

Held September 24,

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SPECIAL MEETING

The Council of the City of Centerville, County of Montgomery, State of Ohio met in Special Session on Monday, September 24, 1973 at 8:00 P.M. in the Centerville Municipal Offices, Community Room. The Meeting was opened with the Pledge of Allegiance to the Flag with Deputy-Mayor John McIntire presiding. Councilmen present were as follows: J. V. Stone, Russell Sweetman, Leonard Stubbs, Charles McQueeney, City Manager James Smith, Municipal Attorney Robert Farquhar, City Engineer Karl Schab and Director of Finance William Bettcher.

Mr. McQueeney moved that Councilman John Davis be excused from this Meeting. Mr. Stone seconded the motion. A roll call vote resulted in five ayes in favor of the motion.

Mr. McQueeney moved that Mayor Paul Hoy be excused from this Meeting temporarily. Mr. Sweetman seconded the motion. A roll call vote resulted in five ayes in favor of the motion.

The Public Hearing concerning an application submitted by G.Z.K. Inc. to construct an Arby's Restaurant in the Architectural Preservation District was held. The approval of this application by the Board of Architectural Review was appealed by an adjacent property owner.

In the absence of the Clerk of Council, the Notice of Public Hearing was read by Mr. Farquhar.

Mr. McIntire outlined the Order of Procedure to be followed. Mr. Farquhar explained his recommendation concerning this Public Hearing's procedure, he recommended that time periods be placed on presentations and they be strictly adhered to in order to avoid an unnecessarily long Meeting.

Mr. Schab located the subject property on a map, being located at the southeast corner of West Franklin Street and Virginia Avenue. The lot is approximately 124 feet by 173 feet in size, the building approximately 65 feet by 40 feet. The building will be of brick construction with a dark roof. Mr. Schab reviewed the location of the building on the lot. The right-of-way of Virginia Avenue in this location is 30 feet back to back of curb. The Planning Commission feels that it is not necessary at this time to widen this portion of Virginia Avenue to match the width at the extreme southern edge. Mr. Schab has recommended that of the Developer be required a 5 foot widening of the right-of-way on the east side of Virginia Avenue at the subject location and when development occurs on the west side, same be required. He did not recommend that the remainder of Virginia Avenue be widened.

Mr. Schab explained the decision and requirements of the Board of Architectural Review made at the time of their approval of this application.

Mr. Farquhar clarified the fact that legally, only adjacent property owners have grounds for objection.

Mr. James Birt, Attorney representing Marjorie McClure, read his attached presentation to City Council. He questioned the total volume of customers over a week period at other Arby Restaurants, he suggested that statistics be reviewed before a decision is made by Council and he questioned whether this type business is a local business use.

Mr. Howard Depew, 47 Virginia Avenue, expressed his concern with the proposed increase of traffic on a residential street, namely Virginia Avenue.

Dr. Ronald Hetman, 110 White Birch Road, explained his attempt to show a parallel between the traffic conditions on East Franklin Street and what will happen on West Franklin Street to the Board of Architectural Review.

Attorney Bill Deas, representing G.Z.K. Inc. explained how Arby's is a Restaurant rather than a Drive-In, he explained the variance between

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peak hours of traffic generated by the Restaurant vs peak hours of neighborhood traffic. Mr. Deas passed among Council snapshots of German Village in Columbus for a comparison with what is being attempted in Centerville. Mr. Deas pointed out the wood fence which will be installed to protect adjacent property owners. The parking lot has been placed to the rear of the building as required by Ordinance. Mr. Deas explained a revised Plot Plan which incorporates all requirements of the Board of Architectural Review outlined with their approval. He expressed his feeling that the Arby's is within the letter and spirit of the law as it exists in Centerville at this time. Mr. Deas feels that this establishment will provide a service to the Community.

Mayor Paul Hoy and Clerk of Council Marilyn McLaughlin entered the Meeting at this time. Mayor Hoy presided from this point.

Mr. Howard Depew, 47 Virginia Avenue, wondered why the proposed Arby's Restaurant faces Virginia Avenue and the parking is in the rear of the building from Franklin Street. He also wondered why the screening along the west property line will be three feet instead of five feet. Mr. Farquhar advised that this matter is at the discretion of the Board of Architectural Review, specifications of the Ordinance can be modified by the Board.

Dr. Ronald Hetman, 110 White Birch Road, cited his inability to make a parallel traffic comparison between East Franklin Street at the high school and at this location on West Franklin Street at a Board of Architectural Review Meeting. He brought attention to an opinion of Mr. Farquhar: if the Board did fail to discuss traffic problems in open meeting, the meeting would be invalid. He questioned whether the meeting was invalid, if not, why; why was there not another meeting held. Mr. Farquhar advised that he did advise the Board that they should consider traffic, they subsequently met and did consider traffic, this fact is evidenced in their decision concerning this Arby's Restaurant.

Mr. William Gimbel, 102 White Birch Road, opposed the description of the A.P. District contained in the Public Hearing Notice for that particular Ordinance. He feels that according to the description it could not be determined what area was involved. Mr. Farquhar pointed out the fact that newspaper notification is not required in accordance with the Charter. The complete legal description was posted in five posting places in the City of Centerville.

Mrs. Wilma Karl, 205 Freyn Drive, questioned where indication is made in the records that the Ordinance was posted in five posting places. Mrs. McLaughlin advised that this posting is required by law, the law was followed.

Mr. Carl Brooks, 25 Virginia Avenue, described the existing traffic problem on Virginia Avenue, he wonders what can be done with an added traffic problem.

Mr. James Birt, wonders whether an Arby's Restaurant is a neighborhood type business, the neighbors do not want this establishment. Mr. Farquhar advised that Restaurants are specifically provided for in B-1 and therefore Restaurants are permitted in the A.P. District.

Mr. Thomas Edgar, 47 Cranston Court, feels that residential property is not enhanced by commercial property, he fails to see how this could make the area a more desirable place in which to live.

Mayor Hoy reminded citizens that, according to the Municipal Attorney, a Restaurant is a use permitted in the Architectural Preservation District. The Board has no authority or power to prevent the Restaurant from being erected in this location. The question before the Board of Architectural Review and now before Council is how should the building be designed: screening, architecture, etc. to make it more capatable.

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Mayor Hoy advised that after the Minutes of this Meeting have been approved, a decision will be made by Council concerning this matter. He would be in favor of a written decision answering questions raised by the Citizens.

Mr. McIntire pointed out the fact that Edward Wainscott listing himself as a party affected by the decision of the Board of Architectural Review in the Notice of Intent to Appeal letter of August 7, 1973, is the same person who requested that his property on East Franklin Street be included in the A.P. District some time ago. He further pointed out the fact that former Mayor of Centerville William Gimbel signed the Petition dated August 22, 1973; while he was Mayor, zoning was provided for half the apartments in Centerville, the center City was forgotten about. He explained what kinds of construction would be permitted in B-1 zoning if it were not for the A.P. District, it costs more to construct in the Architectural Preservation District than in any other area of the City. Mr. McIntire stated his objection to the aspersions cast by the Appeal: that the boundary line of the A.P. District was drawn to include property owned by city officials. He asked citizens to look at both sides of this matter.

Mr. Bob Thomas, 235 Gershwin Drive, emphasized the traffic concern of the residents in the Concept West area.

Mr. David Karl, 205 Freyn Drive, suggested publicizing all property owners in the A.P. District.

Mrs. Claudette Cash, 223 Freyn Drive, reminded Council that the two main concerns of the Concept West residents relative to the Arby's Restaurant are traffic and capatability.

Mr. Robert Archdeacon, from the Ralph L. Woolpert Company and representing Ralph Woodley, explained the revised plan for Carriage Square. It now contains the extension of a private court to Hewitt Road, 25 feet wide, paved; and a barricade to be provided at the property line. The plan also includes an additional lane on the west side of Bigger Road from the Kettering Corporation Line south through the development entrance and then graduating to the present right-of-way of Bigger Road. Mr. Stone moved that Council approve the Record Plan for Carriage Square, Section One as outlined on the map dated September 24, 1973 including the conditions as outlined in the previous motion made on September 17, 1973 and subject to the receipt of a Performance Bond in the amount of \$71,000.00, the execution of a Sub-Dividers Agreement, and the receipt of an Inspection Fee of \$125.50. Mr. Stubbs seconded the motion. A roll call vote resulted in five ayes in favor of the motion, Mr. McIntire voted no. Mr. McIntire explained that his no vote is a result of his opposition to the original multi-family zoning. Mr. Sweetman changed his position at this time because of the inclusion of the access road and the configuration at the two outlets from the development.

Mayor Hoy advised that, according to the Architect, the Municipal Building should be completed for an Open House the weekend of November 11, 1973. The Arts Commission would like to plan an Arts Display in the Community Room along with a musical group for the celebration. Mayor Hoy suggested that Commission Members, the Police Auxiliary and their wives act as hostesses for the Open House. Mr. McQueeney suggested that an orientation of the building be held, perhaps the evening before, for the people acting as hostesses. Mr. McIntire suggested that each Commission appoint a member to serve on a committee to work with an administrative officer to formulate plans. Mayor Hoy suggested that a complete plan be developed by the next Council Meeting. Council indicated their intention for the parking lot to be blacktopped and striped for the Open House.

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To the City Council of Centerville, Ohio

On July 16, 1973, the residents of the Concept West Area submitted a petition containing 250 signatures to the Centerville City Council in an attempt to convey their extreme displeasure and disappointment with the recent action of the Board of Architectural Review in its approval of the proposed plan for the construction and occupancy of a large fast-food drive-in type restaurant at the southeast corner of Virginia Avenue and Franklin Street.

This Board has consistently and publicly disclaimed any responsibility to use sound judgment to judge the effects of the proposed building and occupancy upon the desirability, property values and development of surrounding areas, although this qualification of its members is required by ordinance for their appointment. Instead, they have stated their opinion at public meetings that, no matter what the impact on the surrounding neighborhood or the community, this occupancy could not be denied or the proposed plan substantially modified. They have taken the position that their only jurisdiction is the historic "appearance" of the building, while allowing one of the few old houses in this neighborhood to be torn down to make a larger parking lot for the new restaurant.

This board has repeatedly denied that they have the jurisdiction to consider traffic problems being caused by implementing the developer's plan at this location, and they have repeatedly ruled "out of order" and "irrelevant" comments by citizens at public hearings concerning any traffic related aspects of the plan. Subsequently, with advice from the City Attorney, the Board stipulated in their written decision that they had studied traffic matters, which citizens had not been permitted to discuss in the public hearings, on the basis that they were irrelevant.

The affected citizens have never expected this Board to be swayed by mere public sentiment in reaching a proper decision based on appropriate pertinent data, but neither are they satisfied with its actions, in light of the fact that it has completely failed to meet its responsibilities in this matter, in several respects.

This Board has failed to implement the recommended plan modifications of the City Engineer, who is the only member qualified to evaluate the technical considerations of the effect of increased traffic, and the available remedies thereof. His plan would have provided for a much needed increase in the capacity of this already overtaxed intersection.

The approved plan of the developer has the large parking lot adjacent to Virginia Avenue, facing the residential district, with two of the three one-way driveways, including the only "out" driveway onto the residential street. This shows a woeful lack of understanding on the part of the Board of the most basic traffic pattern considerations and their effect on a heavily traveled narrow residential street. No vehicular access should have been permitted from this street to such a large traffic-generating use.

The Board has admitted that there was no traffic study made of Virginia Avenue, nor was there any consultation with the City Planner or the Planning Commission on traffic matters. Neither was Arby's asked to submit data on the required traffic volume which would have to be generated by this restaurant, in order for it to succeed financially, as was requested by citizens in attendance at public meetings.

This Board also apparently disregarded an opinion rendered by the City Attorney on May 9, 1973, effectively precluding a large use of this type, which by its nature and intent is not a local business, in that it draws people in for miles around. This interpretation clearly limits uses in this district to

small uses which are designed to serve persons residing in adjacent or nearby residential areas. It can easily be shown that this proposed occupancy does not meet this qualification.

No attempt was made by the Board to substantially modify the plan submitted by the developer, so as to limit the undesirable effects of this occupancy on the surrounding residences and the neighborhood. There are several alternative layouts which could go a long way in this regard, but this Board has completely disregarded this area of its responsibility. (INSERT - SEE BELOW)

Adding insult to injury, the Board of Architectural Review's decision was announced in such a way as to make it extremely difficult, if not virtually impossible to effectively appeal it to Council. Citizens in attendance could not understand the unaudible reading of the details of the written decision. Requests for a copy of the decision were refused, although one was given to the applicant. No copy of the approved plan was made available for the appeal. A written request for a copy of the City Engineer's recommendations was refused in writing. Minutes of Board of Architectural Review meetings have not been made available until nearly a month after the meeting was held. Correspondence read at public meetings and referred to as being placed on file have not been made accessible to the public.

In the approval of this occupancy, citizens are being asked to believe that a new business building is being built and a 100 year old house destroyed to provide a larger parking lot for that business, all supposedly in the name of historic preservation. The rationale cited by the Board of Architectural Review's consultant was that the preservation of the old house was not economically feasible. At the same time, an incompatible business use is being introduced into an exclusively residential neighborhood supposedly in the interest of public health, safety, convenience, comfort prosperity and general welfare.

(SEE INSERT ON PAGE 5)

The Centerville City Council must accept the responsibility for correcting this situation, in the interest of public credibility. In their hasty consideration of the original Architectural Preservation ordinance, the City Council approved both a map and a text which in many ways are not in keeping with the purpose or intent of zoning. In so doing, citizens affected by this apparent misuse of governmental power were not properly informed or notified as required by law, in that the wording of the public notice did not properly describe the boundary of the area to be rezoned. In addition, many responsibilities were improperly delegated to an unqualified Board, without council representation.

The citizens of the affected area do not want more problems caused by another hasty decision in this area of Council's responsibility. Council must reverse or modify the decision of the Board of Architectural Review or return to that Board and/or the Planning Commission, a charge to reconsider the Arby project. A proper study must be made, directing specific attention to the proper classification of this use, and the Ordinance requirement of compatibility. At the very least, substantial modifications of the project plan must be made to protect the surrounding residential neighborhood. Use should be made of all available professional services, and written recommendations should be obtained from the City Planner, the City Engineer and the City Attorney.

Following Council's favorable decision on the Arby Appeal, immediate clarification and revision of the Architectural Preservation ordinance and the operation of the Board of Architectural Review must be undertaken.

Our recommendation to Council is that the Board of Architectural Review either be disbanded or else reformed along the lines originally recommended by the Planning Commission in Ordinance No. 81-71. Likewise, the text and/or boundary of the Architectural Preservation District should be reconstructed

along the lines unanimously recommended by the Planning Commission at the time that district was created.

Up to this point, citizens have been frustrated and helpless in their efforts to influence their government to act responsibly in the protection of their interests. Many long-time residents of Centerville have already made the decision to move elsewhere, if this trend is continued. Before allowing this to happen, which would be a major step toward depreciation of residential property values in this area, they have resolved to exhaust all administrative and legal remedies for the good of their neighborhood and the City.

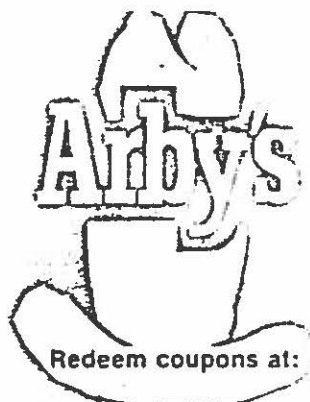
They now stand ready and available to work with Council in an effort to find a solution to this problem which will be for the benefit of all concerned.

INSERT ON PAGE 3 :

Specifically, in regard to the adjacent lot to the east of this proposed project, a minimum rear yard of fifteen (15) feet should be provided, as required by Section 15 of the zoning ordinance for Local Business uses. This would save at least one large (30 inch) tree presently scheduled for removal, and would provide a much needed buffer strip for the protection of the adjacent residence by further separating it from the proposed driveway. Additionally, landscaping and screening at least six feet in height should be provided along this side, from the south property line to even with the north line of the adjacent house. From this point north to Franklin Street, an attractive 30 inch fence should be installed to minimize trespassing. It should also be stipulated that the operator of this restaurant periodically pick up trash from the property of adjacent residences.

UNDER THE BOARD'S "CONTINUING SUPERVISION" POWER

GENERATED BY THIS USE



Use one or all of these Arby's coupons and save

Arby's money-saver coupons

Redeem coupons at:

2400 S. Main St. Dayton, OH 45402
 4900 Broad St. Cincinnati, OH 45244
 2500 S. Main St. Dayton, OH 45402
 4900 Broad St. Cincinnati, OH 45244

with coupon




Regular Arby
 Roast Beef Sandwich
 A heaping portion of thin-sliced barbeque-roasted beef on a toasted sesame seed bun.

2 for \$1.39 Regular 89¢ Ea.

Good at any participating Arby's in the Dayton Area

D1 COUPON EXPIRES OCTOBER 15, 1973 39¢

with coupon The Really Big One



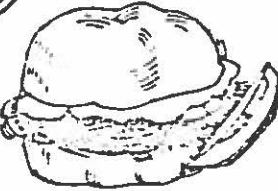
Super Arby's
 A mountainous stack of juicy-thin roast beef, special Arby's sauce, lettuce and tomato on a toasted sesame seed bun. A man's meal!

84¢ Regular \$1.09

Good at any participating Arby's in the Dayton Area

D2 COUPON EXPIRES OCTOBER 15, 1973 25¢

with coupon



Arby's Stacked Hot Corned Beef & Cheese
 Hot, Kosher-style Corned Beef and dill pickle on rye bun with tangy Swiss cheese.

74¢ Regular 99¢ Ea.

Good at any participating Arby's in the Dayton Area

D3 COUPON EXPIRES OCTOBER 15, 1973 25¢

with coupon



Ham & Cheese
 Arby's Stacked Hot Tangy Swiss cheese on hot stacked ham inside a huge rye bun.

74¢ Regular 99¢ Ea.

Good at any participating Arby's in the Dayton Area

D4 COUPON EXPIRES OCTOBER 15, 1973 25¢

with coupon



Fish Sandwich
 Tasty white fish, perfection fried and topped with Arby's tartar sauce on a toasted sesame seed bun.

2 for 89¢ Regular 59¢ Ea.

Good at any participating Arby's in the Dayton Area

D5 COUPON EXPIRES OCTOBER 15, 1973 21¢

TRY OUR NEW "Beefed-Up" Arby



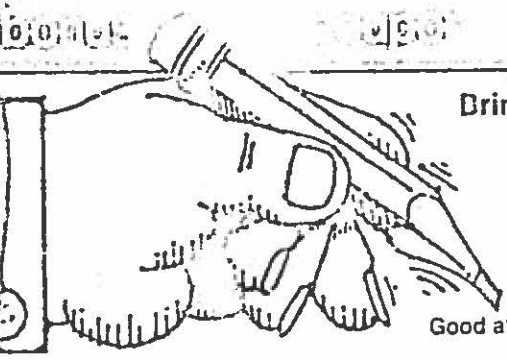
Roast Beef Sandwich
SAME AS THE REGULAR Arby, but "beefed-up" because there's an extra generous pile of delicious thin-sliced barbecue-roasted beef on a larger toasted sesame seed bun. A real tummy pleaser.

74¢ Regular 99¢ with coupon

Good at any participating Arby's in the Dayton Area

D8 COUPON EXPIRES OCTOBER 15, 1973

check your choice!



Bring the Family! — Take advantage of this Bonus Coupon

- 4 Reg. Arby's \$2.78
- 4 Super Arby's 3.36
- 4 Corn Beef 2.96
- 4 Ham and Cheese 2.96
- 4 Fish 1.78
- 4 Beefed Up Arby's 2.96

Good at any participating Arby's in the Dayton Area
 COUPON EXPIRES OCTOBER 15, 1973

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Mayor Hoy made reference to a letter received from Centerville-Washington Township Park District Chairman William Yeck, asking for a meeting with Council. The meeting was tentatively set for Thursday, October 4, 1973.

Mayor Hoy made reference to two letters he received, one from Mayor Charles F. Horn and one from Vice-Mayor John W. McKinney, both of the City of Kettering, concerning the future development plans along the boundary of the City of Kettering and City of Centerville. As requested in their letters, Mayor Hoy suggested that Council meet with these Kettering Officials on October 11, 1973.

As the Poll of Council was taken, the following comments were received:

Mr. Sweetman suggested that Council develop a definite procedure to be followed for Public Hearings.

Mr. McQueeney made reference to a letter he received from Mrs. Hilda Ryan, 88 Davis Road, concerning the black topping of the City right-of-way at 20 West Ridgeway Road. Mr. Smith explained that an area of City right-of-way has been blacktopped in front of the Dollar-A-Week Softwater Company, 20 West Ridgeway Road, for their business parking. Mayor Hoy pointed out the fact that this matter has come to the A.P. Board by citizens aggrieved by this violation. Mr. Farquhar advised that a letter was sent to Mr. Frasure advising him of the existing violations, he was given a period of time to comply, he did then make application to the Board of Architectural Review. At the Public Hearing before the A.P. Board the owners had no complete plans, and non have since been submitted. Mayor Hoy wondered why the City Administration did not correct these violations before citizens had to bring this matter before a citizens board. Mr. Sweetman suggested that action be taken to put this owner on notice that plans must be submitted by a particular date. Mr. McIntire pointed out the need for a City specialist to work with Commissions for the City. Mr. Sweetman moved that the City of Centerville remove all materials put on their right-of-way commencing work on the 25th day of September, 0800 in the morning and all cost of removal, labor and materials be billed to the property owner. Mr. McQueeney seconded the motion. Discussion followed concerning the lack of action by the City Administration concerning this matter. Mr. Sweetman moved to amend the previous motion to read, that on the morning of the 26th day of September, 1973, if nothing is resolved, that the City remove the black top on the City right-of-way at the owner's expense and the property owner be given notice the first thing in the morning of the 25th day of September personally delivered by the City Manager as to the action this Government is going to take. Mr. McQueeney seconded the motion. A roll call vote resulted in five ayes in favor of the motion, Mr. Stone voted no.

Mr. Stubbs suggested that citizens be better informed concerning City Services: Animal Warden, shredding operations and leaf collection. He asked for a report concerning Animal Warden Services. Mr. Smith advised that such a report will be prepared by the next Council Meeting.

Mr. Stubbs wondered whether there are Christmas Decoration plans for the City this year. Mr. Smith advised that there are no definite plans, Service Clubs have been considering this matter.

Mr. Charles Lundy, 222 Gerber Court, suggested that the Ordinance establishing the A.P. District be amended to include an impact clause and to permit adjacent property owners to object. Mr. McQueeney suggested that these recommendations be put in the form of a letter to the City.

Mr. McQueeney suggested that a letter be sent to Mayor Horn of Kettering informing him of the letter from Kettering Vice-Mayor McKinney and leave it up to Mayor Horn to invite Mr. McKinney to the meeting with Centerville Council. Mayor Hoy suggested that Kettering's entire Council

Minutes of

Meeting

Johnson-Watson • Dayton Blank Book—D-2585

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be invited to this meeting.

Mayor Hoy questioned an article contained in Action Line in reference to damage done to a new lawn by snow removal equipment. Assistance Service Director Thayer Thompson explained the cause for delay, the problem has now been taken care of.

There being no further business, the Meeting was adjourned.

Approved:



Mayor

ATTEST:


Clerk of the Council