



**New Albany Planning Commission  
Meeting Minutes**

Monday, May 1, 2023 7:00 p.m.

**I. Call to order**

The New Albany Planning Commission met in regular session on May 1, 2023 at the New Albany Village Hall. Chair Kirby called the meeting to order at 7:01 p.m.

**II. Roll call**

Those answering roll call:

Mr. Kirby	present
Mr. Wallace	present
Ms. Briggs	present
Mr. Larsen	present
Mr. Schell	present
Council Member Brisk	absent
Council Member Shull	absent

Staff present: Law Director Ben Albrecht; Planner Sierra Cratic-Smith; Planning Manager Steve Mayer; Deputy Clerk Christina Madriguera; Engineer Wil Walther.

**III. Action on minutes:**

**April 17, 2023 Meeting Minutes**

Chair Kirby requested a clarification on pages 4 and 5. On page 4 he stated that he clarified with Planning Manager Mayer that the distance from the edge of the pavement to the center line of the creek was at least 50 feet. And then to be more specific, on page 5 that clarification arose again in the condition. The condition that was agreed upon was the following: that the distance between the center line of the creek and the edge of the 25-foot easement at the periphery of the pavement is 50 feet or more. Chair Kirby further explained that in other words, half of the conservation zone was on this side of the creek.

Engineer Walther answered that Chair Kirby was correct and further stated that if there was a curve it would be [in] back of that curve.

Chair Kirby agreed and stated that with a 25-foot easement it gets easy to misconstrue what is 25 feet and what is 50 feet.

Chair Kirby asked if there were any other comments or corrections to the minutes.

There was no response.

Commissioner Wallace moved to approve the April 17, 2023 minutes with the clarifications as stated by Chair Kirby. Commissioner Larsen seconded the motion.

Upon roll call: Mr. Wallace, yes; Mr. Larsen, yes; Mr. Schell, abstain; Ms. Briggs, yes; Mr. Kirby, yes. Having 4 yes votes; 0 no votes; and 1 abstention, the April 17, 2023 meeting minutes were approved as clarified.

#### IV. Additions or corrections to agenda

Chair Kirby asked if there were any additions or corrections to the agenda.

Commissioner Wallace stated that proposed corrections to the April 3, 2023 meeting minutes had been submitted.

Chair Kirby stated those would be considered next and added to the agenda.

#### April 3, 2023 Meeting Minutes

Chair Kirby stated that corrections to the April 3, 2023 meeting minutes had been requested and asked for comments.

The proposed changes are indicated in underlined text or stricken through text as indicated below. Unaffected text is omitted to conserve space.

- On page 2, Commission Member Wallace confirmed that the applicant, New Albany Company, was the current owner of some of the residences in the Bermuda subdivision.
- On page 3, Mr. Rubey and Mr. Underhill responded that yes, the New Albany Company had purchased some of the homes in the Bermuda residential subdivision.
- On page 3, Mr. Rubey responded that New Albany Company now owned at least 7 homes, some have the original owners as tenants, some do not. ~~there are 32 homes in the subdivision and New Albany Company owns them all. He further stated that in some cases, the homes are rented by former owners.~~

Deputy Clerk Madriguera explained that the proposed amendments corrected her misinterpretation of what was said at the April 3, 2023 meeting.

Commissioner Wallace asked Deputy Clerk Madriguera whether the amendments were based upon her listening to the recording of the April 3, 2023 meeting and a determination that what she heard on the recording was more accurate than the minutes.

Deputy Clerk Madriguera responded that yes, she had listened to the April 3, 2023 meeting recording again and the amendments were requested in order to correct her misinterpretation of what was said at the meeting.

Commissioner Wallace stated that it was unusual for the commission to not catch a misinterpretation of that nature. He further remarked that when he saw the proposed corrections he kind of recalled that discussion at the April 3<sup>rd</sup> meeting and the minutes as she had drafted them reflected his recollection.

Commissioner Wallace continued that, nonetheless, given the statement from the clerk of the source of the proposed changes he would move to approve the submitted corrections to the April 3, 2023 meeting minutes. Commissioner Briggs seconded the motion.

Upon roll call: Mr. Wallace, yes; Ms. Briggs, yes; Mr. Kirby, yes; Mr. Larsen, yes; Mr. Schell, yes. Having 5 yes votes; 0 no votes; and 0 abstentions, the corrections to the April 3, 2023 meeting minutes were approved.

Chair Kirby asked whether there were any other additions to the agenda.

Planning Manager Mayer answered that there were not.

Chair Kirby administered the oath to all present who wished to address the commission.

Chair Kirby asked all present to be sure their phones were silent.

**V. Hearing of visitors for items not on tonight's agenda**

Chair Kirby asked whether there were any visitors present who wished to address the commission for items not on tonight's agenda.

There was no response.

**VI. Cases:**

**ZC-11-2023 Rezoning**

Request to rezone 1.765+/- acres located at 6A Hawksmoor from (I-PUD) Planned Unit Development to (I-PUD) Planned Unit Development for an area known as Hawksmoor North Amended (PIDs: 222-004874-00 and 222-005170-00).

**Applicant: Rebecca Mott, Plank Law Firm**

Planner Cratic-Smith delivered the staff report for ZC-11-2023 Rezoning.

Planning Manager Mayer requested that the commission hear the re-platting application staff presentation at this time since it was directly related to the rezoning application.

The Commission agreed.

**FPL-12-2023 Final Plat Modification**

Final plat for the re-subdivision of lots 4 and 6A within the Hawksmoor subdivision generally located north of Hawksmoor Drive (PIDs: 222-003482-00, 222-004874-00, and 222-005170-00).

**Applicant: Rebecca Mott, Plank Law Firm**

Planner Cratic-Smith delivered the staff report for FPL-12-2023 Final Plat Modification.

Commissioner Wallace asked to staff to demarcate lot 6A.

Planning Manager Mayer indicated 6A on the site plan as the flag-shaped lot.

Commissioner Wallace then asked about lot 6b.

Planning Manager Mayer explained that lot 6b would be the new designation of the newly combined parcel which would consist of lots 4 and 5 (previously combined) and lot 6A.

Planner Cratic-Smith continued the staff report.

Chair Kirby asked for comments from engineering.

Engineer Walther stated there were no comments on the rezoning. Engineer Walther further stated that as far as the replatting, any impacts on drainage will be reviewed with a comprehensive permit.

Commissioner Wallace clarified that we are going from 2 combined parcels 4 and 5 to a bigger parcel that will include lot 6.

Planning Manager Mayer responded that was correct, big parcel 6 + 4 and 5. The house sits on lot 4 and a pool is under construction on what was lot 5; the commission approved a variance [on lot 5] so that the pool can be located on the side of the house. The acquisition of lot 6 and

approval of the rezoning and plat modification will permit the property owner to construct accessory structures to serve the house on lot 4.

Chair Kirby noted that Google maps had a more current picture of the pool construction.

Commissioner Wallace stated that, when all is said and done, upon approval of these applications, there will be one big lot with a house sitting on what used to be lot 5 (combined with 4) and then there will be a pool with other accessory structures.

Planning Manager Mayer stated that was correct.

Commissioner Larsen noted the drainage and utility easements go along the back of lots 4 and 5 and through lot 6 and asked whether that would still be a drainage and utility easement.

Planning Manager Mayer explained that this application was similar to a 2015 platting application involving this property. In 2015 the commission approved very much the same request to move the tree preservation zone to the rear of the lot 4 with a 1 for 1 trade and no change to the location of the drainage and utility easements. Similarly, this application seeks to move the tree preservation zone from the rear of lot 4 to the rear of what will be 6b and the drainage and utility easements will remain in the same location.

Commissioner Larsen noted that similar to 2015, the reason for moving the tree preservation zone was to make the lot more buildable. However, if that area is a utility and drainage easement, it would not be buildable.

Planning Manager Mayer explained that it was not that the lot would become buildable but the tree preservation zone which currently exists in the center of the combined lots prevented any encroachment whatsoever. So, the thinking by staff was that it would be nice to move the tree preservation zone to put in a path or sidewalk which would promote cohesive development within the property, and direct access from lots 4 and 5 to the accessory structures on the northern portion of the property.

Commissioner Larsen continued that, from an engineering perspective, although he might be missing something, sidewalks would block the drainage as well.

Planning Manager Mayer responded that, as Engineer Walther mentioned, city staff will review construction permits that propose sidewalks and pavement in that area for positive drainage. The plat allows for engineering review of construction plans for drainage to be sure there are no negative impacts.

Commissioner Larsen asked whether the owner would be advised that the utility easement remains.

Planning Manager Mayer responded that this will be a notation on the title recorded with the Franklin County Auditor which runs with the property, so future buyers will know, if and when this property was sold.

Commissioner Schell asked whether moving the tree preservation zone was trying to relocate the healthy trees or whether new trees would be planted.

Planning Manager Mayer responded that the staff report recommended that there be additional trees planted, subject to staff approval, on the eastern portion of the new tree preservation zone. There was no requirement to move any trees, and trees in the existing zone could be removed at

the property owner's discretion. The new zone would extend the entire zone and buffer the property to the north.

Commissioner Schell asked whether there was a requirement that new trees be planted 1:1 for size.

Planning Manager Mayer responded that there are no requirements in the text other than it is subject to staff approval. He continued that landscaping would be part of the final development plan which would be reviewed by the commission.

Chair Kirby noted that the final development plan was not presently before the commission.

Planning Manager Mayer responded that it was not but staff did have a tree survey from 2019 which let them know what trees were planted in the area and the location of the trees.

Commissioner Schell referenced the earlier discussion regarding the ability to build unlimited accessory structures and asked whether there was a guarantee that there will be no single-family homes in this rezoned area.

Planning Manager Mayer responded that there was no guarantee but if that was proposed (noting that it was an entitlement of the I-PUD zoning), the property owner would have to split the properties to comply with the city code requirement of one house per lot. Nonetheless it was a vested right of the I-PUD rezoning.

Commissioner Larsen noted that he did not understand why the I-PUD zoning request was separate, and why the whole property would not be amended.

Chair Kirby stated that now would be a good time to hear from the applicant.

Applicant Rebecca Mott with the Plank Law firm, 411 E. Town Street, Floor 2, Columbus 43215, attorney on behalf of the applicant property owners who currently own lots 4 and 5.

Ms. Mott explained that the applicants did not want to change the zoning for lots 4 and 5 because they have a separate zoning text for the house and pool. The applicant wants these applications separate because they have been granted variances and land use entitlements for lots 4 and 5 and hope to establish a family compound or large estate property. She stated that .58 acres at the eastern portion of 6A is not yet part of Hawskmoor which is why they are seeking rezoning. These applications present complicated legal issues because there were 2 different properties involved in the zoning application versus the plat.

She explained that the western parcel and eastern parcel were rezoned in 2021, the western parcel will retain 2021 zoning of IPUD and any accessory structures constructed will maintain the higher residential aesthetic of Hawskmoor – these will include things like poolhouses, detached outbuildings, and detached garages. Current zoning code allows 2 accessory structures per residence and the applicant was seeking the flexibility to build more than 2, she stated that the property owners would not want to overbuild the property and were willing to consider a maximum amount of accessory structures. She noted the substantial size of this property and stated they were thinking that 4 would be a good amount of accessory structures.

She presented a map indicating the proposed setbacks for rezoning; and the no-build tree preservation zone/area. She stated that property to the north would be well-buffered and that the property owners would respect the existing agreement to maintain a 50-foot setback. She explained that other than permitting the construction of accessory structures without a primary residence on lot 6A, all of the other features were existing. She stated that the property owners

would work with the Hawksmoor subdivision, that they would comply with the homeowners association, and would comply with the design review board requirements which is a private entity contracted with by the homeowners. Ms. Mott stated that she was happy to discuss the final plat modification now or after consideration of the rezoning application.

Chair Kirby stated these two applications would be best explained as an integrated whole. After the presentation, the commission will vote on each application separately.

Chair Kirby asked whether the new property would be bound by the Hawksmoor covenants and restrictions.

Ms. Mott responded yes, the homeowners association would need to approve the addition and the replat.

Chair Kirby asked what the recourse would be if they did not.

Ms. Mott stated that if they did not approve the replat, it would fail but the property owners would still have the rezoning. In that case, the property owners would most likely return with a replat for lots 4 and 5.

Commissioner Schell asked whether any land had ever been added to Hawksmoor.

Ms. Mott responded that yes there had and she explained prior expansions of Hawksmoor. She also explained that this application was consistent with prior replat applications and their corresponding ordinances. The difference here was that there were 2 different zoning texts and ordinances that apply to this property and they wanted to keep it simple and let those entitlements stand.

Chair Kirby stated that this plan has two masters, one is a large lot and a future vision as 2 lots.

Ms. Mott stated she would not say that 2 lots is their vision.

Chair Kirby asked then how do we get around having a second house here without breaking the 1 house per lot rule.

Ms. Mott replied that the zoning text trumps the code unless the zoning text is silent then the code applies. Because they were asking for a change to the zoning text to allow accessory structures the prong permitting the construction of a single-family residence exists but they agreed to language in the text that would require a replat if they wanted to build a single-family residence, and the zoning enforcement interpretation was only applicable to the 1.726 acres.

Planning Manager Mayer added that there is also a provision in the text that requires that lot to be split again if and when a single-family dwelling unit to be constructed on what is now lot 6A.

Chair Kirby then stated that this text allows multiple accessory structures to be constructed and no residence and in the event an additional residence is sought, the lot must be split.

Planning Manager Mayer answered that was correct.

Ms. Mott answered that was correct, and further stated that if 6b is split for construction of a residential dwelling we will request a rezoning. The IPUD text does not apply to lots 4 and 5.

Commissioner Wallace asked how that would align with the re-subdivision request where it says lots 4 and 5 are combined with lot 6A.

Ms. Mott responded that the city would keep two separate maps on file, and further stated that a plat is totally different than a zoning district and that this lot would have 2 zoning classifications and texts.

Chair Kirby remarked that this was a case where one parcel had multiple zoning districts.

Ms. Mott confirmed Chair Kirby's statement and stated that it was totally legal and would work.

Planning Manager Mayer added that there are other properties in New Albany, in the Country Club Community, that have a two-zoning district classification. And when the city's zoning map is updated, both zoning classifications will appear on the updated map

Commissioner Larsen remarked that he understood the legality of it and the 2 rezoning districts but it was unclear why the replatting was needed.

Ms. Mott responded that it necessary was because the property owners wanted to add the .58 acres east of the property into Hawksmoor and into the lot.

Chair Kirby stated the replat is necessary to combine the ½ acre with 6, but not necessarily with lots 4 and 5.

Ms. Mott responded that was correct and added that the replat included lots 4 and 5 because that would mean the property owners would have one tax bill and was in line with their property goals.

Chair Kirby confirmed that the replat is necessary to bring in the .5 acre of Hawksmoor, but it is not necessary to the combination of lots 4 and 5 with 6A. That was a matter of convenience for the property owners.

Ms. Mott answered that was correct and further explained that her client would be subject to all rules and regulations applicable to adding property to Hawksmoor.

Chair Kirby asked staff whether we had any other properties where secondary structures were as large as these were permitted to be.

Planning Manager Mayer provided the size limits relative to lot size and answered that for purposes of this property the code limited the number of accessory structures to 2 and imposed a size limit of 1600 square feet because the lot is 2 acres or more.

Chair Kirby whether there was a height limit.

Planning Manager Mayer answered that it was 25 feet.

Chair Kirby observed that the height limit proposed in this application was 45 feet which would mean that these accessory structures could be as tall as any of the houses in Hawksmoor.

Ms. Mott explained that they wanted to be as flexible as possible, that the language was permissive, and would maintain the high architectural standard of Hawksmoor. She also stated that no accessory structure plans were underway.

Chair Kirby stated that he was pleased with the architectural standards, his concern was the size of the accessory structures.

Ms. Mott asked whether his concern was with the height and the square footage.

Chair Kirby answered yes, and further stated that 45-feet was a lot and was possibly taller than the houses in Hawksmoor.

Ms. Mott mentioned the 2 ½ story typical heights, and stated that if there was a compromise to be made, they would consider it.

Chair Kirby stated that he would like to hear from staff on that and further, on a related topic, he asked where the second residence would be located. Would it go in the classic lot 6, or to the north in the new portion.

Ms. Mott responded that current zoning text required homes to face the Hawksmoor right of way.

Commissioner Wallace recalled that last year the commission approved a variance for a pool in the side yard to accommodate a pool. He asked Law Director Albrecht how it works when the need for a variance gets mooted out by the same owner buying the adjacent property.

Law Director Albrecht stated that he did not think what happened subsequent made a difference, this application does not affect the prior variance at all. Variances are decided as they arise.

Commissioner Wallace asked whether the commission could impose a condition of approval of this application that the pool be removed from the side yard.

Ms. Mott stated that construction on the pool is almost finished and the use variance is a use entitlement.

Commissioner Wallace clarified that he was not suggesting revoking the prior variance; the commission would be requiring removal of the pool as a condition of approval of this application.

Law Director Albrecht recommended that the commission not go down that road because the pool variance has been approved.

Commissioner Larsen asked staff whether, when the commission approved an IPUD, does the commission need to have a preliminary layout of what is intended for the property because he recalled seeing that in the past.

Planning Manager Mayer responded that the applicant did not have to provide a preliminary layout with an IPUD rezoning application. A subdivision map and standards that usually take the form of IPUD text description were sufficient. He further stated that the commission will review a final development plan prior to construction.

Commissioner Larsen stated that he was of the opinion that the commission should limit the accessory structures to what is afforded in code currently and then possibly approve additional structures when the final development plan is presented. He continued that it was hard to approve an application like this without knowing what was intended for the property.

Ms. Mott added that this was a 1.726 acre lot without a home on it and had ample room for accessory structures as opposed to the standard sized lots that limit accessory structures to 2.

Chair Kirby stated that when there is the entitlement for the home, the commission must assume that a home will be constructed as well as the accessory structures.



Ms. Mott stated that the assumption could be made but clarified that it was not their intent. This application sought to increase the amount of accessory structures, there were no plans to build another primary residential dwelling. If a future owner wished to build a primary residence, they would need to replat the property. This situation deals with accessory structures which are unlimited in the application. She further stated that they are willing to consider a limit and 4 seemed legitimate given the size of the property - 1 in lot 6 body, 2 in the northwest and 1 to the northeast.

Commissioner Schell stated that his only concern with the 4 accessory structures was that there was still room for a large, estate-sized house and asked to confirm the size of the lot.

Ms. Mott responded that the lot size was 1.726 acres.

Commissioner Schell responded that there remains the potential for a large home, and 4 accessory structures and that a lot of that size would be consumed rather quickly.

Ms. Mott stated that if a primary dwelling was sought, a replat would be required and then a limit of 2 accessory structures would apply. She stated that she did not want to crowd or overdevelop the property and she thought 4 accessory structures with these setbacks was about right.

Commissioner Larsen asked whether under the current zoning is there a size limit for the accessory structures.

Ms. Mott answered that there was no size maximum or minimum, but envisioned them as pool-house sized or garage sized. She further stated that a final development plan will be reviewed by the city and by the Hawksmoor association will review the accessory structures.

Chair Kirby confirmed that he heard Ms. Mott say that in the event a residence was built that the limit of 2 accessory structures would apply.

Ms. Mott stated that if her client builds a primary home, that becomes the primary use.

Chair Kirby asked whether, if more than 3 accessory structures are built, would the client be willing to agree to not build a primary residence. If the home was built first, 2 structures would be permitted. Would building 3 structures foreclose the need to build a primary residence.

Ms. Mott responded that that limitation does not accommodate the possibility that third party could buy the property and want to build a residence.

Chair Kirby stated that the commission has seen, even in the Country Club Community, situations owners try to put more things than will fit on the lot. Here, as written, this text permits an unlimited amount of accessory structures and then when all of that is done, a house could be put on it. He did not find that result palatable. If it was done in the other order it would have been a house + 2 accessory structures. He asked whether there was a point at which the commission could impose a condition that a home would not be built.

Ms. Mott responded that she would need to speak with her client, but suspected that her client could live with that. It would be a condition of 3 accessory structures total.

Chair Kirby noted he was still working through the logistics of what it would look like, that it seemed workable aside from the fact that a horrendous amount of trees would be removed.

Commissioner Briggs asked whether her client owned lot 6.

Ms. Mott responded that her clients owned lots 4 and 5 and were in the process of purchasing lot 6.

Commissioner Briggs continued, that the applicants were in contract for lot 6 and 6a and remarked that she was struggling with the plan for lot 6. She noted the location of the pool and the proximity of the adjacent Hawksmoor residences and remarked that lot 6 was distinguished from lot 6a.

Ms. Mott responded that her clients were purchasing lots 6 and 6A plus the .58 acre and that the plan for lot 6 was a pool house, outbuilding, accessory-type structure and that the primary home was on lot 4. She stated that the owners were also intending to build accessory structures on lot 6A and envisioned an estate or family compound.

Commissioner Briggs acknowledged that the property owners had been in discussions with the neighbors and asked what kind of preliminary feedback they were receiving regarding their plans.

Ms. Mott responded that there was a lot of work to be done with Hawksmoor regarding the replat and with the neighbors. She stated that the neighbors seemed generally supportive, and a meeting had been scheduled, there was an existing title issue that they were working through.

Commissioner Briggs asked Planning Manager Mayer whether there was any precedent for this type of application where an owner had a pool and then purchased an adjacent lot for accessory structures that would face the street.

Council Member Shull answered that the closest thing that came to his mind was last year in Ebrington. The property owner purchased an adjacent lot for the construction of an accessory structure pool-house which is currently under construction.

Chair Kirby asked whether an accessory structure required a final development plan.

Planning Manager Mayer answered that accessory structures required a final development plan. He confirmed that Council Member Shull's recollection of Ebrington was correct. Regarding neighbors, he mentioned that neighbor letters were sent out regarding the hearing for this application and that the neighbors will be notified prior to commission consideration of the final development plan.

Commissioner Briggs noted that would include some of the neighbors in Belmont.

Planning Manager Mayer stated that was correct, neighbors within 200 feet within the subject parcel would be notified, so neighbors within 200 feet of an accessory structure would be notified of the commission's consideration of a final development plan. And in this case, if the accessory structures were constructed separately, the final development plans would be presented and considered separately.

Chair Kirby remarked that the commission was considering the rezoning and final plat modification and would then review the final development plan for each accessory structure. And if construction was at separate times, the commission would review each final development plan separately. He asked whether the homeowners association would also consider the final development plans and observed that it would be nice to hear from the owners of lot 3 considering the removal of the trees in the lot 4 preservation zone.

Ms. Mott stated that the homeowners association would review the final development plans and stated that they would not be affecting lot 3's tree preservation zone, only their own.

Commissioner Wallace added that what Chair Kirby was referring to was the fact that if the trees in the current preservation zone behind lot 4 are chopped down then there would be a lot of trees that would that stop and then start again in a new location behind lot 3.

Ms. Mott responded that those neighbors have a 100% vested interest and would have to sign the replat.

Chair Kirby stated that he understood, but their input would be helpful to the commission's consideration because this application presents what is essentially a huge variance over the top of Hawksmoor. He liked that this was an integrated plan but the commission would benefit from input from the residents.

Ms. Mott responded that this was not an area variance or a use variance. The zoning classification is not changing and all of the existing limitations are being maintained. This would have no effect on governmental services, utility use, or traffic. The IPUD zoning for lot 6A and the .58 acres is currently in place. She continued that she was respectfully asking for approval of both applications.

Chair Kirby stated that he understood that this was not a variance and further stated that nonetheless the commission was required to consider criteria under plan review big 3 (a) – (s) in order to approve these applications. Despite the fact that this is not a variance it does change the zoning.

Ms. Mott responded that all setbacks are being maintained.

Commissioner Schell asked how Ms. Mott felt about negotiating the maximum height and the maximum of three accessory structures.

Ms. Mott responded that she felt confident that she could agree to a maximum height of 35 – 40 feet. She further stated that she would have to speak with her client about the maximum of 3 structures and would be willing to table this request in order to confer with her client.

Commissioner Wallace asked about vehicular access. He noted that the text indicated a single driveway but it appeared that a second driveway to serve lot 6A was indicated on the site plan.

Planning Manager Mayer responded yes, a second driveway to serve lot 6A was indicated on the site plan.

Commissioner Wallace asked what distinguished an accessory structure from a residential structure and to what extent could an accessory structure accommodate people residing there.

Planning Manager Mayer responded that an accessory structure is a subordinate structure incidental to the principal structure. Staff has been working with the applicant to clarify the language of the IPUD text to be sure it does not go beyond the intent of an accessory structure. He continued that staff felt clear that the language was clear that the accessory structures proposed here could not be used as residences.

Chair Kirby asked about the definition of dwelling unit, how big was a guesthouse and to what extent can a person reside in a mother-in-law suite. What does it need to be missing in order to not become a dwelling-unit? He further commented that he came from campus.

Commissioner Wallace agreed and stated that when the term family compound was used he thought that accessory structures could be used as dwelling units.

Ms. Mott responded that there are no plans to use the accessory structures as dwelling units, a carriage house, or short-term rentals, and there were no plans to build a primary residence.

Commissioner Wallace then asked whether the applicant would be comfortable with language stating that any accessory structure would not be residential in nature, or something to that effect.

Ms. Mott responded that yes another sentence could be added stating that an accessory structure would not be a residence.

Chair Kirby added that this was about use. It was not about the appointments in the accessory structure. He asked for input from legal staff.

Planning Manager Mayer stated that the Chair was correct, there are many properties that have accessory structures with dwelling unit amenities but they are not used as residences.

Chair Kirby continued that there are more than 0 properties in the Country Club with dwelling unit amenities but are not used as residences.

Law Director Albrecht agreed and reiterated that it is about how the structure is used.

Ms. Mott stated that they would be willing to reference or incorporate the building code definition of a residence into this text.

Chair Kirby asked staff to recite the code's definition of a dwelling or residence.

Planning Manager Mayer then read the code definition of a residence used for dwelling.

Chair Kirby requested of staff that if the application got tabled, could the applicant work out what a reasonable size for maximums of large lot accessory structures would be, if they are different than what is provided by code.

Planning Manager Mayer responded yes, that staff had helpful data on that issue.

Chair Kirby continued that on that line, the building footprints for houses on Hawksmoor was crucial for providing perspective on the size of these accessory structures. He was not adverse to them being large-ish, but these accessory structures should maintain a size proportionate to the residential structure and the surrounding architecture.

Planning Manager Mayer stated that staff would research building footprint sizes to make sure these structures, upon completion, are appropriately designed and sized.

Chair Kirby stated that his goal is to bake them into the zoning text so the final development plan was easy to accomplish. The applicant and all parties interested will know what the boundaries are and that this was a workable set of issues.

Commissioner Larsen agreed recommended that it should be gauged in terms of the foot print rather than square footage, and that the accessory structures should be smaller than the residence.

Chair Kirby asked if anyone from the public was present who wished to speak on the application.

There was no response.

Commissioner Larsen asked whether doing the final plat application was more or less complicated from the city's perspective.

Planning Manager Mayer responded that it was not more or less complicated for the city, and it was not required. The applicant had every right to submit this final plat application and if anything it was more complicated for the applicant.

Chair Kirby confirmed that moving the tree preservation zone on lot 4 was part of the final platting application. He further asked when the tree planting requirements would be imposed.

Planning Manager Mayer answered that was correct, the tree protection zone would be recorded with the final plat. It was mentioned in the rezoning application as well for a belt and suspenders approach. He further recommended that the tree planting be part of the final development plan package.

Chair Kirby requested modestly enforceable language regarding tree planting be added. He further remarked that if there were more trees he would wait until final development but as it was there were relatively few there now. The trees could be removed right away and the final development plan could be years away.

Planning Manager Mayer stated that was true. He added that the new preservation zone on the northern zone would become effective immediately.

Chair Kirby confirmed with Planning Manager Mayer that the establishment of the new tree preservation zone allowed the planting of native species and did not prevent an increase in forestation. He added that he wanted to make sure that a gotcha was not built into the plan.

Commissioner Larsen stated that the commission could require preservation of existing trees and further require that any trees removed must be replaced.

Ms. Mott stated that her client had no plans to remove the trees, and her clients did not want to impact drainage or stormwater.

Chair Kirby stated that on the text, it is identical to the existing text for Hawksmoor North.

Planning Manager Mayer stated that this is all the same text and the setback standards had been increased slightly from the eastern property line.

Chair Kirby remarked that what he looked for and did not find in his packet was diff-marked text, the inclusion of which would have been appreciated as it eases comparison.

Ms. Mott stated that she could provide that, and there were many iterations of red-line text.

Planning Manager Mayer stated that staff had worked closely with the applicant and felt with 100% assurity that all existing requirements were met.

Council Member Shull asked Planning Manager Mayer when this becomes one parcel, in recalling the Ebrington discussions about side yards versus front, lot 4 is currently established as the frontline of this parcel, will that change if anything is built on lot 6?

Planning Manager Mayer answered that it would not change the frontline but it would change the internal property lines. The side lot and front lot lines would remain the same but the internal setbacks would be removed to allow for more cohesive design on lot 6.

Chair Kirby confirmed with Ms. Mott that development of accessory structures could preclude a future split because then the property would not meet the one house, one parcel requirement.

Ms. Mott stated that the zoning text would require that the property be re-platted if a residence is proposed for the 1.76 acres. She further interjected that the setbacks on the highlighted diagram would control for lot 6 but do not change the setbacks for lots 4 and 5. Lots 4 and 5 are one lot and lot 6 is another lot.

Chair Kirby responded that it was more common for the commission to hear that the internal lot lines go away and then the re-split is a real deal because the commission cannot create non-conforming lots.

Ms. Mott clarified that her engineer may have created confusion when labelling the new area 6b because 6b consisted of the entire new parcel.

Chair Kirby noted that a new designation was needed to describe the combined area before platting, the intermediate step. The new and combined area were really 6c.

Ms. Mott agreed and added that her zoning text describes the land by acreage and by metes and bounds, not by lot designations. Thus, 6b should probably come off of her zoning map.

Commissioner Wallace requested that Ms. Mott's diagrams become part of the record because it seemed likely that these applications would be tabled and these diagrams would be helpful.

Ms. Mott asked Law Director Albrecht whether she could adjust the title headings of the diagrams.

Law Director Albrecht responded, sure. He continued that it was probably easier that way.

Ms. Mott then indicated that the diagram for the zoning, with the colored highlighting, would be Exhibit A.

Chair Kirby noted it was the last diagram in the packet.

Ms. Mott then indicated that the 2021 map would be Exhibit A1.

Chair Kirby then asked whether staff was able to record this information.

Planning Manager Mayer responded that if it was okay with the applicant, the maps would be scanned and would become a permanent part of the minutes.

Ms. Mott agreed and indicated that the map with the re-subdivision of lot 6 to lot 6A would be Exhibit B.

Ms. Mott then indicated that Exhibit C would be the new lot, the proposed final replat, which would be lot 6b, 2.456 acres.

Ms. Mott then requested a recapitulation of her homework.

Chair Kirby stated that his list for Ms. Mott included to check with her client about the following: the 3 accessory structure maximum; the height and size limit of the accessory structures, with the concurrence of staff; and tree language on the north side of lot 4, the removal and replanting to new location on the north side of the property.

Commissioner Larsen confirmed that the list included the limitation on the size of the structures.

Planning Manager Mayer stated that the list of action items for the staff included the following: research accessory structure size limits in past cases; research the size of the existing homes in Hawksmoor.

Commissioner Wallace stated there was also discussion of a change of language in section 2b regarding residences.

Chair Kirby added that commentary from the owners of lot 3 would be helpful. Input from lot 7 would be helpful as well, but particularly helpful from lot 3.

Planning Manager Mayer stated that staff recommended the addition of a provision to the text, for a belt and suspenders approach, that the setbacks in the zoning exhibit apply even after combination. This added provision would provide further clarity for the record.

Chair Kirby asked if there were any other questions from the commission.

There was no response.

Documents motion for ZC-11-2023

Chair Kirby moved to accept the staff reports and related documents into the record for ZC-11-2023, and noted the clarification on some of the exhibits as well. Commissioner Wallace seconded the motion.

Chair Kirby asked whether there was any discussion on the motion.

There was no response.

Upon roll call: Mr. Kirby, yes; Mr. Wallace, yes; Ms. Briggs, yes; Mr. Larsen, yes; Mr. Schell, yes. Having 5 yes votes; 0 no votes; and 0 abstentions, the staff reports and related documents with the clarification on the exhibits, were accepted into the record.

Documents motion for FPL-12-2023

Chair Kirby moved to accept the staff reports and related documents into the record for FPL-12-2023. Commissioner Wallace seconded the motion.

Chair Kirby asked whether there was any discussion on the motion.

There was no response.

Upon roll call: Mr. Kirby, yes; Mr. Wallace, yes; Mr. Schell, yes; Mr. Larsen, yes; Ms. Briggs, yes. Having 5 yes votes; 0 no votes; and 0 abstentions, the staff reports and related documents were accepted into the record.

Motion to table ZC-11-2023

Chair Kirby moved to table ZC-11-2023 to the next regular meeting that meets notification requirements. Commissioner Schell seconded the motion.

Chair Kirby asked whether there was any discussion on the motion.

There was no response.

Upon roll call: Mr. Kirby, yes; Mr. Schell, yes; Mr. Larsen, yes; Ms. Briggs, yes; Mr. Wallace, yes. Having 5 yes votes; 0 no votes; and 0 abstentions, the application was tabled to the next regular meeting that meets notification requirements.

Motion to table FPL 12-2023

Chair Kirby moved to table FPL-12-2023 to the next regular meeting that meets notification requirements. Commissioner Briggs seconded the motion.

Chair Kirby asked whether there was any discussion on the motion.

There was no response.

Upon roll call: Mr. Kirby, yes; Ms. Briggs, yes; Mr. Wallace, yes; Mr. Larsen, yes; Mr. Schell, yes. Having 5 yes votes; 0 no votes; and 0 abstention, the application was tabled to the next regular meeting that meets notification requirements.

The commission thanked the applicant and stated that they looked forward to seeing her again soon.

Thereby, at 8:50 p.m., Chair Kirby ordered a 5-minute recess.

Chair Kirby called the meeting to order at 8:55 p.m.

**VAR-46-2023 Variance**

Variance request to allow a deck to be constructed within a platted drainage easement located at 7831 Straits Lane (PID: 222-004613).

Planner Cratic-Smith delivered the staff report.

Chair Kirby asked for comments from engineering.

Engineer Walther delivered the engineering report noting that in the event maintenance needs to be performed, the proposed deck encroaches on the manhole.

Chair Kirby asked for comments from the applicant.

Jim Knox, Suncraft 122 W. Johnstown Road, applicant appearing on behalf of the property owner. Mr. Knox acknowledged the encroachment and stated that he was unaware of the encroachment upon the manhole at the time of design. The homeowners would still like to construct the deck there and do not feel that the encroachment is substantial.

Chair Kirby asked whether construction had begun.

Mr. Knox stated that it had not because they were waiting for approval.

Chair Kirby thanked Mr. Knox for conducting this transaction in that order.

Commissioner Wallace noted that page 3 of 5 of the staff report showed the manhole cover in different locations.

Mr. Knox confirmed his measurement was correct.

Planning Manager Mayer explained that within the staff report figures 1 and 2 were provided to the city at submittal. The exhibit presented at the meeting was provided after submittal and after the staff report was issued.

Commissioner Wallace requested that the new slide be included in the record.



Commissioner Larsen confirmed with engineering that this was part of a drainage easement that served the entire community.

Engineer Walther answered correct, the easement extends to the neighboring properties on both sides and properties to the side and to the rear.

Commissioner Wallace asked Mr. Knox whether he could redesign a deck that would not interfere with the easement and that would comply with requirements. A deck that would be smaller.

Mr. Knox responded in the affirmative and that he could discuss it with the homeowner, but the homeowner would prefer the current design.

Chair Kirby asked if there was anyone from the public who wished to speak on the application.

Shelly Gupta, 4530 Ackerly Farm Road. She stated hers was the first home in the community and that she lived to the rear of the subject property. The subject property is a lot higher than her property and that she has had drainage issues. She asked whether this cutout was for a catch basin or whether it was just for access/entry.

Chair Kirby added that there appeared to be a swale there.

Engineer Walther stated that this was just for access and for port entry, not a catch basin and would not be for drainage. He further noted that the manhole had a closed lid, which would indicate access as opposed to an open lid.

Chair Kirby stated that the short form is that you are not allowed to change your neighbors' drainage. It appeared to be a drainage swale to the catch basins and that in the event of a large rain there would be sheet-flow of water toward the catch basin. He further confirmed that swale was the correct term.

Engineer Walther confirmed that was correct.

Chair Kirby stated that the Village is very careful to not interfere with drainage swales and drainage easements because they serve a functional purpose for sheet-flow of water.

Ms. Gupta asked whether other structures could be built around the deck.

Chair Kirby stated it depends on how the language of the plat is drafted.

Planning Manager Mayer responded that the drainage easement plat for the subject property stated that there can be no additional construction.

Chair Kirby moved for acceptance of staff reports and related documents into the record including the drawing submitted by the applicant for VAR-46-2023. Commissioner Larsen seconded the motion.

Chair Kirby asked whether there was any discussion on the motion.

There was no response.

Upon roll call: Mr. Kirby, yes; Mr. Larsen, yes; Mr. Schell, yes; Ms. Briggs, yes; Mr. Wallace, yes. Having 5 yes votes; 0 no votes; and 0 abstentions, the staff reports and related documents including the drawing submitted by the applicant, were accepted into the record.

Chair Kirby moved for approval of application VAR-46-2023 based on the findings in the staff report with the condition listed in the staff report, subject to staff approval. Commissioner Wallace seconded the motion.

Chair Kirby asked whether there was any discussion on the motion.

There was no response.

Upon roll call: Mr. Kirby, no; Mr. Wallace, no; Ms. Briggs, no; Mr. Larsen, no; Mr. Schell, no. Having 0 yes votes; 5 no votes; and 0 abstentions, the motion failed.

Chair Kirby stated the following rationale for his no vote: that this was a substantial variance; there were city services; there was no evidence in the record that this property was purchased without knowledge of the drainage easement; this can be solved with a smaller deck; granting the variance would set a precedent the commission does not want to set; and the commission should not interfere with drainage swales.

Commissioner Wallace agreed with Chair Kirby and further stated that the commission had recently denied similar variances in Ebrington and needed to adhere to the precedent set in those cases.

Commissioner Larsen agreed with Chair Kirby and Commissioner Wallace and further stated that the commission needs to remain consistent and that the community needs to be protected.

Commissioner Briggs concurred with Chair Kirby and Commissioners Wallace and Larsen and further stated that this variance would result in disruption of city infrastructure, and would set a precedent.

Commissioner Schell agreed with Chair Kirby and Commissioners Wallace, Larsen, and Briggs and further stated that approval would set a precedent and that the applicant had an easy solution of shrinking the deck.

**VII. Other business**

Chair Kirby asked if there was other business before the commission.

There was no response.

**VIII. Poll members for comment**

Chair Kirby polled the members for comment.

Each member expressed thanks to the commission and staff.

**IX. Adjournment**

Chair Kirby, noting no further business before the commission, adjourned the meeting at 9:05 p.m.

Submitted by Christina Madriguera, Esq., Deputy Clerk.

**Appendix**

**ZC-11-2023:**

**Staff report**

**Exhibits A, A1, B, C**

**Record of action**

**FPL-12-2023:**

**Staff report**

**Record of action**

**VAR-46-2023**

**Staff reports**

**Applicant Slide – Slide 10 of PC meeting presentation**

**Record of action**