordinance. The neighbors ask the Zoning Board to reverse the zoning administrator's interpretation of the location of the PIZ. Additionally, they ask that they reverse the administrator's interpretation of the bootstrap of the four story buildings into the B1 next to the residential properties. Both of these are legislative decisions and are not to be made by the zoning administrator. If the Zoning Board of Appeals is unwilling to reverse the Zoning Administrator's decision, she asked that they send it to the Town Council for a legislative decision.

Mr. Hug said that Ms. Embry had referred to the decision to allow multi-family in B1 and they have a copy of the Council action report and minutes of the Planning Commission and asked to submit them.

Mr. Blakney said that there was a picture that was shown of the existing building and asked where the picture was taken and if the new building would be farther away from the property line. Ms. Embry said that she was standing in the parking lot. She said that the current plan said that it would be 65' from their property line and it would include the alley, so it would be further back. She said that there is a house that is directly on the alley; all of the rest of them would have more space.

Mr. Troemel said that the Parking Impact Zone was established in 2001. The original map did follow Church Street to the west from University bisecting this property, so the north 30 to 40 percent of the property was in the PIZ. There is a conflict in the text description of the Parking Impact Zone and what was produced on the map. The top map (shown on the board) was included in the packet when the Council considered the Zone. The one in the middle was the first published zoning map. The Town by ordinance publishes a new zoning map every March by state statute. This map showed the Parking Impact Zone line running through the 1010 N. Main

property leaving the southern two thirds out of the Zone. Mr. Troemel said that he took exception to what Ms. Embry said; he did not recall saying that they made the change purposely and it had never gone through a public hearing with the Planning Commission and Council for a map change. That would not be his intent. What he intended to say was that the Engineering Department produces our zoning map through a CAD program. We have had this happen, not often, in other applications where a program will pick up piece of property and he thinks this is what happened with this property. The 1010 property is under unified ownership and the program colored in the southern half of the property. It has been that way since 2003 on the map. We haven't had any activity on this property until now. Mr. Troemel said that he does not go back and read the written description; he relies on the zoning map as he has for 25 years with the Building Inspection Dept. He looked at the zoning map as published in March. Staff does try to catch any discrepancies and this is a good example of one of those. So that is his interpretation of the property being in the Parking Impact Zone.

Mr. Troemel said that the second part of Ms. Embry's argument is what is required by the Parking Impact Zone standards. He takes the position that the Parking Impact Zone requirements are more restrictive than property outside the Parking Impact Zone, clearly with parking in mind, with the idea that the end result of the Impact Zone is to try to promote and create more opportunities to provide parking on private sites, coupled with building concessions such as building setbacks, building height, locations where you can locate parking on a property in the Impact Zone that is different on properties outside the impact zone. The Special Use Requirement is not something that he applied. It is a development alternative that this developer chose. The property has had three different development proposals. The first being rezoning from B1 to R3-B, which was denied and plans were withdrawn. The second attempt was the same developer to go to a less dense R3-A zoning with a Planned Unit Development. This was given a favorable recommendation by the Planning Commission but ultimately denied by Council. A new developer decided to use the Special Use provision of the zoning code. To introduce dwelling units on the first floor in B1, the special use was created in 2004. At the time it was intended to facilitate the development of the Junction Place property, however they did not end up using that but developed through the PUD process. This particular application did use the Special Use Standards, which are very explicit. If a B1 property is located within 100' of single-family zoning, you apply the bulk provision for R3-A zoning. If it is more than 100', you use the bulk provision for R3-B. His "bootstrap" was, being with 100' of R1 zoning, which is directly to the east, subjected them to the R3-A standards in regard to setbacks. Because it is in the Parking Impact Zone, there are other provisions for R3-A or R3-B standards that he applies as being most restrictive whether it is in regard to the number of parking spaces, building setbacks, building height restrictions or transitional yards.

Mr. Troemel said that getting to the second point of Ms. Embry's argument, his interpretation of the map was that he saw the property being eligible for the Parking Impact Zone based on the zoning map that has been published since 2003 this way. Going through the Special Use Standards, the developer and Staff did represent the development that came through on the 1010 property without waivers. His argument is that if the property is within 100' of single-family zoning, you apply the R3 standards and specifically in the Parking Impact Zone it tells you that R3-A property is eligible for four stories. This is what his decision was based on. His recommendation is that, regardless of what happens, this be remanded to Council for clean up in relation to the map itself.

Chairman Anderson said that he agreed with clearing up the map with any written form of the code and any time there is a revision, it is reviewed for accuracy.

Mr. Troemel said that it was represented that he, himself as Zoning Administrator, made some authoritative decisions to change the map and he took exception to that. He enforces the map as it is published by the Town. There is a review process and they try to catch mistakes or changes in zoning that take place or creations of different overlays or districts. This was not a willing decision on his part to just say that he was going to include the south half of the property just because it's going to suit someone.

Mr. Hug said that the fact that it was an inadvertent inclusion into the PIZ has now snowballed and it was not adequately addressed previously. It also brings to mind the unintended consequences of this particular mistake. He said that they are asking the Board to make a decision contrary to the decision that Greg made and it was an inadvertent decision in at least as far as the application of the PIZ. Once the PIZ was applied to the south 2 ½ acres of the Cinema property, then Greg brought in all the other stuff that they argue they shouldn't have done anyway. But basically they are asking the Board to make a decision contrary to what Greg has done and what is on the map, but which is supported by the language of the ordinance. He said that zoning is a legislative decision. The effect of changing the Cinemas property into the PIZ was to change parking requirements, setbacks, density, bulk requirements and allow building of greater height. The changing in zoning was never subject to an application. The change in zoning was never subject to notice, it wasn't subject to public hearing, it wasn't subject to any other proceeding by the Town Council – the only body, by law, that has authority to change zoning.

Mr. Hug said that he wanted to talk about the north and south sides. He showed on the overhead the green area with lines. He said that the lines represent existing lots on the property which have not been vacated. So, if Church Street came through, those lots could still be developed and sold as is without vacation. In Mr. Troemel's written presentation he indicated that there were other locations that this has occurred. One of the locations (at the top of the map), but as we now know, is already in the PIZ and no adjustments or interpretation are needed. Even if that interpretation was

done electronically, the language of the ordinance is very specific about the directions. The language in the ordinance also addresses this property (on the map) to the west of the University Cinema property. You come down Kingsley and go straight across. He said that there was no provision that he was aware of that included that property in the PIZ. That property has, as seen in the earlier picture of the actual theater, multiple houses before you get to the apartments, so it is not a continuity problem, not a continuity issue if you have multiple parcels on it. There are problems with the map that the Town of Normal has published and he could understand how Greg would rely on it. But when issues as important as this come up, the Zoning Board and Town Council should be a little more vigilant in making sure that the neighborhood is protected as they promised under the Zoning Code. He said that under the Zoning Code there are only two ways that a zoning officer can interpret a zone. He doesn't have the authority to interpret the zone except under two things. One of those occasions was right after the Zoning Code was enacted. If a zoning district went through a published property, the Zoning Administrator could make that determination. But he had to make that determination within 30 days of when things pass, and we know that the Zoning Code was passed in 1969, so that provision of the Zoning Code does not apply. The other provision of the Zoning Code is if there is some sort of question about the clarity of the description or the layout of the map or some other provision, then he can make an interpretation. In this case, Church Street is very clearly outlined, not only on the plat, but also on the aerial. Church Street, except for the fact that it dead ends at the end of the parking lot, still exists right there. There is no question of the clarity there, so there is no interpretation needed. Accordingly, the provision that allows that portion to be in the PIZ is erroneous and that should be reversed. There is a provision in the code that suggests that the map controls, even if a conflict. However, this code section is considered weak in this situation because nobody made the change. There is no ordinance to support this change to the map, so lack of an ordinance is the rebuttal to any change to the map. Additionally, case law provides that when the language of the ordinance is inconsistent with the map, the language of the ordinance controls. Mr. Hug recited the case. He said that there is not a lot of doubt that the ordinance language controls. The ordinance did not include the University Cinemas property to the south of Church Street and it is not subject to the PIZ. In the case there was an additional note by the court that there was insufficient notice by Arlington Heights such as a hearing to change the zoning. They basically said that if you haven't had a hearing, you don't change the zoning. This is exactly the situation here. He suggested that the courts and the public are entitled to rely on published language of the ordinance. He cited another case, Central Transport vs. Hillside. The public comes to rely on their elected officials and rely on the zoning of the property right next to theirs and they expect to be notified of any changes. However, the entire process was short circuited by inclusion of that property into the PIZ. This is not how the Town of Normal does things. They are meticulous in its zoning. The Zoning Code is extensive, it is lengthy, and it is detailed. There are situations that tell how many trees they have to plant to where they have to plant them. When there is that kind of detail, this kind of

error is not typical and is not the way that the Town of Normal does things. The planning of the PIZ in this case also suggests terrible planning and design. With few exceptions of the PIZ, every border follows an existing road and does not divide any property. It follows a prescribed course. It carefully includes areas usually associated with a central business district and student housing. There is not a clear case of vague language in the ordinance or mistakes setting the boundaries. If the ordinance and PIZ were clear, no interpretation is necessary. As significant of a landmark as University Cinemas is, you can assume that the Town Council knew of its existence when they drew up the PIZ. You can assume that they made a conscious decision to draw a line across Church Street and the reason for that is that there is no other significant business in the area. The Cinema at the time had and still has a whole lot of parking, significant parking. They knew at the time that the Cinema sat next to residential property and arguably they knew at the time that the residential property would be hurt by anything inconsistent with their application of the PIZ. The Cinema property is multiple parcels. Church Street separates about seven or eight parcels from one or two north of Church Street. It is entirely proper to go through and continue Church Street as it did. The ordinance was admitted in 2008 and no change was made that suggests that the language of the ordinance was reaffirmed by the Town Council. The inadvertent inclusion suggests another problem or another problem in the future. If you are an owner of property in the PIZ, then can you buy property next to yourself and include that in the PIZ. That allows the owner to expand the PIZ as opposed to the Board and Town Council. That is zoning by landowner and obviously you can't do that. The Parking Impact Zone is to deal with density problems. The buildings in B1 are limited to two stories within 100' of a residential district. Buildings in R3-A are limited to that also. They are limited to two stories anyway. In the language of the PIZ, it only refers to R3-A. He said that he gives someone credit for being clever saying that if you are now in R3-A, now you get the benefit of the PIZ. That is the bootstrap that he is talking about. The language of the PIZ doesn't say you can't do it. If you look at the Special Use provision for multi-family residences in B1 district, it is confusing and you are lead to believe that if you're neighbors to a property in a B1 zoned area, you are protected by that 100' requirement for a building limited to two stories. There is no way that a four story building should sit next to a single-family residential area. The Zoning Board has worked hard to protect single-family residences and the Town Council has also. The bootstrap argument that was used by the developer in the case is backdoor action that can't be done outright. They are asking the Zoning Board to reverse the application of the PIZ to this parcel and specifically the property behind Ms. Embry's house and to reverse the decision that the PIZ can be bootstrapped to allow a four story building into a two story limited property.

Mr. Troemel said that this clearly has been a very public project. He knows that Ms. Embry's interest is in the 1010 project and the others will sort themselves out. The B1 district allows for six story structures. It not to say that you are entitled to six

Stories; transitions will be considered. Both properties have been there quite a long time. We have several properties along Main St. that are four and five stories that are across the street from ordinary residential single-family zoning. Whether it's the Zoning Board or Planning Commission, over time we have considered them through other processes, but it's the Zoning Board or Planning Commission that consider transitional height issues. B1 zoning is not restricted to two stories when adjacent. It is a consideration; a transition issue. Literally, B1 allows six stories. The R3-A bootstrap approach at least lends four, which you can look and say it is transition.

Mr. Troemel said that because there have been three different applications, staff has been very involved in the development process all along. Staff supported all three developments, even the first request for R3-B zoning request that involved a four-story building. Ultimately, that project was denied. The second project was for R3-A zoning that were 2 ½ to 3 story structures. This was represented as a four-story structure. There was a lot of discussion about the four-story structure. He said that he was not going to take exception to Mr. Hug's comments about how literally the text reads versus what is published on the map. It was publically discussed, both at the Planning Commission and the Zoning Board. His interpretation, and through staff in writing the report, did represent that this last project did not have any waivers. He would still make the argument that there are no waivers. If you want to say that the south half is not subject or eligible to the Parking Impact Zone restrictions, they could list the south half of the property as being four stories and consider it as transitional and it would be one waiver. Staff supported the two previous developments with a long list of waivers. This development came through with no waivers. The Zoning Board supported it and the Council did too. He said that he cannot speak for the Zoning Board, Planning Commission or Council. But looking at the bigger picture, there was a lot of discussion about height, the distance between the building and the relationship to the properties on University.

Mr. Hug said that in Section 15.4-5 of the Zoning ordinance it states when any lot zoned S1, S2, C2, C3, B1, B2, M1 or M2 is contiguous to or across the street or ally from any lot zoned R1-AA, R1-A, R1-B, R2, R3-A, R3-B or R4 the heights of buildings on said lots shall not exceed the height permitted on such adjoining residential lots. Residential lots are normally two stories in Normal and this property facing the east of the University Cinemas is residential and it is single-family. It is R1-B and is protected by that provision of the ordinance. He said that he was focusing on the decision to include the property in the PIZ. He was not involved in the actual hearing. He said that he cannot think, having now heard the impact, that we can make a decision whether or not the Board would or would not agree. The fact that the change in the Special Use ordinance would allow to suggest that you can make this bootstrap, he didn't think that anyone knew that that was actually occurring. He did not think that anyone had the concept that this would result in a four-story building next to a residential area. If he were other members of the Board,

he would be very concerned about having this bootstrap used against him in his neighborhood to put a four-story building near him. It is six stories in B1. But if you put in R1-B residential property, it is two stories. He said he did not know if a waiver would have been granted, and since it was not clearly discussed, it doesn't make a difference one way or another. The question is does this property belong in the PIZ and can you make a bootstrap argument to hold this property up to a four-story building given all the provisions of the Normal Building Code text regarding residential property next to B1 properties and for that matter R3-A properties.

Mr. Schaab asked if that part of Church Street had been vacated or was it still considered a street. Mr. Troemel said that our records indicated that it had been vacated. Mr. Schaab said that if it had been vacated, have the properties been replatted to be one parcel at 1010 S. Main. Mr. Troemel said that our current access shows that it is no longer multiple lots. He said that he would not say for certain that it was one unified lot, but it is shown as a single or maybe two parcels. He said that he did not think our current records or current GIS or the Sidwells would show individual lots, but he could not say for certain. Mr. Schaab asked if any action tonight would affect the ruling made in March. Mr. Mahrt said that the action tonight was to determine whether or not the south portion of the property falls in the Parking Impact Zone and under the B1 Special Use, what is the height limit for property adjacent to single-family residence. Is it four stories that are allowed in the Parking Impact Zone, if the property is in the Parking Impact Zone, or is it limited to two stories. Mr. Schaab said that in order for him to make a reasonable determination, he needs to know if Church Street has been vacated and if the property has been replatted, because if it has been replatted, then the argument of bisecting the property would be a moot point. Mr. Troemel said that he could say with certainty that Church Street had been vacated. He could not say that the underlying small lots had been vacated. Mr. Schaab said that if it were one contiguous piece of property, then it would not seem reasonable to bisect a piece of property with PIZ. Mr. Mahrt said that he thought that the old plat lots still exist as a matter of record. Church Street was vacated so that property goes 50/50 to the adjoining lots and since the entire parcel is owned by one entity, it receives a PIN number from the tax assessor and is treated as one parcel by the tax assessor. Our GIS programming picks up parcels based on parcel numbers and that is probably how it got reflected on the zoning map as one continuous parcel.

Mr. Hug said that the application for 1010 listed multiple tracts; multiple parcels, they are still separate. Mr. Troemel said that Mr. Brown just gave him information that confirmed what Mr. Hug was saying and confirmed that Church Street was vacated. But we do see this happen quite often, even through the assessor's web site, where properties come under unified control and they assign a single PIN number. He is not saying that it is right or wrong, but the program will pick up the parcel number and shade it in. We have had that happen and have caught it. Near the hospital there were properties that were single family, and because the hospital was the owner of the

properties, they were in advertently shaded in as S2 zoning. Mr. Hug said that he wanted to attach the tract list. Ms. Davison said that we do have a policy of treating under unified control as one for other town policies such as tap on fees; if a line cuts through and it's under common control, we count the whole property. That is not unique in this situation. Mr. Troemel said they are also given the benefit when it comes to building. For example, you may own several narrow lots and construct a building over the top assuming there are not utility easements. That happens fairly routinely. Mr. Hug said that in this case that benefit goes to the builder and not to the neighbors who were not aware of the application and the methods. He said that in this case it is actually rezoning, more than tap on fees.

Mr. Mahrt said the Board needs to make two findings. The first is the Parking Impact Zone map in relation to the actual ordinance. He said that he thought that Mr. Troemel was in agreement that they don't match. The ordinance clearly shows Church Street as the dividing line whereas the map included the entire south half of the parcel. The other question is was the entire parcel in the Parking Impact Zone or was the Parking Impact Zone limited at Church Street. Mr. Schaab asked if Church Street was vacated, how would they draw the line. Mr. Mahrt said that the legal description says Church Street extended. The second issue, being referred to as the bootstrap argument, is in the B1 Special Use, what is the height limit for property within 100' of a residential zoned district. The B1 Special Use says the greater of the height allowed in the Parking Impact Zone or the R3-A zone. Mr. Hug said that he wanted to address the language. He said the greater of the height allowed in the Parking Impact Zone or the following, are lots adjacent to or within 100' of single-family residential district, in accordance with the R3 medium density multi-family residence district standards, which is two story, or are the lots in accordance with the R3-B height in single-family residence district standard six stories. He asked that the Board look at the language of the ordinance. He said that it is confusing.

Mr. Hug said that he believed that there were other people that wanted to discuss things and ask questions. Chairman Anderson said that he believed that he had stated his case very clearly and he did not think it would be necessary because the issues were clear and they would like to keep it between the two parties.

Mr. Schaab said that in the B1 Special Use Permit, the issue is once they determine whether this is in the PIZ or not in the PIZ, then the height does become an issue. At this point, if it is in the PIZ, then they can have a four-story building based on the language. Mr. Mahrt said that is what the applicant is complaining about. Their position is, even if the property is in the Parking Impact Zone, the height limit is two stories, not four stories. They are calling that the bootstrap argument to get to four stories. Mr. Hug said it is a difference of opinion. He said that under this particular section, under the PIZ ordinance, it says you don't get anything else, you don't get an increased height. There is nothing in that particular section that allows for increased height when you are alongside a residential district, the R3-A is still within 100' and

you are still limited. It's only when you go to the B1 and it says Special Use in B1 and it says in B1 you are limited to two stories also. Then it says you get the higher of the PIZ or whatever is granted to those in R3-A which is within 100' of single-family homes, then that is what he is suggesting. He said that you are not going to get to where you're going unless you go to two or three ordinances to get there. He said that it is a backdoor way to achieve what you want to achieve. Mr. Schaab asked if they agreed that if it is a PIZ they could have a four story. Mr. Hug said no, he is suggesting that the ordinance is improperly interpreted to allow that. Ms. Davison said that in the Parking Impact Zone standards it specifically says in R3-A you can have four stories. Mr. Hug said that you are in B1 going back to R3-A. He said there are too many steps. He said that if the Town Council wants to do it, make it part of the Parking Impact Zone and say if you are in B1, you can go to four stories.

Mr. Troemel said that it is B1 and it does specify a transitional consideration. So where B1 adjoins single-family there is a transitional component you have to consider. But it is still allowed to go to six stories, but it is not guaranteed. Also, this was a public process. In regard to the height issue, this was not backdoor, secretive, or underhanded. They went through three public processes. Building height was an issue and was considered publicly. Ms. Embry was very clear in all three applications that she had concerns about building height and building proximity. His opinion is that ultimately that Zoning Board, Planning Commission and Council made a cognitive decision knowing that height was an issue and consideration when considering approval of the plans. Ms. Davison said that in regard to it being too many steps in getting to the four stories, she could think of several other places in the code where routinely you go from section to section. Mr. Hug said that you may be doing that, but this is a change in zoning, when you go from two stories to four stories. He said that the first application was a four-story building. The second application was two stories. Two stories is maybe an issue, but not as significant as a four story application. Bulk regulations are controlled and height is a bulk regulation and they are using that in a way that he suggests was never intended by the Town Council. That is why Ms. Embry asked them to send it to the Town Council. He thinks that the Town Council should provide their legislative input on what they intended. He is not sure that they intended or knew the way that this was going to occur. If you look in the application for Special Use in B1, there is nothing in the paper work, except the language of the ordinance, that suggests that somebody next to this property, or next to B1, would be looking at a four-story building. You have the application provided to you and the information background, the staff report, and there is nothing there to tell you that you would be looking at a four story building. That is due process; let people know what is going on. It happened and fell through the cracks.

Mr. Schaab said that regarding the first item, whether the map was misinterpreted, it seems we have agreement that language takes precedence over a map, in which case his opinion would be that it was erroneously applied if verbiage takes precedence

the map and this property wasn't replatted to be one parcel.

Mr. Mahrt said that the Board is being asked to make a decision regarding Mr. Troemel's interpretation that the entire parcel is in the Parking Impact Zone. That decision is final. It is not reviewable by the Council. The Council can take other action as a result of this, but the Board's decision on that issue is final.

Mr. Schaab moved that the Zoning Code Administrator erroneously applied the provisions of the Zoning Code since it is agreed that verbiage on the Parking Impact Zone boundaries takes precedence over the map.

Ms. Brand asked if it would be that he erroneously applied the Zoning Code or would it be that he erroneously placed a piece of property inside the zone.

Mr. Troemel asked that the decision be stayed until the next meeting. Staff has several items to investigate regarding this decision.

Mr. Blakney said that since this was much more than he thought it would be, he would be more comfortable waiting until next month. Ms. Brand agreed.

Mr. Schaab rescinded his motion.

Mr. Schaab moved, seconded by Mr. Penn, to table the item until the June meeting.

Mr. Troemel thanked the Board and said that they would keep Ms. Embry informed.

Ayes: Mr. Blakney, Ms. Hood, Mr. Schaab, Mr. Penn, Ms. Brand and Mr. Anderson

Nays: None

Motion declared carried

**Other Business:**

None

**Adjournment:**

There being no further business, Mr. Blakney moved, seconded by Ms. Hood, to adjourn the meeting at 7:30 p.m.

Respectfully submitted,

Sheila Elgin  
Office Associate