

**COUNCIL MEETING MINUTES
CITY OF UNIVERSITY HEIGHTS, OHIO
MONDAY, FEBRUARY 5, 2024**

Vice Mayor Michele Weiss called the meeting to order at 7:00 p.m.

Roll Call:

Present: Mr. Christopher Cooney
 Mr. Brian King
 Ms. Threse Marshall
 Mr. John Rach
 Mrs. Sheri Sax
 Mrs. Michele Weiss
 Ms. Winifred Weizer

Also Present: Mayor Michael Brennan
 Clerk of Council Kelly Thomas
 Law Director Luke McConville
 Fire Chief Robert Perko
 Economic Development Director Susan Drucker
 Police Chief Dustin Rogers
 Service Director Allen Pennington

Approval of Council Minutes:

There were no corrections to the January 16, 2024.

MOTION BY MS. WEIZER, SECOND BY MR. RACH, to approve the Council minutes from January 16, 2024. On roll call, all voted “aye,” except Ms. Marshall, who voted “abstained”.

Additional and Removals from the Agenda; Referrals to Committee:

Vice Mayor Weiss reported that just prior to the Council meeting the Safety Committee met and referred the following three (3) items to the City Council for approving and they will be agenda items (G, H and I)

Agenda item G: A motion to add to the Council agenda item G, a motion authorizing the renewal of the 2024 University Heights Police Department Lexipol subscription services in a total amount of \$17,026.10

MOTION BY MRS. SAX, SECONDED BY MR. KING to add to the Council agenda item G a motion authorizing the renewal of the 2024 University Heights Police Department Lexipol subscription services in a total amount of \$17,026.10. On roll call, all voted “aye.”

Agenda item H: A motion to add to the agenda item H, a motion authorizing the renewal of the 2024 UHPD TAC Computer software services in the total amount of \$18,645.42.

MOTION BY MR. KING, SECONDED BY MS. MARSHALL to add to the Council agenda item H a motion authorizing the renewal of the 2024 UHPD TAC Computer Software Services in the total amount of \$18,645.42. On roll call, all voted “aye.”

Agenda item I: A motion to add to the agenda item I, a motion authorizing the Lexipol Subscription Renewal Service for the Fire Department in the total amount of \$10,773.54.

MOTION BY MR. COONEY, SECONDED BY MS. WEIZER to add to the agenda item I, a motion authorizing the Lexipol Subscription Renewal Service for the Fire Department in the total amount of \$10,773.54. On roll call, all voted “aye.”

Comments from Audience

Ms. Marilyn Singer was present on the behalf of the Heights Observer on the behalf of the League of Women Votes. Ms. Singer stated that on President's Day, February 19th, from 6.30 to 8.30 p.m. at the Cleveland Heights University Heights Chapter of the League of Women Voters of Greater Cleveland, in partnership with the Heights Libraries will present the PBS video, A Citizen's Guide to Preserving Democracy, in meeting rooms A and B at the Main Library, 2345 Lee Road, Cleveland Heights. The video presents an interview discussion between politician and author Richard Haas, President of the Council on Foreign Relations, and PBS correspondent Hari Srinivasan. The discussion will be illustrated by examples of positive actions, beginning with the Great Lakes Civility Project. Following the video small group discussions with other attendees will take place and focus on the qualities of citizenship that are both valued and needed in the United States.

Mr. Micah Maliskas, 2592 University Blvd. Council is under no obligation to accept the site plan that does not conform with the zoning requirements. Mr. Maliskas said that he did not think it was appropriate for City Council to pick and choose what goes where based on personal preference, but that they did have an obligation to adjudicate what goes into the zoning. The site plan is clearly not in compliance with zoning rules and therefore Council is under no obligation to accept the site plan. Mr. Maliskas provided a few examples of what could go in a similar size parcel; 25 single family homes, 130 apartments, and 10 retail parcels, all three options would generate far more revenue for the city than what is being proposed tonight. From a tax revenue standpoint, a drive-thru is probably the worst possible land use in this fairly small and highly developed city. Mr. Maliskas continue to say that he could not think of a single use that would generate less tax revenue for the city except maybe a paved lot with nothing going on, but basically everything else that could possibly be done with the land would be better for the city from a revenue standpoint and certainly from a pedestrian standpoint as well.

Mrs. Judy and Roy Schonfeld, 2084 Miramar Blvd., South Euclid were present to voice their option in opposition to Chick-fil-A citing the already increase of traffic in front of their house from the school buses and litter that they have to clean up from the already existing fast food restaurants.

Mr. Reginald Highland, Miramar Blvd., South Euclid stated that he hoped the City would consider the neighbors to the north and added Chick-fil-A would bring more traffic and litter to those across Cedar Road in South Euclid as well.

Ms. Alex Ogilvie, Faversham Road expressed her opposition to Chick-fil-A. Ms. Ogilvie said that she supported transit and pedestrian-friendly developments and though that the city should also, especially for a project that does not conform to the current zoning code. Should Council decide to approve the project, Ms. Ogilvie suggested perhaps a condition being placed on the development, on the owners, that they are responsible for picking up trash within a certain number of feet of their project.

Reports and Communications from the Mayor, and the taking of action thereon:**Mayor's Report**

I would begin by thanking all the citizens who are here who have addressed the City regarding the proposed Chick Fil-A. I appreciate anyone who takes the time to come before the City to express their views, and let be known their positions on the issues that we all face.

Some of the things I will go over now are things I have mentioned before, in one context or another, but I think are worth going over once more, briefly.

The proposed site for the Chick Fil-A is 14100 Cedar Road, which is zoned U-9 and also known as the Cedar Center District.

Restaurant use is expressly permitted in the Cedar Center/U-9 district. If this proposed restaurant did not have a drive thru or a patio, no special use permit or any of the variances before council tonight would be necessary. When we take up this item this evening, the law director will go over the standard under ordinance 1274 for a special use permit, and what standards the council should be applying in considering the application, just as Planning Commission did when it declined to reject the application and then recommended approval. Namely, that the applicant show "by clear and convincing evidence ... that the special use will not impair surrounding property values or uses, vehicular parking and pedestrian or traffic conditions, lighting glare at night, noise pollution to others or other applicable criteria in the Planning and Zoning Code, and will not be otherwise contrary to the public health, safety and welfare."

The test for the issuance of a special use permit, or for whether a new applicant may come to our city, build in our city, the test is not whether you or I personally would patronize the proposed establishment. Later tonight we will consider and likely approve a special use permit for a day care center, even though none of us up here have children of age to use it. Similarly, when we have considered and approved special use permit for houses of assembly, whether or not we might join them to worship and pray is immaterial to the application.

Personally, I avoid eating in chain restaurants, favoring locally-owned, family-owned establishments. I prefer to get my chicken sandwiches at Chicken Ranch and Sauce the City, even today with a Popeye's less than a mile up Warrensville Center Road and possibly tomorrow with a Chick Fil-A in the neighborhood. Where *I* might chose to eat is immaterial to this application. But as an elected official in this city, I do appreciate any applicant's willingness to invest in our city, bring new construction, bring jobs, and bring tax revenue. Especially to an underutilized and obsolete site. That all said, I did not seek this applicant. They sought us.

Chick Fil-A's interest in our city is understandable. We have a strong consumer base and we are densely populated. And while we as a City are seeking to expand upon our city's walkability when it comes to development generally, the high-density development along Cedar Road and at Cedar Center historically has been automobile-centric. A drive thru restaurant that at peak would handle 200 cars an hour would be at home on Cedar Road in a way that it may not be on nearly any other street in our City.

Over two decades ago, University Square was developed to have 2 dozen or more successful businesses. Today, University Square has Target, Macy's, Verizon, and a couple of banks. One successful restaurant is not going to overburden the U-9 district. Also, the planned redevelopment of University Square would be mixed use including over 200 apartment units, which would have less vehicular traffic than retail in that same space. The site was built to handle far more traffic than it currently does.

Currently, there is a bank drive thru and a largely unoccupied office building on the site at 14100 Cedar Road. The real estate market for office space is soft all over, and University Heights is no exception. The proposed development would replace a run down and obsolete office building.

I walked through that building again just today. Most of the office suites are vacant. There are a handful of businesses, most keep odd hours. I have lived here long enough to remember this building at its peak. That is not the condition of the building or the tenancy present there today.

Hearing comments tonight, I am reminded, back in 2008, when Waterway was interested in University Heights. They proposed not just a car wash and convenience store, but a regional training center and offices. At urging of residents, the City ultimately rejected the zoning changes that would have permitted that applicant to build, and Waterway instead built in Pepper Pike on Lander Circle. Here in University Heights on the site that was Waterway's first choice, we instead got a McDonald's.

At the time the City rejected Waterway, the choice was not Waterway or McDonald's. It was Waterway or the languishing status quo. Which really meant Waterway and the unknown. Which became McDonald's.

Similarly today, we do not know what we might get instead if we do not approve this project. For those of us who remember who Monty Hall is, we do not know tonight what is behind "door number 2."

But differently, zoning changes are not needed for this applicant. Simply variances connected to a special permit under 1274. And there is precedent in place in the U-9 for an application like the one before us tonight.

Ten years ago, the City approved another drive thru restaurant with a patio in the Cedar Center U-9 District, being the Dunkin Donuts located at 13880 Cedar Road. In 2014, developers tore down an old building that once contained Sills Insurance, Ark Jewelers, Classic Memorial Monuments, and a lot of vacant office space. Then, as now, it was redevelopment that took obsolete and underused space and made it productive. The few businesses that were present there relocated – Sills Insurance is still in University Heights just west of the library. Ark Jewelers and Classic Memorials relocated to the South Euclid side of Cedar and Warrensville.

Again, the U-9 is zoned for restaurant use. Chicken Ranch, Zina, Primoz, Bibibop, Georgio's, The Sauce, Boston Market, Applebee's, all current and recent restaurants in the U-9. And Dunkin', with its drive-thru.

I urge the city council to consider the law director's direction on the legal standard applicable under 1274 for the special use permit, as he will set forth when we get to that item on the agenda.

One other item.

We do not have on tonight's agenda an engineering candidate.

The rejection of our engineering candidate last month has had a ripple effect on projects here in the city. I am endeavoring to mitigate and minimize that effect. However, ODOT has postponed our traffic signal project until fiscal year 2025 specifically citing the lack of an engineer. NOACA has expressed concern in the status and timing of numerous projects without an engineer, and we will be meeting with them in early March – hopefully by then we will have an engineer to bring to that meeting to keep those projects on track. Though we do not today have a city engineer, we have proposed a budget that uses GPD's last numbers for the road program, though those numbers were provided knowing that they would not be the one needing to fulfill them, and will require revision by whomever ultimately comes in. There are other projects that are delayed besides these, such as the continued replacement of the Silsby Road water main, the projected design costs for which exceed my spending authority.

I am in talks with two engineering firms presently. I hope to have one to nominate or bring back later this month for approval.

Thank you, this concludes my report

Reports and Communications from City Council, and the taking of action thereon

Mrs. Weiss reported the following:

In light of the 2024 City Budget that is on the agenda, there will be a Joint Finance and Finance Advisory Committee scheduled in the next few weeks to review the budget.

I also am disappointed that the engineer is not on the agenda tonight because she was hoping that would have been a priority. Projects should not have been canceled or postponed because the City does not have an engineer for four weeks, that is unacceptable.

There will be a Council of the Whole meeting tomorrow, February 7 to discuss the resumes that have been received for a new Law Director and interviews will be scheduled within the next few weeks.

There were no other reports from City Council.

Reports and communications from the Directors of the Department of Finance, the Department of Law, the Department of Public Safety, the Department of Public Service, and other department heads as applicable, and the taking of action thereon

Finance Director Dennis Kennedy reported that the Finance Department was closing out the month of January so he would provide Council with a financial report once that it finished. There will be an upcoming CIC meeting to approve the auditor for the CIC.

Housing and Community Development Geoffrey Englebrecht stated that the City \$395,000 grant that the city applied for from NOACA passed committee and will be going to the NOACA Board of vote on March 8th. The grant funding will be used to reimagine and redo South Taylor Road.

Economic Development Susan Drucker provided an up date on business in the City. After three years of renovation, Clean Eating 2 has opened at 2263 Warrensville Center Road and specializes in sandwiches, salads, rice bowls, and smoothies.

There were no other department reports.

Reading and Disposition of Ordinances, Resolutions, Motions and Consideration of Agenda Items:**A. Motion to Confirm the Appointment of Alix Ogilvie to the University Heights Architectural Review Board for a Term of Three (3) Years Effective February 1, 2024**

Mayor Brennan stated that Ms. Ogilvie chose to make University Heights her home after spending much of her time and professional career in California. Ms. Ogilvie is not only an experienced architect, but is experienced in community service as well. She was on the planning and Design Commission for the City of Sacramento, California and brings a lot of great experience University Heights.

Ms. Ogilvie commented that she really loved the community and that as she stated before, she supports transit and walkable neighborhoods as a bicyclist herself and everyday walker. As an architect, she supports the values that the community has demonstrated since they have been here almost two years and she has hopes to serve in whatever capacity she can.

Mr. Rach commented that Ms. Ogilvie's resume was great and that she will do exemplary work for the city and Architectural Review Board (ARB) but also noted that the Architectural Review Board was still not fully staffed yet. Mr. Rach added that he was a little confused as to why Mr. Cucciarre's position on the ARB was eliminated when there is still not a fully staffed Board. Mr. Rach continued to say that the Mayor gets to choose the Architecture Review Board members subject to Council approval and that he thought that when there were vacancies people would not just fired from the board to bring on somebody new. Mr. Jack said he would think that opened positions would be filled first and so he was a little taken back by that. For the record Mr. Rach informed Ms. Ogilvie that she was not obligated to take a meeting with the mayor at any time. The rest of this is as read into the record by Mr. Rach.

"The Mayor has called board members to come to a meeting in his office to whatever reason, you (Ms. Ogilvie) are under no obligation to take a meeting. They usually happen when you either vote against something he prefers or you talk to a council person, which he does not prefer you get called into the office. You are under no obligation to take that meeting. You do not work for the Mayor, he just appoints you and we (Council) confirm. There may be a time you get a nasty letter from the mayor. Both Mr. Caito and Mr. Cucciarre just received a letter last week that I got to read. I felt it was threatening in nature and intimidating to get them to change the way they conduct themselves on ARB. It came to my attention that before the last Architecture Review Board meeting, one of the board members' employers was called. And I feel that was in a way to get them to vote a certain way. That board member felt extremely uncomfortable. If your employer is called, you are under no obligation to talk to them or anything. You actually are allowed to discuss the site. So as part of the Architecture Review Board, you are gonna look at materials, fenestration, colors, that sort of thing. But also, part of your scope is specifically on the site, you can look at vehicular access, pedestrian access, orientation of the building, traffic flow, those are things that are actually spelled out in the administrative code. So, in the last meeting, board members were forbidden from talking about the site. But you actually under the administrative code can talk about the site. I just want to talk for a minute about how this behavior has become a pattern. Back in 2022, the Mayor had tried, he attempted to remove two Architectural Review Board members. After they had a disagreement with the facilities assessment, this Council ended up expanding the board to five people plus an alternate, so that's six, which we still have not filled that sixth position. In fact, that alternate position has been vacant the entire time, Mayor Brennan has been mayor. In 2023, he removed another Architectural Review Board member, no reason was given. And in 2024, he removed another Architectural Review Board, again, no reason given. I assume it's because of their reluctance to pass the Chick-fil-A project in the last meeting. He also removed two Planning Commission members right after they voted to table the meeting, because they had disagreements over the bus depo, which is right outside those windows there. When they showed their disagreement, they were let go before the following meeting. The applicant never returned and the bus depo got built. He also removed two members from the Beautiful Home Commission that he did not agree with. He had attempted to remove a citizen member of the CIC, because he did not agree with them, and is now trying to reorganize the governance structure of that. Again, I want to just go back to why Mr. Cucciarre was let go from the architecture review board when we have a need for an additional person. Ms. Ogilvie can serve alongside the peers on the Architecture Review Board, but I have heard no reason-

At this point Ms. Weizer called for the point of order and said "I'm sorry Mr. Rach, we're discussing an appointment to the Board. I understand why you want to do what you want to do. But as a point of order, we're moving into an area that isn't on this session."

Mr. Rach: Sure. So let me explain why I'm going in that direction.

Mrs. Weiss: No, no, I know that, but –

Mr. Cooney: Vice Mayor Weiss, I'm in agreement with Council Member Weizer. This is about the appointment. I make a motion – we need to move forward, there is a point of order.

Mrs. Weiss: There is a point of order.

Ms. Weizer: Yes

Mrs. Weiss: The point of order over rules the - -

Mr. Rach: I'm only hesitant, I do not want vote no on this, because we desperately need an Architectural Review Board to be fully staffed. So, I'm not voting no on this, but I do want to make sure that it's clear that I'm not sure how to vote yes when we are removing people from a board, and what I perceive as the dismantling of the board, and that has come up before with the trying to eliminate residency requirements.

Mrs. Weiss: So, we can have that in comments then afterwards. Ms. Weizer?

Ms. Weizer: Thank you, Vice Mayor. Alex, I will say I was highly impressed with your resume the first time I read it, which isn't tonight, and it wasn't in the packet. It was the first time your name came up as a potential person to serve on ARB. You are more than qualified. The mayor is right. You are overqualified. You have new ideas that you can bring to this city to dust off a lot and I think we need that. I hear Councilman Rach's concern, because there has been things that have happened, and I will tell you your email to the Mayor those many months ago proved to me that you can stand on your own two feet, and we don't have to worry. I think you know how to handle yourself professionally. I think you will be an asset to the community, and I would hope that Councilman Rach would put aside his concerns, which are very real, and use that as the basis to vote for to approve the nomination to ARB. We can't afford to lose this woman's qualifications. We just can't.

Mrs. Sax: And I thank Ms. Ogilvie for reconsidering in spite of what happened before. For the very reasons that Councilman Rach has been stating, so I will not restate any of that. I have been grappling with the decision on how to vote, because on the one hand, you and Ms. Huyen are very qualified and very much needed in our city. But, I do want to send a message to the Mayor that while I support you strongly on the ARB, I also strongly disapprove of his dismissal and termination methods. So, should Ms. Ogilvie and Ms. Huyen be appointed to the ARB, I firmly hope they can express their professional opinions without having to face the same fate of those who have been curtly and disrespectfully terminated and dismissed. Thank you.

Mayor Brennan: I'm not going to go into a full blow-by-blow refutation of what Mr. Rach said, because I want to respect the point of order that I think Councilmember Weizer rightly made. But, but I do think there are a couple of things that need clarification. First of all, Mr. Cucciarre was not fired, his term was up. His term was up and these are not lifetime terms. Any time a term is up, you may renew somebody or you may go in another direction. In this instance, we went in another direction. I wanted to give somebody else an opportunity to serve in the ARB. Mr. Cucciarre has served with distinction over a long period of time. I celebrate his service to the city and look forward to another opportunity for him to serve at a later date if he is so interested in some other capacity. I reject the idea that Mr. Cucciarre was let go because of Chick-fil-A. He, as a member of ARB, he voted in favor of the application. So that would be a strange turnabout if I was somehow punishing him for Chick-fil-A when he voted for it. That said, when it comes to Ms. Ogilvie, and I don't believe she's anybody's yes person, least of all mine. So, I have no problem with strong, thoughtful people being in the various appointed positions here in the city. And if fielding to the Mayor was a qualification, Alex wouldn't be the nominee. She's here because she's qualified, she's gonna be great at it. And anybody is always welcome to disagree with me, because that's how conversations continue and better decisions are made. So, I don't fear that one bit, I welcome it. So, Alex, thank you for your willingness to serve in this capacity. And I know that your allegiance is to doing the best job possible, not to myself or any member of Council. So, thank you.

Mr. Rack: I'd like to add one more thing. So, Ms. Ogilvie, just to be consistent with Mr. Broadus, who was appointed a month ago, I believe. I just want to let you know when and if you get appointed to this Board, you'll get to participate in our Zoning Committee redo. So right now, we're undergoing a comprehensive zoning redo. And so Board Members from the Architecture Review Board, Planning Commission, and Board of Zoning Appeals have a seat at the table to have a voice of how our zoning should look. So you will be invited to come to all those meetings if you are confirmed. And then there's also the Building and Infrastructure Subcommittee, in which we allow licensed architects or actually

anybody who's interested in architecture or development engineering, that sort of thing, to have a voice at the table regarding public works projects or buildings. Right now, we're going through new municipal facilities. So we're trying to right size that. So again, you'll have a seat at the table to help us with that, undergo that process.

MOTION BY MRS. WEISS, SECONDED BY MR. KING to confirm the appointment of Alix Ogilvie to the University Heights Architectural Review Board for a Term of Three (3) Years Effective February 1, 2024. On roll call, all voted "aye."

B. Motion to Confirm the Re-appointment of Lyly Huyen to the University Heights Architectural Review Board for a Term of Three (3) Years Effective February 1, 2024

Mrs. Weiss opened the floor to Mayor Brennan for comments.

Mayor Brennan: Lily was previously appointed to serve a partial term when we reorganized the ARB. She has served well in my estimation and in the estimation of those who have served with her. If anyone has had any issue with her, they have certainly not shared it with me. Again, this is a younger but experienced architect who has cut her teeth in areas outside of Cleveland. I appreciate people who bring in the outside perspective. Much of her work prior to coming to Greater Cleveland was in Philadelphia. This is somebody who I think brings attributes that will help us be the city that we want to be going forward and in the future. I'm delighted that Mrs. Huyen is willing to serve again and continue with a full three-year term.

Mrs. Huyen: I'm excited to serve again for a full three-year term. I'll follow that up by saying that I was quite disappointed to hear that Mike Cucciarre would not be joining us this year. He brought an immense amount of experience to the ARB, very in-depth insight, not only to the architecture, but also just generally the community. I think that's something that, in the hustle and bustle of everything happening, can sometimes get lost in the conversation. As ARB members, we are residents first who genuinely care about the community at large and what we can hope to contribute here. To hopefully move forward without much contention would be great, as our primary focus is just to make this community the best that it can be, architecturally speaking. The second thing I wanted to restate is the importance of having an alternate. I am a new mom, so when Mayor Brennan called me young, it was very nice. I don't feel very young anymore with a baby. This past summer, I was on maternity leave for three months. Then we only had four ARB members, so to meet quorum, we needed three people here at all times, which during the summer is a little bit dicey given everyone has their own vacation plans. We have jobs outside of ARB as well, and we have our own personal lives that we need to attend to. I, as much as I wanted to be at ARB during my maternity leave sometimes, could not make it. I was especially appreciative that the three other members that were on the board could show up, because we did not have a fifth member and we did not have an alternate who could sub in for them. Understanding that there is still an alternate position open and understanding too that Mike was essentially let go, knowing that there is another position open, it is disconcerting. I'm excited to serve again with Alex and the three other board members. And, hopefully an alternate this year.

Mrs. Sax: I am just so pleased with the integrity of these two residents who are willing to serve on ARB. I am just very, it's a great package to have professional expertise and commitment to the city as well as integrity. Thank you so much for your comments tonight, and I do hope the Mayor will reflect on them to reinstate Mr. Cucciarre, to make the ARB whole.

MOTION BY MRS. WEISS, SECONDED BY MRS. SAX to confirm the reappointment of Lyly Huyen to the University Heights Architectural Review Board for a Term of Three (3) Years Effective February 1, 2024. On roll call, all voted "aye."

C. Motion to Approve the Planning Commission recommendation from the February 1, 2024 Planning Commission Meeting for the following Special Permit to operate a day care center in a (U-2) two-family district at 13504 Cedar Road (La Petite Learning Daycare Center)

Mr. Rach provided a synopsis of the Planning Commission meeting and stated that this application for a Special Permit was unanimously approved by the Planning Commission. The commission did take the canopy off as the canopy was pre-existing and drawings of the canopy were not provided. Mr. Rach added that he did not feel comfortable reviewing something that he could not see, so he asked that that not be

considered as part of the packet and that was fine because it is an existing condition. This was a daycare center before and has recently been a vacant building for some time. Now we have an investment into this building, into this community, to bring a new daycare center here. Mr. Rach's added that the only concern that was brought up during the Planning Commission meeting was in speaking with the Building Commissioner what use group would this falls under because part of the building is educational, and part of it falls under I-4 in the Ohio Building Code, which is for the toddler rooms and the infant rooms. They fall under a different standard because of the high standard that it holds. These are humans that cannot take care of themselves so one change that may have to be made once the Building Department conducts its thorough building code review is that there may need to be another means of egress outside the toddler room and outside the infant room. This should not have a monumental change to the site plan, except maybe a sidewalk connecting to the sidewalk. The Planning Commission felt comfortable in approving this with the condition that the applicant would have the thorough building code review conducted by the Building Department.

Ms. Weizer comment that she was probably the only person on Council that has an intimate knowledge of the site, because she has lived right behind La Petite for 30 years and that use has been there for years.

Mr. McConville interrupted Ms. Weizer and stated before proceeding in taking testimony or evidence from the applicant, he wanted to clarify for the record that this was a Special Use Permit under 1274.01(b) and the legal standard is enunciated in 1274.01(d). The applicant has a burden by clear and convincing evidence to show that the special use will not impair surrounding property values or uses, vehicular, parking, and pedestrian or traffic conditions, lighting glare at night, noise pollution to others, or other applicable criteria in the Planning and Zoning code, and will not be otherwise contrary to the public health, safety, and welfare. With that, Mr. McConville yielded the floor.

Ms. Weizer continued to say that honestly in the 30 years, they probably have had marginal complaints, if anything and if the applicant runs her business the way La Petite was run previous to this, all of those conditions should be easily met. The main concern the neighboring residents have had was the fact that building was empty for such an extended period of time. Whoever the applicant hired to clean the site has done a tremendous job. Ms. Weizer added that she thought that the people in that area, the neighbors in that area, are used to the use as a day care center.

Mr. Rach also noted that the Planning Commission's motion included that the approval be subject to building code evaluation or building code review by the Building Department.

Mrs. Weiss asked Ms. Weems is she was licensed by the ODJFS or the ODE and if not have they given her a timeline in which she could expect receiving her license?

Ms. Weems replied that she could not get license until she receives approval by the City and after that once the Health Department has all the paperwork they would assign a worker and from there it would be three to four weeks.

Mrs. Weiss asked Ms. Weems if she would also have a food program and go through the CAFCP program.

Ms. Weems replied yes and that she would be going through the Board of Health for her food program.

Mr. McConville noted that this was an existing building with no alterations to the site plan. The particular condition that was articulated at the Planning Commission level was that the approval would be subject to plan review for purposes of reviewing whether additional egress is required at ground level with respect to students who are in kindergarten or below.

Mrs. Weiss clarified that the building would have seven rooms with a possible eighth room in the basement, if the rooms were all measured to conform to the certifying agency and if any of the original age group rooms had been switched from the original day care center? Because they need to be a certain square footage based on the age of the child.

Ms. Weems replied that the requirement is 35 square foot per child and the age group rooms would be just as they were originally.

Mrs. Weiss commented that the building has been empty for too long and that she was very excited that this will be a daycare again. There is a big need for daycares in the city.

MOTION BY MS. WEIZER, SECONDED BY MR. COONEY to Approve the Planning Commission recommendation from the February 1, 2024 Planning Commission Meeting for the following Special Permit to operate a day care center in a (U-2) two-family district at 13504 Cedar Road (La Petite Learning Daycare Center) contingent upon plan approval as stated in the Planning Commission meeting. On roll call, all voted “aye”

D. Motion to Approve the Planning Commission recommendation from the October 5, 2023 Planning Commission Meeting regarding the Site Plan Application Approval from PEA Group for the Construction of a New Chick-fil-A Restaurant with Drive-Thru at 14100 Cedar Road including the approval under University Heights Chapter 1274 for a Special Use Permit for a drive-thru and patio as depicted in the site plan application and the findings that the conditions for which variances sought by the applicant were waived by the Commission, and in reflection of discussion had on the recording at Planning Commission, amend the waiver of variances to a granting of variances time-limited to the duration of the Special Use Permit.

Waived/Time-limited Variances included: (1) Variance from the requirement that all area within the required building and parking setbacks be landscaped; (2) Variance for Lot size of .85 acres, where the requirement is 3 acres and the lot is 2.15 acres; (3) Variance for Front setback of 9 feet required, where 75 feet is required and the building is set back 66 feet; (4) Variance for Minimum landscape requirement variance of 20%, where 50% landscape coverage is required and 30% is shown on site plan; (5) Variance for Maximum width of access points (entrances and exits) is 24 feet – variance of 4 feet required for South access point where access point width is 28 feet; variance of 1 foot required for North access point where access point width is 25 feet; and (6) Variance of 7 foot for radius at the edge of driveway apron, where radius of driveway apron is required to be 12 feet, and radius of driveway apron at North access point is 5 feet.

These minutes will be verbatim.

Mrs. Weiss: Mr. McConville, do we – when we discuss this we should go one by one in terms of variances?

Mr. McConville: Yes. A few things at the outset. This is a special use permit under 1274.01(b). The same legal standard that you just heard also applies in this case. And again, for purposes of the record, I'll just read that in. The applicant has a burden by clear and convincing evidence to show that the special use will not impair surrounding property values or uses, vehicular parking and pedestrian or traffic conditions, lighting glare at night, noise pollution to others, or other applicable criteria in the planning and zoning code and will not be otherwise contrary to the public health, safety and welfare. I note that this is an application for a special use permit that involves a request for variances. At the Planning Commission meeting. There was a concern that was articulated by a member of the Planning Commission that the city would be prevented from ever reconfiguring the site if variances were granted that would run with the land. And as a solution to that issue in an effort to craft a less burdensome decision on the city, it was suggested that waivers of the variance requirements be approved in lieu of variances. And, it was also indicated that the Law Department would take a look at that issue to determine whether variances run with the land as a matter of law or whether they can be time limited. We did do that research and we've found case law that supports the idea that variances can be time limited. And, so because it's a more conventional approach, we would recommend that if a Council is inclined to grant the special use permit, that you also grant variances that are temporally limited to run concurrently with the duration of the special use permit. So that if the applicant were to ever leave or abandon the site, the variances would be extinguished as they departed. I can answer more questions about that if you have any. I would also note that because the applicant is seeking variances, this is a quasi-judicial hearing under Chapter 2506 of the Ohio Revised Code. And we'll ask the applicant and any witnesses that they might bring this evening to be sworn. And if you open the floor up for comment from the public, we'll ask anyone who's commenting publicly to be sworn this evening. With that, what we would typically do is turn the floor over to the applicant, ask them to be sworn, and go ahead and make their presentation to Council.

Mrs. Weiss: Okay, if there's anybody for the applicant that would like to speak, please approach the podium. If you can get sworn in, please.

Mr. Coyne: Good evening. My name is Anthony J. Coyne. I'm legal counsel to Chick-fil-A on this matter as their land use counsel. Just for the sake of cooperation, I'll be glad to be sworn in, but I'm already sworn in as a member of the bar. I have to testify truthfully. I have to follow the Constitution, the laws of the State of Ohio, and the ordinances of this wonderful City. But I'll be glad to be sworn in if you'd like me to.

Mr. McConville: Do you swear or affirm the testimony you will give today will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Coyne: I do. Thank you. Note for the record, Leslie Accardo is with me. She is an engineer working on the project, and she also consented to being sworn in. So, for the record.

Mrs. Weiss: Thank you.

Mr. Coyne: Yeah, I will get to that here as we progress. First of all, to the Vice Mayor, on behalf of Chick-fil-A, we're really excited to be here. This project has been under review by just one full year, actually, and we have had many meetings. We had some challenges trying to schedule this meeting for a variety of reasons, but because of technology, we're fortunate enough to have our team leader appear by Zoom. Shaun Walker is the Principal Development Leader with Chick-fil-A from Atlanta. She is available on Zoom to comment or answer questions. Leslie Accardo is the Civil Engineer and Senior Project Manager, she is present with me. Heather Simko, who has been to several meetings with the E&H Architectural Firm as the Project Manager, is also on Zoom. Also, we believe our Traffic Engineer from Fishback Engineers from Detroit, Michigan, is available on Zoom as well. With that technology introduction, I just want to thank the entire Council for your time and hopefully for your fair consideration for this really, we think, exciting project here in University Heights. I know that this project is probably the largest single investment in University Heights in a while. It's going to involve significant restoration of a site, which currently is, as you know, a medical office building. It will create 60 to 80 jobs. It is all new construction. And so, we're excited to bring this. Now, as some of the original comments that were made, if you look on the screen, the site is zoned U-9, and a restaurant is an expressly permitted use in the U-9 district. So, the reason we came before the and again, the Planning Commission, the Board of Zoning Appeals, we had some disagreement on that respectfully as to whether we just went to the Board of Zoning Appeals for the variances. It was decided because of this 1274 application that we would go to the Planning Commission, which we did and presented the plan there. But it is U-9 zoning as you can see, the property is located at the corner of Miramar and Cedar. Go to the next slide, please. And as you can see, it's on a fairly heavily, well-traveled commercial corridor, which obviously abuts University Heights and South Euclid. It is also more than five miles away from any other Chick-fil-A restaurant, as you can see on this slide. And if you look at the existing conditions, I think the Mayor made some points about the existing building. It's a well-worn suburban medical office building. That's what it was built as probably a half a decade ago, or half a century ago. It has significant vacancies. But we are looking to acquire the entire site and redevelop it. So there would be demolition on the site and complete redevelopment of the site. If I can go to the next slide. This is the project timeframe and timeline. So, we had filed originally on February 1, 2023. And we had several comments from the community, from the city. We've been to several meetings with the Planning Commission and the Architecture Review Board. So, the project has gone through a very strict review process with your professionals that work directly for the City of University Heights. Next slide, please. We note that the Traffic Engineering Review approved the site and project. Your Engineering Department approved the site and project. Your Police Department approved it. Your Fire Department approved it. On the next slide, you'll see that there were formal memos from Fire, Engineering, and Police. That this, and I quote specifically, that they confirmed that the results of the traffic impact study, that there was no regular impact and the proposed development will not result in any significant impact to the adjacent road network. The proposed site access configuration is appropriate and will acceptably facilitate site regress and egress. So, I just note that for the record, before we actually had formal presentations to the Planning Commission, we did have your professionals review the site in detail, review the project in detail, and they all were in simpatico as it relates to approving what was being proposed by Chick-fil-A. At some point in time, the project was also reviewed by a Planner named Richard Hirsch from SafeBuilt in Oakland, California. And Mr. Hirsch prepared a very exhaustive 31-page zoning code compliance matrix. Ms. Accardo and our office and also Chick-fil-A and Shaun Walker reviewed that plan. We went back and forth through your Law Director to address all of the issues that were raised in that plan. And we came down to the application formally being addressed to the City Planning Commission with the request for one, a special use permit for an outdoor dining patio. Yes, you need an outdoor dining patio in University Heights to be a special use permit. That was requested by folks in the community and some of the community meetings we had, I might add. The original plan did not have that. Then there's also a need for a special use permit for a drive-thru. And as you know, with banks and restaurants, drive-thrus are very common, in particular given the COVID situation. That is a common business plan in this Country today. And Chick-fil-A probably operates one of the most efficient and safest drive-thru programs. In addition, there were some area variances that are described on your agenda, which again, we looked at that meeting that was attended, that they could be deemed to be waived or to have the variances granted in a time limited to the duration of the special use permit, which we took to mean if the building were torn down and somebody else came in, they'd still have to apply for variances. But most of those variances resulted from the conflict between the U-9 district under 1266 and the application of Section 1274. And we'll talk about that here shortly. After we went to Planning and got approval from Planning, we also received unanimous approval from the Architectural Review Board. We had three members vote in favor of it, one member abstained. So we

did receive that approval. During that meeting, there were at least seven suggested changes to the architectural design of the building. Some of the landscaping features, all of those were integrated into the plan that you'll see tonight and that Heather Simko will describe to you in some detail. So first of all, I would like to now at this point turn the presentation over to Leslie to review the following slides.

Leslie Accardo: Good evening. So the plan that you're seeing right now was the original site plan that we had provided with our site plan approval package. You'll notice that the patio was behind the building. We had two drive-thru lanes going through the entire site. We did not have any pedestrian access from the street. And we just had the code required landscaping, nothing above and beyond. We did receive plan review comments from the City Engineer. We went back and addressed those. And we also revised the plans and resubmitted. This was revision two. You'll notice that we have pedestrian access added directly from Cedar Road. We moved the patio to the front side of the building to allow better visibility. The meal planning delivery drive-thru was moved along Miramar instead of along the front of Cedar Road. And we reduced the drive-thru lanes from two going all the way through to one after you pick up your meal. And then we also added some landscape enhancements based on feedback received. This is the most recent plan. Notable, sorry, this is revision three. There's one more after this. We also, in this one, we adjusted the sidewalk near the dumpsters to create more site landscaping. We added striping in the parking lot to enhance the pedestrian connectivity. We added a low wall so there are pilasters with wrought iron along Cedar Road and along with additional landscaping to provide more of a buffer as well between the residential apartments across the street. This is our current plan. With again, we've added some additional plantings along Miramar. We've added some berms to the site as well. And we reduced the flagpole height to 35 feet. This is a plan showing the various plantings, the heights that they will end up being. We thought this was very important to have so you can see what the plants will end up looking like. We have a nice variety of both deciduous and evergreen. And this is an example of the low wall. And I'm planning, it's just an example. I'm going to now turn this over to Heather Simko at E&H and she is going to present on the elevations. And she's online.

Mr. McConville: And Tony, we would ask that she be sworn as well.

Mr. Coyne: Yeah, I thought I tried to make that on the record that they were. But if you want to do it again, the Vice Mayor.

Mr. McConville: If you'll stipulate that they're sworn.

Mr. Coyne: Yeah, we'll stipulate that the representatives of Chick-fil-A, which would be Heather Simko, Shaun Walker, and the Traffic Engineer would be assumed to be sworn in.

Mr. Coyne: Thank you.

Mr. Coyne: So Heather, you have the floor on the original elevations.

Mrs. Thomas: Can you hear?

Mr. Coyne: Heather?

Mrs. Thomas: I have her. She's here.

Mr. Coyne: Technology is great until it's not.

Mrs. Thomas: No, it's the person using technology.

Ms. Walker: We can hear you, Heather. Just speak up.

Ms. Simko: Oh, okay. So, on this first slide, we have our original elevations, our prototypical two-tone brick building with bronze accents, the same darker tan brick color that we have there. And we're showing in this version the parapet height to the top of framing is 28 foot 4 1/2 inches. And then on the next slide, after receiving feedback from Council, we have raised the parapet significantly to try to achieve that two-story appearance that is required by the code. We've increasingly been on the foundation on these elevations, added some extra accent detailing in the volume-spacing theater. And then after presenting this to Council again, on the next slide, we'll see our revised...

Mr. Coyne: Hold on, Heather. Hold on one second.

Mrs. Thomas: I think I lost you. Heather, are you still there?

Ms. Simko: I'm still here. I'm not able to see which slide we're on.

Mr. Coyne: Yeah, we're going to go to 17.

Ms. Simko: Okay.

Mr. Coyne: So one more. This is 16. If we can get to 17, it's the next slide. Okay, now we're on slide 17, which is the elevation revision 2.

Ms. Simko: Yes, this is revision 2. The change is made after our first appearance at Council. Again, the raise...

Mrs. Weiss: I think we just want to say ARB instead of Council.

Mr. Coyne: Really, Planning Commission and Council, but you're right.

Mrs. Weiss: Well, not Council.

Mr. Coyne: For the record, yeah, not Council. Planning Commission or ARB.

Ms. Simko: Planning Commission. Thank you. And after further comments, if we can go to slide 18, please. We are now (counting) our final version of these elevations after additional feedback from the Planning Commission and the ARB. We've increased the glazing on all of the elevations significantly, especially the elevations along Cedar and our parking area where the guests come in. Feedback received from the ARB to include additional glazing on our... excuse me, east and west elevations, and also the... added secondary material, the Nichiha panels, to give the building a more modern look. And just really, you know, really invested in that modern, forward-facing look along Cedar Road.

Mr. Coyne: If I could just talk with that. These were suggestions made by the Architectural Review Board that Chick-fil-A followed. Go ahead, Heather.

Ms. Simko: And if we could go to the next slide. Okay, I can see that now. Thank you. In this view, you can see the height of the landscaping at the time of installation to kind of give the impression of what the building is going to look like free from Miramar and, again, from the access roads on our... east and west elevations there. And we are on the perspective. Again, seeing the landscaping, so low walls with the wrought iron gate between there. You can see our view of the patio here, very welcoming, very encouraging of pedestrian access from Cedar Road. We also are providing bike parking and quite a bit of landscaping to screen the refugee closure from any residents and to reduce any light pollution that the neighboring sites may receive from driving traffic. And then, next slide. Here we have some examples of our signage. Again, this is only provided as a reference. As I understand it, the signage is a separate application, but we would like to provide this now for review just as an example. So we have our monument sign with small signage letters, our menu board, our typical directional, our flagpole, and then on the slide 22, examples of our wall sign.

Mr. Coyne: And I'll start off in a second too. The signage is submitted to the Building Department after approvals are received, and then if there are issues with either the design, size, or variances, they come back to ARB for review and approval. So we presented those just for illustrative purposes, not requesting approval of the signage package. And we thought it was important for the Council to know that because the real reason we're here is for the Planning Commission affirmation. So I just wanted to point that out. We can go to the next slide here. I think these are helpful slides when you consider this project along the corridor of Cedar in the City of University Heights. As you can see, this is the commercial heart of University Heights. If I can approach from the left side is the Dunkin' Donuts, all the way to Miramar, which is the location of the proposed Chick-fil-A. The red line that's been inserted there is the building setback line. If you look at it carefully, you will see that Chick-fil-A will have the most amount of landscaping in front of its building line, of anything along Cedar, as you can look at it. It's important because we were advised to be as green as we could. We added significant landscaping. We also added pedestrian connections to the restaurant. There is a likelihood that we're going to get redevelopment, hopefully, at University Square. And that would be important given the fact that we may have apartments going in next door. So that landscaping is significant given the built environment. Some parts of the commercial corridor in University Heights have virtually no landscaping in front of any of the buildings along Cedar, zero. Even Dunkin' Donuts, it's all gravel, no landscaping. Now, as you can see, and there's

the Dunkin' Donuts and there's the commercial shopping center. The way the parking is configured, there's virtually no landscaping. Now, if we could go to the next slide. If we go to the next slide. This shows the rationale. So, again, the standards for the special permits that we've requested are, we believe, thoroughly met. The drive-thru is keeping with similar and adjacent projects as well as the existing site, which has a drive-thru on it. Oops, if we could stay there for a second. There we go, thank you. Also, the outdoor patio was really encouraged from almost the very beginning. There was actually a site plan submitted that did not even have an outdoor patio. So that, we thought, was a major amenity. There's additional seating. There's 68 seats in the restaurant. And that that amenity would be very attractive to pedestrians because you could walk into the site through a sidewalk. We're not really adjacent to a residential district. There's an apartment building behind it that's separated by a large parking lot. Although we do have some landscaped areas. The drive-thru site has been designed to contain traffic on site within University Drive. We've added additional landscaping, a low wall, location of the building has been purposeful to be in harmony with adjacent businesses and residential. I might add, they will capture all of the vehicles on site. You can look at some, particularly more urban restaurants that have a drive-thru, and they can't necessarily easily keep the cars on site and that's a safety issue. This site will be able to accommodate all the cars during their peak time on site. And then again, the outdoor patio was encouraged by staff, and we think is a nice amenity for the community and those who are going to patronize Chick-fil-A. And again, Chick-fil-A spent a lot of time looking at sites. They think this part of Cuyahoga County, this community in particular, that this would be a very successful restaurant proposal. So what we would request is, very respectfully, that this Council affirm the recommendation of the Planning Commission. The Planning Commission made the recommendation, and as I said from the beginning, there is some confusion. And one of the council members mentioned the concept of redoing some parts of your zoning code. I wouldn't disagree with that. And if we go to the next slide, as an example, the property is zoned U-9, which is governed by Chapter 1266. If applicable, you could apply the 1274, which is more for religious institutions and medicinal marijuana facilities. So, it was suggested because it could be applicable that we should follow that. When you do that, you have conflict. So the variances which the Planning Commission deemed to be potentially waivable are up here and I'll give you just four examples. Under 1266 U-9, for this site, requires a minimum of one acre in size, under 1266. We are on a site that is 2.15 acres. So we comply. And that's what we originally thought. If you look at 1274 Houses of Assembly and Social Service Uses, the minimum acreage size is three and I don't think a Chick-fil-A would fit into one of those uses. Under the required area for usage and frontage requires 20%. We provide 31%. We comply under 1266. Under 1274 houses of assembly and social service uses, 50%. We don't comply with that one. So that would be a variance issue. As it relates to area, yard, and height, and regulations, and usage and frontage regulations, and these are taken from your planning consultant's analysis, I might add, requires 30 feet on cedar, and we provide 66 feet from the property line. Under the 1274 code, it's 75 feet. For parking facilities, there's no specific requirement for the parking, you know, exit lanes with entrances, or what have you. And this 1274 provides 24 feet of maximum width. So we believe that we have looked at your code, we have worked with really good engineers and architects to try to come up with a project that we think would be well received by the community. And again, from February 1st of last year, we have had countless meetings and countless revisions by our engineers, by our architects, and listening to people in the community at meetings such as this that we've attended. And so we would request that the Council affirm the recommendations of your Planning Commission, given all of the analysis that they did in making that recommendation. And we would be glad to answer any questions that you may have.

Mrs. Weiss: Thank you for your presentation. I'll start off with any comments, and then I'll open it up to the rest of council. First of all, I appreciate the time that you have spent with the city. I know, you know, you've mentioned it's been over a year at this point. I've attended all of the Planning meetings. I've attended the last ARB meeting also. I want to make it very clear that whatever my vote on, it has nothing to do with the entity of Chick-fil-A at all. It has to do with the City of University Heights. There's a couple things that stuck out with me. The previous slide in particular, those four pieces of information, and I'd like the Law Director to elaborate on those. But in the zoning code review that we had in SafeBuilt, which is our Building Department do, and we had an outside entity from SafeBuilt do it. One of their comments was that the overall project is supposed to enhance and improve the character of the community and be appropriate and compatible with its surroundings in accordance with the intent, objectives, and development requirements. Yet the layout does not integrate with the fabric of the surrounding neighborhood and does not reflect the evolving character of the surrounding built environment. That struck a chord with me. I feel personally that the City of University Heights has a future vision, especially with what's going to be built next to it. And we hope that we will have a forward-thinking development there. Our own Building Department feels that it doesn't reflect what our city is. It doesn't conform with that. And I happen to agree with that. And that's besides the whole 1274 issue. And before I open it up to other comments, I would like the Law Director to elaborate on that piece.

Mr. McConville: Well, just to further explain the city's position, I guess, Mr. Coyne is correct that most of the variances that are in front of you relate to Chapter 1274. I believe there's only one or two that fall under 1266. The requirements in 1274 are more burdensome. The legal analysis is that the provisions of 1266.02, I believe it's 02(b), specifically indicate that a drive-thru use is to be looked at for compliance with the provisions of 1274. As Mr. Coyne has noted for the record, that's an item that he and I disagree on. That's noted for the record. But the city's position is that in order to put a drive-thru in a U-9, the requirements of 1274 must be met.

Mrs. Weiss: Thank you. Mr. McConville.

Mr. Coyne: If I could respond to your comments, there are a couple of things that I think are really important. I don't know that the planning consultant ever spent any time in University Heights, ever. So those comments, while they're well-intended, if he had been, your Planning Director was at a table that I could say, let's take a look at this, I might have some sensitivity to that. He never, to my knowledge, spent a foot in University Heights. He did his planning analysis from Oakland, California. That's number one. Number two, I think zoning matters. I really think it's important. And the zoning code provides for this use as being a permitted use.

Mrs. Weiss: Not under 1274.

Mr. Coyne: Is it a religious institution? Was there a finding by the Planning Commission? I know, this is where we have some disagreement. Was there a finding by the Planning Commission that it had to be applied? I don't think that happened. But that is a separate discussion. But we, again, addressed those reasons and requested variances and got approval from your Planning Commission. And I hopefully thoroughly reviewed the qualifications of your Planning Commission members who heard presentations on more than one occasion and approved this.

Mrs. Weiss: Okay, but I'm just stating it wasn't unanimous, the Planning Commission.

Mr. Coyne: It was four to one, I believe.

Mr. Rach: No, it wasn't. Three to two.

Mr. Coyne: I'm sorry. Three to two, yes. And again, under the law, that's an approval.

Mrs. Weiss: It was approved. I'm not disagreeing with that.

Mr. Coyne: And for ARB, it was three to an abstention, which is not counted as a vote. So it was unanimous. So all I'm saying is we can only look at your code and meet with your traffic engineers, your police, your fire, your consultant from California with a 31-page report, and these were the only variance items that came to fruition at the end after Leslie worked hard with them and through your Council (Counsel). So I urge you to really look at the zoning code that you have before you to allow this to be approved and affirmed, given the work of your Planning Commission.

Mrs. Weiss: I just also want you to know that one of the reasons we're having the meeting today is because I specifically requested that city council have time to review everything. And I don't know if you saw any of my emails that you were copied on, but there wasn't enough time to review all of the meetings and the minutes after ARB, right? Because that was Thursday and then the Council meeting was Monday. So, I wanted to make sure me personally, and I was at the meetings, had time to review everything. So, I wanted to do my due diligence. Hmm and City Council does have the opportunity to say yay or nay on the variances. That's why it's coming here.

Mr. Coyne: And we know the package you got was quite significant. We hope you were able to go through that.

Mrs. Weiss: Yeah, thank you. Mr. King?

Mr. King: Thank you, Vice Mayor. I find there's a mismatch between the proposal and our zoning code. The three most prominent aspects of the Cedar Center mixed-use district zone are, and this is directly from the code. A - to permit and encourage mixture of uses, including higher-density residential offices, limited retail, and civic uses in a manner which ensures the area is functional and competitive in today's housing and retail markets. B - to provide increased opportunities for economic development while strengthening the diversity and uses found in the community; and C - to provide pedestrian-friendly mixed-use district

that imparts a sense of identity and creates a unique place in the center of our community. This code was passed on February 7, 2000, nearly 24 years ago to this day. Our predecessors recognized the importance of the Cedar Center District, specifically the vicinity of University Square. To this day, we are still working to make University Square vibrant. I cannot think of a land use more opposed to the spirit of the code than a drive-thru fast food restaurant. It is single-use, it is low-density, it creates a hostile environment for pedestrians. I walked past the building on my way here tonight. Quite frankly, the existing building is a better fit for the zoning criteria. When running for office, my platform included thoughtful redevelopment of our limited land resources. Talking with residents, they said we needed to lean into the walkability and the bikeability of our community. People want to be able to walk safely to businesses. This project would create a wall of cars right next to University Square. University Heights is only 1.8 square miles. We must be vigilant over how our zoning code is applied. My apologies to the applicant. I truly do appreciate when there is a desire to make an investment in the city. Unfortunately, I strongly believe this project is not a proper fit for the Cedar Center Mixed-Use District. Thank you.

Mr. Coyne: Mr. King, to our knowledge the potential redevelopers have no objection to what this would bring and it shows investment in your community, it's a significant investment. So we hope you would give consideration to that, but I understand your position.

Mrs. Weiss: Ms. Weizer.

Ms. Weizer: Was your traffic study done at Cedar, for Cedar Road?

Mr. Coyne: The traffic study, is Ms. Bauer available?

Ms. Bauer: Hi, this is Jill Bauer with Fishback. Yes

Mrs. Weiss: The question was, did the traffic study consider Cedar Road? Is that correct?

Yes, that was the question.

Ms. Weizer: What I saw was a traffic study that came from a totally different area.

Mr. Coyne: Could you hear her, Jill?

Ms. Bauer: I'm sorry, I didn't hear your question.

Ms. Weizer: What I saw was a traffic study that came from a totally different area. Matter of fact, I think it was out of state.

Mrs. Sax: She's in Detroit. Oh, Michigan, right.

Ms. Weizer: From Michigan.

Mrs. Sax: That didn't even open.

Mr. Coyne: Can you hear that, Jill?

Ms. Bauer: Yes, the question is where the traffic study was done in Michigan?

Mrs. Weiss: Yes.

Mrs. Sax: From Chick-fil-A that didn't even open.

Ms. Bauer: So, yes, I am located in Michigan. We, as a company, do have offices in Ohio and Toledo. So, we are in Ohio and have engineers in Ohio who are familiar with this area and University Heights.

Mrs. Weiss: So, was there an updated traffic study on Cedar Road?

Ms. Weizer: Yes, that actually had traffic counts from Cedar Road.

No.

Ms. Bauer: We did do traffic counts on Cedar Road at the intersection of the University Square driveway, across from the Burger King driveway.

Ms. Weizer: There was nothing in the document.

Mr. Coyne: In your packet, there's a memo from Joe Ciuni, dated February 27, 2023, noting that the proposed development will not result in a significant impact to the adjacent road network. The proposed site access configuration is appropriate and will acceptably facilitate site ingress and egress. No proposed improvements are recommended at the studied intersections. So, the traffic engineer did look at the traffic on Cedar at Miramar, and that was the conclusion.

Ms. Weizer: That isn't the question I asked. Mr. Coyne, I asked a specific question, Mr. Coyne, not what Joe Ciuni said. I asked if you submitted a physical traffic study for the traffic at Cedar, Warrensville, and Miramar.

Mrs. Weiss: So, the answer is no.

Ms. Bauer: We did not study the intersection at Cedar and Miramar. That's not what we were asked to look at. We did not look at Warrensville and Cedar Road.

Ms. Simko: The scope was defined by the City Engineer, and that's what we based the traffic study on. So we had a meeting with Joe Ciuni. He explained what we needed to provide in the traffic study, and that's what was provided.

Ms. Weizer: So was that provided to planning?

Mrs. Weiss: Mr. McConville, we do have a specific report from Mr. Ciuni with traffic details here.

Mr. McConville: Well this is –

Mrs. Weiss: It was not provided to us, because I never saw that before.

Mr. McConville: This is labeled Chick-fil-A, University Heights, Ohio, Traffic Impact Study. It's dated February 23, 2023. The only reason I have this is because it was provided to me in a packet, presumably a Planning Commission packet. It does have traffic analysis at Cedar Road and the University Square driveway. I can pass this down. Just for purposes of the record, there were materials provided.

Mr. Coyne: My understanding, again, I wasn't here for some of that, but there's no curb cut on to Miramar. So I can see why that was the suggested direction for the traffic impact analysis.

Mr. Rach: If I could just clarify regarding the traffic study. I read through, there's two different documents here. There's the Traffic Impact Study draft, dated January 25, 2023 and then there umm –

Mr. Coyne: I'm sorry, Councilman, was that January 25th?

Mr. Rach: 2023. That's on the cover letter here, or the cover. And then there's another document here, also called Chick-fil-A Traffic Impact Study, dated February 23, 2023. I mentioned this in the Planning Commission, and I'll mention it again tonight. One of the requirements that I had, if you were to come back to Planning Commission, was to provide a newer traffic study. This particular traffic study had a lot of flaws that I had pointed out at the Planning Commission meeting. First and foremost, the data that was conducted, they used data from a store in Indiana. Let me just find my sheet of paper here. From 2016, they used data from 2016, so that's eight years ago. We've had a pandemic since then that has changed the way we commute. It has changed the way we order our meals. It has changed the way the fast food industry has performed. Obviously, you noticed in your metrics, there's been an increase in sales during COVID and after COVID. So, I had asked for specifically an updated traffic study that was more relevant and timely, that would be conducted in real time. This one was in 2016, using data generated from the South Bend, Indiana location for the Michigan location, which was - What was the name of it?

Mr. Coyne: Mr. Rack, that was the Planning Commission meeting that you attended, right?

Mr. Rach: Yes, this is where I spoke. So, they used it for a location in Michigan that didn't get built at the location that was proposed in the traffic study. In the traffic study, they were proposing a store in a mall area in the parking lot of the Target, which did not end up getting built there. I don't know if it's been built since, but at the time of the Planning Commission, the proposal was to go at the Golden Corral location

across the street. So there was a totally different set of feedback here regarding traffic because one's coming out of a mall and one's coming out of a freestanding location. The other flaw that I was discovering in this traffic study was in order to get the passing grade, University Heights would have to update its signals and nowhere did we discuss updating our signals. And, if Chick-fil-A wants to pay for us to update our signals, then we could talk about that. But at this - to receive the passing grade, that was one of the footnotes here in one of the charts. Also, regarding the traffic study, I had requested in the Planning Commission that we review more local restaurants as opposed to Indiana and Michigan. Specifically, there's one on Harvard Road and there's one on Mayfield Road.

Mr. Coyne: Right, correct.

Mr. Rach: So I did take it upon myself to review those particular locations. I clocked in exactly 60 minutes, zero seconds I counted 209 cars at the Mayfield location between 12 o'clock on the dot and 1 o'clock on a Saturday and 206 cars at the Harvard Road location between 12 o'clock on the dot and 1 p.m. on a Monday. Sunday, the locations were closed. That had come up at some other point, someone had verified it's about 200 cars an hour, give or take. So, that sort of validates my traffic count of about 200 cars. But you have to understand, too, it's not just 200 cars per hour. They're going in and out. So it's really 400 trips across the apron. So when we're looking at site plans here about pedestrian access, you have to also consider there'll be 400 times in one hour that a vehicle will cross that apron.

Mr. Coyne: That's incorrect.

Mr. Rach: Also, can we know the record?

Mrs. Weiss: Mr. Rach can?

Mr. Coyne: The traffic engineer would like to respond.

Mrs. Weiss: Yes, Can we hear what she has to say?

Mr. Coyne: Joe, could you comment on that?

Ms. Simko: Yes, so I don't know, Leslie, if you've been able to share the studies that we did do in Michigan at three different locations that we have studied in the past for Chick-fil-A. That supported the data that was used in the study from South Bend, Indiana. But we have looked at other locations. We've done a similar thing. We've looked during the peak hour. One thing we always look at when we do these traffic counts is the size of the site. That is something that's used when we're using data to forecast these types of trips is the size of the restaurant itself. And, as far as the traffic signal upgrades that are discussed in the report, this was something that we were talking to the traffic engineers. We've gotten in here back in February of last year. Because we forecast our trips and the data to a 2033 timeline, that was the goal was to include and there were going to be projects to upgrade those signals within that 10-year time frame. So, understanding he's not here to speak to that. But that was something that we were going to be scoping the project and working on the study that we talked about with the city engineer at that time.

Ms. Bauer: Can you also clarify the counts when it's a 200 at peak, that's 100 in and 100 going out?

Ms. Simko: Well, for this site in particular in the study, we forecast 293 total trips. And we have about 150 coming in and 150 going out based on that data from South Bend, Indiana. I do not have the Michigan data in front of me. But we have done, like I said before, we've done studies at other locations in Michigan looking at the traffic for those Chick-fil-A's and that has been since COVID so that's newer data that was mentioned. But that is something we can share.

Mr. Rach: Okay, so thank you for confirming that the report does specify that in a 10-year span, traffic signals would be modernized, which would give this a passing grade. Now, 10 years is a very long time. It's almost as old as this report, which was data which came out in 2016. So, I just want to clarify that. Another thing that got brought up was about the votes in Planning Commission and Architecture Review Board. I want to be clear, in Architecture Review Board, the original vote was 2-4 and 2 abstained.

Mr. Coyne: Right.

Mr. Rach: The motion would have failed.

Mr. Coyne: But that's not what happened.

Mr. Rach: I understand.

Mr. Coyne: 3-4, the motion abstained and the abstention vote does not count.

Mr. Rach: But the motion would have failed. Mr. Cucciarre took it upon himself to change his vote to yes so that the City Council can approve this. So, it can get out of ARB.

Mr. Coyne: That's not in the record at all.

Mr. Rach: It's in the record that there was a motion on the floor.

Mrs. Weiss: Okay, but ARB passed it.

Mr. Rach: And, it did pass. But I just want to be clear, it was not originally 3-1. It was 2-2.

Mr. Coyne: But it's not 3-1. It's three votes in favor and an abstention is not counted in such a vote. An abstention doesn't count. In fact, you shouldn't abstain at the end of the meeting, you should do it at the beginning of the meeting. I didn't understand that. But an abstention is neither a no vote or a yes vote. So, there were three in favor and no opposed.

Ms. Weizer: We can debate Robert's rules later.

Mr. Rach: That's fine.

Ms. Weizer: We can debate Robert's rules later, Mr. Coyne.

Mr. Rach: But I know you encouraged Mr. Cucciarre to change his vote because it wasn't going to pass with two yeses.

Mr. Coyne: Well, I encouraged them all to support it.

Mr. Rach: Thank you. Umm - I spoke at length at the Planning Commission. I will save you that one hour of time that I gave reading the zoning code. But I do want to bring up a couple of key points. Mr. King brought up the sole purpose of the U-9 District here. And I'm not going to reread it because he already did. But I really want to reiterate that this is going into a U-9 district. And so, the threshold is much higher than any other district here in what it's requiring. Yes, restaurants are a permitted use. But the purpose of U-9 is to encourage mixed use. Of that mixed use, a restaurant can be a component of that. It's supposed to have housing, retail, restaurants. It's mixed use. Now, you can do a restaurant without a drive-thru, that is a permitted use. What you're here before us today is to do the drive-thru, that is a special use. That's a special permitted use. That's not a permitted use. That's a special permitted use, which is why you have to come before us today.

Mr. Coyne: Right.

Mr. Rach: Another thing I want to really address is the waiving of variances. Now, I see here in the agenda that upon personal reflection of the discussion, we're going to amend the waiver of variances to a granting of variances time limited to the duration of special use permit. Well, that's not what the Planning Commission approved. The Planning Commission approved the waiver. So, who –

Mr. McConville: Let me interrupt for a moment because I can shed some light on our research on that. We researched both issues. First, whether waiver was permissible, and we determined that it's absolutely permissible and does not set a precedent that you would be bound by in future decisions relating to SUPs under 1274. So, if Council is inclined, they can simply ratify or approve the Planning Commission recommendation. Alternatively, we also researched the issue of whether variances can be temporally limited, and we found case law that established that they very clearly can be. That was an issue that I was not able to address at the Planning Commission meeting. Umm, during the course of that meeting, I asked Mr. Coyne if he knew the answer to that question. He was not comfortable opining. We indicated to the Planning Commission that we would circle back and do research on that and present the results of the research to Council. So my recommendation to Council is that variances be considered because that's a more conventional act of the city to provide, to grant variances if you're so inclined to grant the special

use permit and to temporally limit them to address the concern that was raised at Planning Commission that those variances not run with the land and bind the city indefinitely.

Mr. Rach: Thank you. And that was my concern at the Planning Commission. since we would consider upon reflection of this discussion to amend the waiver in lieu of granting variances. It is my opinion that in the Planning Commission, we really didn't vet these variances one by one. And as I tried to do that, it was like, well, we just waived it. So, I don't feel it was vetted properly. You can even look at the zoning code compliance matrix, which was done by our consultant. And I do take exception about the author not being in University Heights. I wrote the original matrix and prepared it for the Planning Commission, the Administration, as well as the applicant. My work on that had been confirmed in this matrix. Now, I live here. I serve here. I've run here.

Mr. Coyne: It was in a public meeting.

Mr. Rach: But I'm saying the components that are in his matrix, I can confirm. He had actually confirmed my work. So it's sort of validating that what I had discovered, in terms of discrepancies between what's proposed and what's in the zoning code, were confirmed by the professional. And since we didn't really get a good chance to vet each particular variance one by one, there's a few things in particular that are concerning to me with regard to the site plan and traffic flow. On page 33 of that matrix, which is towards the end, it's basically at the summary. But it's under site layout. The consultant talks about a number of project features that continue to fail to meet the minimum code requirements. And in particular, it talks about vehicular flow and traffic. So according to the Institute of Transportation Engineers Traffic Engineering Handbook, parking and terminals, which is the city's standard, this is what the city uses to evaluate its projects. There were deficiencies in the plan. In particular, the drive aisles at 20 feet, where the requirement is 24 feet. Now, where this could become a problem is if you had a 20-foot drive aisle, which falls below the standard, it's going to be very hard for cars to back in and out of these particular spaces. Coupled with that, you have the drive-thru that exits through that drive aisle and then has to make a hairpin turn, a 180-degree hairpin turn at this private drive, which actually happens to be a variance that we would either waive or consider for granting. And that was the 7-foot variance for the radius at the edge of the driveway apron, where it's required to be 12 feet. So already, it's too tight. But now, if we have to add another 4 feet for each drive aisle, that curb's going to move out 8 more feet, which would really make that turn impossible.

Mr. Coyne: I can let Leslie address that. The drive aisle meets your code, though. So I mean –

Mr. Rach: But it doesn't.

Mr. Coyne: It wasn't a variance needed. No, that's the ingress and egress issue that's in 1270.404.

Mr. Rach: That's right here. It says in the consultant's notes that the handbook states minimum 24-foot aisle widths. However, two proposed aisles in the more northerly parking area are 20 feet and 20 feet and a half feet wide.

Ms. Simko: Those are one-way.

Mr. Rach: It doesn't matter. These are cars backing in and out. If it was one-way and angled, then the drive aisle width can be reduced. There are parking lots here in University Heights that have one-way angled parking. This does not. This has 90-degree parking. It's really not about the direction of flow. It's about being able to turn your car 90 degrees out of the parking spot and into the aisle. I do have concerns. Since you have pedestrian access through the middle of the parking lot here, when you're going to have Uber drivers and DoorDash drivers coming in and out of these front spots. I'm assuming they'll probably park up front, or any type of delivery driver, they're going to be backing in and out all day as cars are exiting the drive-through 200 an hour. It's just going to happen. There's going to be fender benders. Every one of our commercial properties in University Heights has had some type of fender bender at some point. But when you fall below the standard, now you're asking the Council here, who has to approve a Planning Commission recommendation, who never vetted this in the first place, whether we're okay with falling below traffic standards. And, again, it's your role here to, through clear and convincing evidence, that the provisions of the chapter will be met regarding vehicular parking and pedestrian and traffic conditions. I'm not hearing that.

Mrs. Weiss: So, we are going to vote on the variances and if it passes, that can be discussed going forward. But I think that's important to be noted. Thank you.

Mrs. Weiss: Ms. Weizer?

Ms. Weizer: I wasn't finished.

Mr. Rach: I'm sorry.

Ms. Weizer: But that's okay.

Mr. Rach: I'm not either.

Ms. Weizer: I know.

Mr. Rach: You go ahead and then I'll go.

Mr. Coyne: Mr. Rach, to bring this part to; Ms. Weizer, I don't want to interrupt you. To bring this part to a close, we could look at that angle parking issue. I'm just saying. You're raising it. We can look at it.

Ms. Weizer: We can look at a lot. Number one, with all due respect, Mr. McConville, I am not inclined to move to granting of variances in a time limit format, especially when variances have not been thoroughly vetted. Quite frankly, I think the action to waive the variances, however it came about, was inappropriate. I think we have codes for a reason and we just love to do variances on codes and hopefully, as we update our zoning code, we'll have something that's solid. Umm, the site for Chick-fil-A is a much larger site than what we had at Dunkin' Donuts. The building at Dunkin' Donuts was not a big office building. It was a small building. It had Ark Jewelers, it had Sills, and there might have been a couple small offices up on the second floor. So, while I appreciate that we want to go back there and say, oh, look, this fits this, I don't think we can. The issues with Waterway are different. One of the problems that happened with Waterway, they refused, if I remember correctly, and a lot of the stuff I do, they refused to move their building forward and at that time, we had a zoning code that actually took that back area and it was zoned for parking and that's why it just wasn't people who didn't want Waterway, for whatever reason. It was an issue also with the zoning on the site. I can appreciate that you would prefer 1266 over 1274 I think that 1274 applies. I'm very comfortable with the Law Department, and their ruling on this. I know we go back and forth, even here on Council, where the Mayor always wants to be his own Law Director, and we get these back and forths. Attorneys will love to do that. However, I think that there is a very valid case for 1274 and under 1274, you're almost an acre short. You can say, oh, we can put Chick-fil-A on one acre. Well, I suppose you could. It's jammed in on Mayfield Heights, on a very, very small lot and there are issues with that site, with traffic coming out of there, which has gotten worse over time. Part of my family works for Hillcrest, so we go through there all the time. This is a visual, it's anecdotal, because it's visual. It's not a physical count, but I can tell you it has gotten more and more problematic.

Mr. Coyne: It is a popular restaurant.

Ms. Weizer: So, you're basically, although I think you started out by saying we were not that short, you are almost an acre short, .85 is very close to one.

Mr. Coyne: What type of use, when you say that? What type of use is 1274 governed?

Ms. Weizer: I'm not - - that's...

Mr. Coyne: Did Dunkin' Donuts comply with 1274?

Ms. Weizer: But you went for, because of the way the code is currently written, 1266 ends up referring to 1274.

Mr. Coyne: If it's applicable.

Ms. Weizer: And, I believe the ruling of the Law Director is correct, and it is applicable. I can appreciate, Mr. Coyne, that you will work very hard to represent your client. And that you will argue your client's case very, very well. However, I don't work for your client. I don't have any problem with a restaurant. I really could care if it's Chick-fil-A or George's Big Boy. I don't know. But the reality is you're short on the size by 1274, and I agree. The other part of this is, however crazy our zoning codes might be, they are designed to deliver what the community standard is. Even when you go back to when the Supreme Court upheld zoning, nuisances, all of those issues; I'm not saying Chick-fil-A is a nuisance. Please do not take it that way, and I'm clarifying that. But those things all came in, in terms of comparable uses, how we do things. That's how the code got written. And quite frankly, I think it's time for the City to not just turn around and

waive codes, but to actually begin to honor them until we finish our whole zoning code update. Now, I don't know what's going to happen with this section when we update that zoning code. Maybe then you can come back and we can put Chick-fil-A in that site. But the fact is it's not updated yet. We're working with the code, and the code actually has done a good thing for the city for a lot of years. And I don't think we should throw it out.

Mr. Coyne: Can I address Vice Mayor?

Mrs. Weiss: Sure.

Mr. Coyne: Given Mr. Rach's comments on the parking layout, the angled parking, the signalization, having Chick-fil-A pay for the signalization, these code issues about how the Planning Commission reviewed this, seems to be some procedural disagreement among some of the members of council. Could I request that this matter at this time just be tabled so that we can maybe address those issues?

Mrs. Weiss: I mean, I think we're ready at this point to take a vote. You've wanted this for a while already.

Mr. Coyne: Yes, but I did not expect some of these issues to be raised the way they've been raised. I really did not. And I'm concerned that there's allegations that the Planning Commission didn't do their job in looking at this when they made a decision with a waiver, and then there was a review by the Law Director that that's permissible, and there's also a review about having the variances approved but tied to a time limit, and I'm not hearing any kind of consensus among council, so that's concerning. Mr. Rach has raised the issue of the parking layout, which is something we could look at again, and the cost of signalization, and you're looking at your code. So I guess my concern is that the way we have been presented to you after getting approvals from all of your professional boards and consultants, that there's still deficiencies. When I see that, I like to try to bring the best project forward for any community, including this one. So that's why I would make the request.

Mrs. Weiss: As I mentioned before, I've been to all of the meetings. The parking on the 20 versus 24 was mentioned at the meeting. 1274 was mentioned at the meeting.

Mr. Coyne: Right.

Mrs. Weiss: The traffic signals were mentioned at the meeting, these are not new.

Mr. Coyne: I don't remember the traffic signal one, I'll be honest with you. I don't remember the request that you mentioned.

Mrs. Weiss: I remember that specifically. So, none of these are new. I think umm, I know that I'm ready to vote. I think that after reviewing all of this information, I think that Planning Commission reviewed everything. There was an outside zoning code review. There was a definitive vote. The Law Director many times explained to Planning Commission and to ARB and to City Council what that waiver meant. Is that correct, Mr. McConville?

Mr. McConville: We were pretty explicit on the record at Planning Commission as indicating that it would be an issue that we would follow up and do additional research on. I don't think it's by any means a fair characterization to say that the Planning Commission did not vet these variances. This applicant has been before the Planning Commission three times. One of those occasions the applicant appeared before the Planning Commission only for the purposes of asking questions of Planning Commission members as to what their preferences would be relating to certain design standards. At the last Planning Commission meeting, each of the seven variances was addressed one by one, both by code section and by description of the requested variance as it related to the particular site plan. It was only because there was a concern that was voiced relating to future development that was being put out there and possibly would have held the applicant up further that this idea of waiver was discussed and approached by Planning Commission. It was not, in my opinion, any decision to be flippant about our zoning code, to casually do anything. It was the opposite. It was the desire to tailor an approval that was as narrow as they could make it so that the city wouldn't be adversely impacted by that approval in the context of any future development. And, that was followed up with research in which we learned that variances can be temporally limited. And, as I mentioned before, since that's a more conventional approach, an approach that is less susceptible to misunderstanding or mischaracterization, that's the Law Department's recommendation.

Mr. Coyne: To the Vice Mayor, I tend to agree with much of what you said, but I'm not hearing that. I'm hearing that there are members of Council that believe the Planning Commission did not consider those

variances in the way that you just described. That's what I'm hearing, so that gives me cause for concern, which I thought maybe would be better addressed if it were tabled. But, that's just my perception.

Mrs. Weiss: Mayor.

Mayor Brennan: Yes, as the Chair of the Planning Commission, as the one that made the motion, and I made the motion carefully following the guidance of our Law Director. In light of the, you know, Mr. McConville has been diplomatic in a way that I will not be. That this was a concern raised expressly by Mr. Rach, that he did not want to see variances that ran with the land continuously. And we wanted to accommodate his concern. It was his concern in particular. He made a motion to reject this application and there was no second. And because there was no second, I read the room to mean that the Planning Commission was ready to approve something. So, I crafted a motion following the guidance of the Law Director, respecting what I had hoped at the time were the bona fide concerns of Mr. Rach to waive the variances, though that was a concept that we had not engaged in previously, rather than granting variances that would run with the special use permit or some other limitation. Mr. McConville faithfully with the Law Department did the research and shared that with all members of Council in November. And we have members of Council here today acting like they haven't heard of that. The Planning Commission vetted this at length, more than any other application I can think of in recent time. And though Mr. Rach may have been on the losing end of a Planning Commission recommendation just because he voted no, doesn't mean that he speaks for the Planning Commission and saying that the ones that voted yes, didn't properly vet the variances. We vetted them. Now, if there are other reasons, Mr. Coyne, that you would seek to table, if there's other reasons why you would like to supplement your application, I think we should allow that. I think you should be given every opportunity to give the city the best application that you can give if there are still concerns after a year of what it is that is before us and that the council members have what they need in order to have this vote. And moreover, that you feel as if, you think as if, you have provided everything that the Council should have in order to make the best decision it can. So, if you as the applicant are asking for a motion to table, I would urge our Council to indulge the applicant and allow them the additional time to provide whatever additional information they believe is appropriate to help you have everything you need before you make your vote. Thank you.

Mrs. Weiss: Mr. King.

Mr. King: Thank you, Vice Mayor. I have a question for Mr. McConville. You've stated that we would vote on each of the seven variances independently.

Mr. McConville: That's correct.

Mr. King: Okay. Would it be possible to make a motion to reject the recommendation from the Planning Commission as one vote?

Mr. McConville: Ah, yes.

Mr. King: Good, okay. I would like to make a motion to reject the Planning Commission recommendation from the October 5th, 2023 Planning Commission meeting regarding the site plan application approval from PEA Group for the construction of a new Chick-fil-A restaurant with drive thru at 1400, or 14100 Cedar Road, including the approval under... I'm going to end it there.

Mr. Coyne: I'll object to the motion. It's not in the affirmative. It's in the negative under Robert's rules that's not an appropriate motion and I also believe that the decision as to how this was to be presented would require a separate vote. I just want to note that for the record.

Mr. McConville: I think that's right. I reconsider it. I think you should make a particular motion and start with the special use permits. I think the special use permits are essentially... In order to grant the variance... The special use permits are... I'm trying to think of what the right word is here.

Mr. Coyne: Just for the record, we request, again, tabling to be fair. We're looking for fairness so that we can address some of the criticisms raised. We request tabling.

Mrs. Weiss: Ms. Weizer, you had a question?

Ms. Weizer: Yes. Mr. McConville, if we use the motion that is currently in front of us up to" by the applicant or waived by the commission." is that a motion? It's a motion in the affirmative that we can vote up and down. It includes the special use permits. It includes Section 1274.

Mr. McConville: Yes.

Ms. Weizer: Okay. Mr. King, can I make a friendly amendment?

Mr. King: You may, Ms. Weizer.

Ms. Weizer: Or do you want to withdraw your motion and I'll make one? How do you want to do it?

Mrs. Weiss: I think you need to withdraw your motion anyway.

Mr. King: I'll withdraw my motion.

Mrs. Weiss: Can I say something first?

Ms. Weizer: Go ahead.

Mrs. Weiss: Mr. Coyne, I just want to hear what you are asking because the parking, the size of the driveways were addressed. The vetted was addressed.

Mr. Coyne: The vetted? What does that mean?

Mrs. Weiss: The vetting of the variances was addressed by Mr. McConville and by the Mayor.

Mr. Coyne: At the Planning Commission meeting?

Mrs. Weiss: At the Planning Commission meeting. What else are your concerns?

Mr. Coyne: Well, my concern is you're not following that that was done and there were comments made by Council that it was not done. And the issue of some of these changes that Mr. Rach had mentioned, including purchasing a traffic signalization device, is not something we've contemplated doing and we will evaluate some of those things. As well as the other issues that have been raised, that have not been brought up.

Mrs. Weiss: So, again, that issue was, I believe, also raised, but those could be after the fact of possible approval, right? Those are not based on an approval.

Mr. Coyne: You could have those conditioned. They could be approved with those conditions, which is why...

Mrs. Weiss: I don't think that's the crux, though, of an approval here. I think, in my opinion, that's not what's going to make or break this approval here. I mean, you've changed this many times to try and get Planning and ARB approved, which they did. I think Council's aware of that. Mr. Rach, I just want to ask you, do you feel that the variances were not vetted; I don't think that's what you meant.

Mr. Rach: I said it was in my opinion that I didn't... First of all, I did not feel comfortable leaving.

Mrs. Weiss: But you said that even in Planning.

Mr. Rach: In planning, I did not feel comfortable leaving that Planning Commission meeting without a more thorough review of this site. Now, I want to be clear about something. The standard that we have today to vote is in 1274 that the applicant has to demonstrate by clear and convincing evidence that the provisions of this chapter will be met and the special use will not impair the surrounding property values or uses, vehicular parking, pedestrian or traffic conditions, lighting glare at night, noise pollution to others. I have not heard clear and convincing evidence. That's the standard.

Mrs. Weiss: And what I want to make Mr. Coyne, what I want to make clear to Mr. Coyne is Mr. Rach has one vote on the Planning Commission and one vote on City Council and Planning Commission approved it. So, I don't believe that this council's vote would be negated by anything that Mr. Rach said.

Mr. Coyne: Well, I'm not saying that. I'm saying that given the totality of the comments made, I would like the decision to be made on the zoning.

Mrs. Weiss: He's the only comment that has said that in council. Ms. Weizer.

Ms. Weizer: I move to approve the Planning Commission recommendation from October 5, 2023 Planning Commission meeting regarding the site plan application approval from PEA Group for the construction of a new Chick-fil-A restaurant with drive-thru at 14100 Cedar Road, including the approval under University Heights Charter 1274 for a special use permit for drive-thru and patio as depicted in the site plan application and the findings that the conditions for which the variance sought by the applicant were waived by the Commission.

Mrs. Weiss: Is there a second?

Mr. King: Seconded.

Mrs. Weiss: Are there any comments or discussion? Okay, Mrs. Thomas, will you call the roll?

Mrs. Thomas: Mr. King.

Mr. King: Nay.

Mrs. Thomas: Mrs. Sax

Mrs. Sax: Nay.

Mrs. Thomas: Mr. Cooney

Mr. Cooney: Nay.

Mrs. Thomas: Mrs. Weiss

Mrs. Weiss: Nay.

Mrs. Thomas: Mr. Rach

Mr. Rach: Nay.

Mrs. Thomas: Ms. Marshall

Ms. Marshall: Nay.

Mrs. Thomas: Ms. Weizer

Ms. Weizer: Nay.

Mrs. Weiss: I want to thank you, Chick-fil-A, for coming and all the time that you've put in.

E. Resolution 2023-04 Recognizing and Celebrating Black History Month 2024

Mrs. Weiss read Resolution 2023-04 Recognizing and Celebrating Black History Month 2024 into the record.

WHEREAS, the City of University Heights is a community that values its diverse population and celebrates the many cultures, backgrounds, and histories of its residents; and

WHEREAS, Black History Month has been recognized each February by U.S. Presidents since 1976 and grew out of the creation of Negro History Week in 1926 by Carter G. Woodson, an author, historian, and son of enslaved persons; and

WHEREAS, Black Americans have struggled and persevered through enslavement, persecution, and oppression, facing still today systemic barriers to equality in our economy, at the ballot box, and in many other facets of American society; and

WHEREAS, despite these seemingly unending challenges, Black Americans have continuously made critical contributions to America and the world through innovation in arts, science, business, law and governance, healthcare, education, and more, as well as to our broader national culture and heritage; and

WHEREAS, the Association for the Study of African American Life and History has declared the 2024 theme for Black History Month to be “African Americans and the Arts”; and

WHEREAS, African American art is infused with African, Caribbean, and the Black American lived experiences. In the fields of visual and performing arts, literature, fashion, folklore, language, film, music, architecture, culinary and other forms of cultural expression, the African American influence has been paramount; and

WHEREAS, African American artists have used art to preserve history and community memory as well as for empowerment; and

WHEREAS, for centuries Western intellectuals denied or minimized the contributions of people of African descent to the arts as well as history, even as their artistry in many genres was mimicked and/or stolen; and

WHEREAS, it is essential to our continued growth and progress as a nation that we honor the legacy and contributions of Black Americans, including artists, while vowing to continue the necessary work of reckoning with past injustice and seeking equity for our present and future – not only in this month, but indeed all year round; and

WHEREAS, Black history is American history; and during Black History Month, we pay tribute to the contributions and accomplishments of past generations as we reaffirm our commitment to keeping the American Dream alive for generations to come.

NOW, THEREFORE, BE IT JOINTLY PROCLAIMED BY THE MAYOR AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS, OHIO, THAT:

Section 1. The City of University Heights recognizes and honors Black History Month in February 2024, celebrates our Black neighbors, and encourages all residents to further educate themselves on Black history in America and seek remedies to continued injustices.

Section 2. It is hereby found that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance of all legal requirements.

Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, the emergency being for the reason that this resolution pertains to the concurrent celebration of Black History Month in February 2024; wherefore, this resolution shall be in full force and effect from and immediately after its adoption and approval by the Mayor.

MOTION BY MS. MARSHALL, SECONDED BY MS. WEIZER to approve Resolution 2023-04 Recognizing and Celebrating Black History Month 2024. On roll call, all voted “aye.”

F. Ordinance 2024-03 Establishing Permanent Appropriations for the Year Ending December 31, 2024 and Declaring an Emergency (on first reading)

Mr. Kennedy state that per the State deadline the city has to submit the City’s 2024 Budget to the Cuyahoga County Budget Commission prior to March 31, 2024. The submitted Ordinance is in preliminary form and Mr. Kennedy believed that it would be best to go through the budget in greater detail department by department; fund by fund at one or more Finance Committee public hearings.

Mrs. Weiss stated that based on Mr. Kennedy’s comments a poll has been sent out to aid in scheduling a Finance Committee meeting to begin to review the budget.

Ordinance 2024-03 has been placed on first reading and referred to committee.

G. Motion Authorizing the renewal of the 2024 UH Police Department Lexipol Subscription Services in the total amount of \$17,026.10

Ms. Marshall stated that this was discussed at the Safety Committee meeting that was held just prior to this Council meeting and that the Committee recommends the approval.

MOTION BY MS. MARSHALL, SECONDED BY MR. KING Authorizing the renewal of the 2024 UH Police Department Lexipol Subscription Services in the total amount of \$17,026.10. On roll call, all voted “aye.”

H. Motion Authorizing the renewal of the 2024 UH Police Department TAC Computer software services in the total amount of \$18,645.42

Ms. Marshall stated that this was discussed at the Safety Committee meeting that was held just prior to this Council meeting and that the Committee recommends the approval.

MOTION BY MS. MARSHALL, SECONDED BY MS. WEIZER Authorizing the renewal of the 2024 UH Police Department TAC Computer software services in the total amount of \$18,645.42. On roll call, all voted “aye.”

I. Motion Authorizing the renewal of the 2024 UH Fire Department Lexipol Subscription Services in the total amount of \$10,773.54

Ms. Marshall stated that this was discussed at the Safety Committee meeting that was held just prior to this Council meeting and that the Committee recommends the approval.

MOTION BY MS. MARSHALL, SECONDED BY MRS. SAX Authorizing the renewal of the 2024 UH Fire Department Lexipol Subscription Services in the total amount of \$10,773.54. On roll call, all voted “aye.”

J. Motion to Enter Executive Session for the purpose of Discussing Legal Proceedings, Personnel and Real Estate Matters

MOTION BY MS. WEIZER, SECONDED BY MR. COONEY to enter Executive Session to discuss pending litigation and real estate matters. On roll call, all voted “aye.”

Reports of standing committees and the taking of action thereon.

Standing Council Committees:

Building/Housing - Chairperson Winifred Weizer

A doddle poll has gone out for a meeting on February 20th at 6pm. There are a number of items for the agenda: flow chart from the Housing and Community Development, discussion regarding Safebuilt contract, questions regarding Point of Sale, sidewalks, and rentals.

Community Outreach – Chairperson Mr. King

No report.

Economic Development – Chairperson Mr. Rach

No report.

Finance Committee – Chairperson Mrs. Weiss

Hopefully there will be a Finance Committee with the Directors and Mayor in the next few weeks.

Recreation – Chairperson Mr. Cooney

No report.

Safety Committee - Chairperson Ms. Marshall

No report

Service and Utilities – Chairperson Mrs. Sax

The Committee will meet on Tuesday, Feb. 6 at 6pm to discuss the SES Engineers Recycling Feasibility Study observations and recycling recommendations.

Committee of the Whole – Vice Mayor Weiss

The Committee will meet on Tuesday, Feb. 6 at 7pm to discuss the Law Director resumes and then a second committee meeting possibility on Feb. 21 for interviews.

Reports of special committees, and the taking of action thereon.

No reports

Council entered Executive Session at 9:48 p.m.

Motion by Mr. King, second by Ms. Weizer to come out of Executive Session. On roll call, all voted “aye”.

Motion by Mr. Rach, second by Mr. Cooney, to adjourn the meeting. On roll call, all voted “aye”.

There being no further business to consider, the meeting adjourned at 10:06 pm.

Michele Weiss, Vice Mayor

Kelly M. Thomas, Clerk of Council