

Chairman Bill Frye convened the Zoning Commission meeting at 6:00 p.m. Present were Ernest Stein, Bill Frye, Jane Scott, Colleen Ahern and Patrick Craig. Alternates Walter Benson and Mark Wasick were also present. Kim Ferencz, Zoning Inspector, Sue Schultz, Assistant Zoning Inspector and Attorney Irv Sugerman were present.

NEW BUSINESS:

APPLICANT: **WXZ DEVELOPMENT**  
LANDOWNER: **RONALD NOLAND**  
APPLICATION: **MAP AMENDMENT**  
LOCATION: **4672 & 4666 MEDINA ROAD**  
CURRENTLY: **C-2 COMMERCIAL**  
PROPOSED: **C-3 COMMERCIAL**

Chairman Frye opened the public hearing.

The following is a Memorandum in Support of Application for Zoning Map Amendment that was submitted by the landowner's legal counsel, Suzanne DeGennaro.

Property: Parcel Numbers: 1700288 and 1702051, 2.44 acres of land located at the southeast corner of State Route 18 and Hametown Road.

Atty. DeGennaro stated that she was an attorney as well as a professional planner. Atty. DeGennaro stated that she can look at this from a planning point as well as a legal point. The area is located by a corridor between the I-77 interchange and Hametown Road. A gas station is next door to an area that is being proposed to be rezoned. A gas station is permitted in a C-3 but not a C-2 District. State Route 18 is on the north (5-lane) with high traffic counts. The Comprehensive Land Use Plan indicates that over the last ten or fifteen years there has been a real increase in rooftops that have appeared, mainly to the west and south of this proposal. Currently there is not a real neighborhood oriented retail use to serve those residents. At this point if they need the pharmacy or convenience retail small items they have to drive all the way into Montrose to get it. There are no pharmacies close by for them to use. This proposed development would help reduce traffic on Rt. 18, in my opinion. We have a traffic study that has been done that tends to show that there is only a moderate increase in traffic due to this development. Hametown Road provides a natural ending point to the commercial development. The Comprehensive Land Use Plan mentions a fear of creeping commercialism. We feel that this development helps further the goals of the Comprehensive Land Use Plan. Goals 4 and 5 protect drainage systems and existing ground water supply. You can not overburden the sewer capacity. The restrooms at the Rite-Aid would not be in constant use. Goal 6 talks about planning for growth well in advance of it occurring. Goal 7 talks about preventing over-saturation of commercial, this can be avoided by putting commercial where it makes sense.

Introduction: The subject property consists of two parcels totaling 2.44 acres. The parcels are located at the intersection of State Route 18 (Medina Road) and Hametown Road. The owner, Ronald G. Noland

plans to sell the property at WXZ Development, Inc. The site is currently zoned C-2 which permits offices and limited commercial activities ancillary to office uses. The developer is seeking to have the subject property rezoned to C-3 which will permit the site to be developed as a standalone commercial structure which will house a 14,564 square foot Rite Aid pharmacy with a drive-thru prescription facility, surrounded on the north and west by 68 parking spaces. A site plan of the property with the proposed development is attached hereto as Exhibit A.

- a. The proposed rezoning advances the objectives of Copley Township's Comprehensive Land Use Plan and is consistent with the changing character of the area.

The property is bounded by State Route 18, a five-lane undivided highway, and by Hametown Road, an urban local street primarily servicing residential roads north and south of State Route 18. According to Copley Township's Comprehensive Land Use Plan, the application for residential building permits has increased steadily over the last two decades, which has resulted in a large increase in the population of Copley Township. The Comprehensive Plans seeks to "guide new growth in an orderly, regulated manner that will minimize stress on services and public facility infrastructure." Given the tremendous increase in the population of Copley Township, services such as those provided by the proposed development must be incorporated to serve the new residents.

The proposed development has been carefully planned and designed to be compatible with and highly responsive to the needs of the surrounding area and its residents in several ways. One, it provides for proper and safe access to the abutting major streets, State Route 18 and Hametown Road. Two, it is shielded from view by the surrounding residential area due to the topography of the land, and the proposed prescription drive-thru which will be a great benefit to the local residents, particularly the elderly and families with children, which is not visible at all. Third, the site plan allows for high efficiency in providing public utility services, managing the impacts of storm water in the area, minimal environmental impacts, and an extremely well-designed, highly aesthetic facility. Fourth, the store will close at 9 or 10:00 p.m., so the hours are reasonable in light of the surrounding residential areas. Finally, Rite-Aid reserves space in their stores for nurse practitioners to meet with patients to answer questions about their medications, and schedules community medical events such as flu shots and blood pressure clinics. Both of these services would be extremely beneficial to the local residents.

For these reasons the proposed development gives the Township an opportunity to allow for "new growth in an orderly and regulated manner", a key goal of the Comprehensive Plan. The Zoning Resolution is inconsistent with the Comprehensive Plan and therefore unreasonable in that the existing zoning would prevent this carefully planned, highly beneficial development, which is the type contemplated in the Comprehensive Plan to serve the needs of Copley Township residents.

- b. The proposed rezoning would result in an equal or better Zoning Resolution.

Limiting the subject property to the uses permitted in a C-2 District results in a Zoning Resolution that is inconsistent with current development needs for the Township. As the Comprehensive Plan outlines, the population and construction of residential units in the Township has exploded over the last two decades. In spite of this tremendous growth, the subject property with its ideal location adjacent to a major State Route and to the Interstate 77 interchange has failed to be developed under the existing zoning and remains virtually vacant, save for two aging residences.

Clearly, it is neither practical nor feasible to develop office space on this site. The Zoning Resolution sets forth the purpose of the C-2 Commercial District as follows: "The District is established to create an environment conducive to well located and designed office building sites to accommodate professional office, sales offices, non-profit organizations and limited commercial activities ancillary to the office uses." The Zoning Resolution contemplates a well-planned office park type setting. At approximately 2.44 acres, the subject property is far too small to meet the standards of a "well located and designed office building to accommodate professional offices...." A small site like this could never have been intended as a desirable location for an office park setting with all the required parking and "limited commercial activities ancillary to the office uses," which would be necessitated by such a use.

Another problem with developing the site as office space under C-2 zoning would be the increase in traffic coming from a larger regional area that an office building would attract. If the site were developed as the proposed use, the majority of trips to the site would be from the local residential areas. By contrast, an office development attracts traffic from a much broader regional area that would continue to exacerbate the intersection congestion at State Route 18 and Hametown Road. Rather than minimize the impact of traffic which the C-2 zoning improperly intends, office space on the site would actually exacerbate traffic problems throughout the entire general area around the site.

Moreover, not permitting the Rite Aid to serve the many residents surrounding the proposed development and instead requiring an office development on the site will also exacerbate the traffic problem along State Route 18 heading into Montrose rather than helping to alleviate the problem. There are several pharmacies in the area including a Klein's Pharmacy located in the Akron General Health and Wellness Center and a few pharmacies in the Montrose area on the east side of I-77. There are no convenience pharmacies on the west side of I-77, and the residents of the vast residential areas located to the west and south of the proposed development are currently forced to drive longer distances along the already congested State Route 18 to Montrose for their pharmacy and convenience needs. The proposed use is designed to capture pass-by traffic already on the adjacent State Route 18 and Hametown Road.

When viewed in light of the development needs of the township and the

goals of the Comprehensive Plan, including minimizing traffic congestion, ensuring that new developments are compatible with the rural/suburban nature of the township, planning for growth and permitting well-planned, thoughtful development, the Zoning Resolution is unreasonable with regard to the subject property. Moreover, the proposed rezoning would result in an equal of better Zoning Resolution far more responsive to local township residents and their needs.

The property has been for sale on and off for the last 14 years. It is not feasible or practical to develop office on this site.

Atty. DeGennaro stated that according to the traffic study, 60% of the traffic that would use the Rite-Aid is already pass-by traffic. As far as increasing the traffic in the area, as was alleged by the Summit County Planner's report that is refutable according to our traffic study.

Mr. Frye swore in persons who wished to speak.

Mr. Wasick asked when the property was purchased by the current owner and when was the zoning established for the property? The property was rezoned 14 years ago and Mr. Noland purchased the property 7 years ago.

Mr. Frye stated that it was mentioned tonight that people need this drugstore. I don't see any needs survey where residents are saying we need this drugstore. Was a survey done?

Mr. Brad McLean went before the Board and was sworn in. Mr. McLean stated that he was with WXZ Development and they are currently under contract to purchase the subject property. We are a preferred developer for Rite-Aid and Rite-Aid would be a tenant on this property and WXZ would be the landowner. In terms of the needs survey, Rite-Aid is in the business of establishing locations where there is a need. They aren't going to go somewhere where they know it is not going to be profitable. Their clientele is rooftops. This area has a void. Mr. McLean did not have that documentation with him. Rite-Aid is not a supermarket.

Mr. Frye stated that this sounds like a marketing analysis. The question was, was there a needs survey done among the residents of the service area? Mr. McLean stated that surveys have not gone out to local residents. Rite-Aid knows how to locate based on demographics and census data, what makes the most sense.

Ms. Ahern stated that if the property were rezoned anything that was permitted in that District could be built. Currently, I haven't heard any evidence to rezone this property.

Mr. McLean stated that they have a project that the Township should welcome.

Atty. Sugerman asked that everyone be sworn in that was present.

Mr. Frye swore everyone in.

Atty. DeGennaro stated that an office tends to attract traffic from a regional area.

Ms. Ahern asked Atty. DeGennaro, if in her opinion, an office building could be built on that property? Atty. DeGennaro stated that an office building could be built.

Mr. McLean stated that it was physically possible but you are not going to get sewer permits for office use.

Ms. Sandy McKew (planner) stated that her firm does a lot of work on writing Zoning Codes. We have this problem that we have Zoning Districts that have uses and generally tend to be a laundry list and we also have Districts that have collections of those previous District. They are all tied to the Comprehensive Land Use Plan. The problem is the types of businesses that are out there and how they are marketed have changed dramatically over the last 5 to 6 years. This client asked me to look at your Zoning Resolution and Map, a drug store is permitted in the C-1 and C-3 District. The C-1 does not allow for a drive-thru. Ms. McKew stated that in the write-up from Summit County Planning, it describes creeping commercialism. Ms. McKew stated that this property has been zoned commercial for several years. We feel that the community is under-served from a pharmacy perspective.

Ms. Ahern stated that the drug store is not conducive for that property.

Ms. McKew stated that she doesn't like blanket rezoning, the drive-thru component could be a Conditional Use, so that you would always maintain control under this type of issue.

Mr. Michael Domotor, (owner of the office building on the other side of Rt. 18) asked if there was a breakdown of percentage of retail vs. prescription drug sales? Mr. McLean stated that he could get that information, but he does not have it with him. There are going to be two new office buildings built in Bath on Rt. 18.

Ms. Jane Scott asked what percentage of cars use just the drive-thru? Mr. McLean stated that the requirements for the drive-thru far outweighs the need. The drive-thru is for prescription use only.

Atty. Frank Witschey (representing landowner Ron Noland) stated that he sees two aspects; traffic around the store and traffic in the Montrose area. Where is the traffic problem? To the east? To the west?

Atty. DeGennaro stated that there is a bit of a traffic problem in Montrose. We were referring to the volume of traffic on Rt. 18.

Atty. Witschey stated that he didn't think that was the problem. The cars travelling on Rt. 18 are heading to the Montrose area. You have all of the residents in that area are going to go to Montrose area where the problem lies. This particular location would help alleviate the traffic problem.

Mr. Frye asked for additional comments from the floor that were in favor

of this proposal. None were offered.

Mr. Frye asked for comments from the floor that were against this proposal.

Mrs. Ramona Edminister, 40 S. Hametown, stated that her home was across the street, one home down from this proposed rezoning. Ms. Edminister stated she can clearly see that property. The elevation doesn't hamper my vision. A long time resident at this location. Ms. Edminister is against this proposal for a number of reasons; only two parcels out of four are being proposed for a rezoning, we are creating a spot zoning, earlier there were comments made about the number of rooftops, she would like to refer to them as neighbors, C-2 has been viewed as a buffer, how is it determined that 80% of the people that would be using this facility would come from the residential area (our neighborhood), she picks her over the counter items when she is at the grocery store and there seems to be a lot of opinions being thrown out there. Ms. Edminister stated that the lighting, noise and traffic would be obtrusive.

Mr. Michael Domotor asked how many employees Rite-Aid would have? He was answered 4 – 5 per shift.

Mr. Jim Nolte, 22 Scenic View, stated that as far as retail, Bath Township has retail (Life Styles) on the other side of Rt. 18. Life Style has a restaurant, banquet facility and a drug store. Mr. Nolte has no objection to the rezoning. The zoning needs to be looked at all along Rt. 18.

Atty. Suzanne DeGennaro asked the Zoning Commission if they had additional concerns other than the ones already discussed?

Mr. Frye stated that they will discuss their concerns after the public hearing is closed.

Ms. McKew stated that there are other spot zones that are sprinkled throughout the community. We are trying to create a zoning situation that gives you the greatest control that would allow us to meet the concerns of the Zoning Commission.

Zoning Inspector Kim Ferencz read the write-up from the Summit County Planning Staff and the Summit County Planning Commission.

**SUMMIT COUNTY STAFF – DISCUSSION: Existing Zoning** – The subject properties are located on Medina Road (State Route 18), just southeast of the Hametown Road intersection. The current zoning for the said parcels is C-2 Commercial. Permitted land uses in this zone include professional and administrative offices, medical and dental offices, clinics, and non-drive-through banks. Conditionally permissible uses include drive-through banks, churches, schools, clubs and daycare facilities. The C-2 Commercial District prohibits more intensive commercial uses such as retail, dining, and lodging establishments.

**Requested Zoning:** The applicant has expressed a desire to build a

14,564 square foot Rite-Aid pharmacy with a drive-through prescription area and sixty-eight (68) parking spaces. The applicant originally requested a use variance to the Copley Township Board of Zoning Appeals. Upon learning from the Copley Township Board of Zoning Appeals that sufficient evidence was lacking to support such a variance, the applicant withdrew the request and subsequently applied for a rezoning.

The applicant is requesting a rezoning to the C-3 Commercial District. The C-3 District permits all of those uses permissible in C-2 and the following: convenience retail (studios, barber/beauty shops, pharmacies, dry cleaners, laundromats, florists); community regional retail (apparel, furniture, appliances, hardware, household, sporting goods, etc.); religious facilities; eating/drinking establishments (restaurants, carryout/drive-through, bars, taverns, nightclubs); recreational (theaters, arcades); retail food establishments (supermarkets, delis, bakeries); funeral; hotels/motels; and telecommunications.

**Existing Zoning and Land Use:** Specifically, the surrounding uses and zoning include the following:

East: zoned C-2 Commercial  
West: zoned R-3A Residential  
North: zoned B-4 Business (Bath Township)  
South: zoned R-2 Residential

**Copley Township Comprehensive Land Use Plan:** The Copley Township Comprehensive Land Use Plan (1997) lists a number of reasons that would oppose with this rezoning request. Policy 1 of Goal 7 of the Comprehensive Land Use Plan aims to prevent the over-saturation of commercial and industrial zoning. The policy advises:

“a thorough review of the consequences of creeping commercialism should be conducted before a rezoning.”

Policy 2 of Goal 7 of the Comprehensive Plan states that “applications for a commercial rezoning should consider the existing surrounding land uses” This second policy adds:

“low-intrusive commercial uses such as business offices are best situated adjacent to single and two-family residential neighborhoods while high-intrusive commercial uses such as supermarkets shall be separated from residential areas by manmade boundaries such as interstate highways.”

The Comprehensive Land Use Plan also disallows spot zoning (p. 67).

**Staff Comments:** Staff believes that the existing C-2 Commercial District better suits this area. Professional and medical offices are more compatible with the surrounding residential neighborhood. These low-intrusive commercial uses would generate less traffic, maintain operation hours more compatible to residential areas, and pose fewer potential nuisances such as noise and lighting. Staff is concerned that a

retail facility such as a pharmacy would potentially negatively affect the surrounding residences. Professional offices, banks, and medical/dental facilities provide valuable and necessary services to the community while better integrating with the surrounding residential neighborhood.

A C-3 Commercial District would be inappropriate for this area. This entire C-2 District includes four (4) parcels and fewer than five (5) acres. The applicant is requesting a rezoning of two (2) of these parcels and 2.44 acres, approximately one-half of the existing C-2 Commercial District. The Copley Township Zoning Resolution and Comprehensive Plan both assert that C-3 Commercial Districts area intended to be "principal shopping areas of regional importance with a concentration of comparison shopping facilities in quantity." This rezoning request of two parcels and fewer than two and one-half acres would not qualify as an area of regional shopping importance. The small site barely accommodates the Rite-Aid pharmacy. The C-3 Commercial District is more suitable in the Montrose area where there is a large concentration of retail and comparison shopping facilities.

There are already a number of developable parcels in other C-3 Commercial Districts. For example, large vacant tracts along Rothrock Road are available for retail development. This area is near a high concentration of existing retail facilities, has exceptional accessibility, and is sufficiently buffered from residential areas by the interstate highway.

This rezoning would contradict the Copley Township Comprehensive Land Use Plan. As alluded to previously, the Copley Township Comprehensive Plan warns of over-saturated retail development and "creeping commercialism." A rezoning here could lead to future zoning amendments along this corridor, forever altering the rural nature of this area. The Comprehensive Land Use Plan explicitly states that low-intrusive commercial uses should be located adjacent to residential areas whereas high-intrusive uses should not be. A pharmacy is considered a high-intrusive use. Along with dispensing prescriptions, Rite-Aid pharmacies are also quasi-supermarkets, selling a number of consumer products. There would be a potential for greater traffic, especially trucks delivering merchandise. Also, retail facilities are open later, usually until at least ten o'clock p.m. There is potential for unwanted noise and light at hours much later than those of traditional office facilities.

The Copley Township Comprehensive Land Use Plan also discourages spot zoning. This particular rezoning proposal should be considered a spot zoning for several reasons. First, a rezoning to a higher intensity commercial classification would be incompatible with surrounding residences. Second, there already exists plenty of land in Copley Township zoned C-3 Commercial. The most notable example is along Rothrock Road and adjacent to I-77, in the principal retail concentration of Copley Township. Third, all other C-3 Commercial Districts in Copley Township are much larger in comparison to this site. The five (5) C-3 Commercial zones in Copley Township average 42.7 acres. Fourth, the 2.44 acres proposed for the rezoning only accommodates a single building. No other buildings could fit within this area, if rezoned. Fifth,

the two (2) other parcels in this C-2 Commercial District, just east of these properties are not included in this rezoning request. Finally, the proposed rezoning is incongruous with the goals and development strategies of the Copley Township Comprehensive Land Use Plan.

Staff also notes that even though a plan has been submitted for a pharmacy, once these parcels are rezoned, they may assume any of the permitted uses for the C-3 Commercial District. The permitted uses in this C-3 Commercial class are more commercially intensive than those uses allowed in C-2 Commercial zones. Many of these permissible C-3 Commercial uses would be incompatible with the surrounding residential community.

Finally, one must consider precedent. A similar rezoning proposal for Copley Township was heard by the Summit County Planning Commission in February 2001. This rezoning request, located on Copley Road, also requested a change from C-2 Commercial to C-3 Commercial and included 2.15 acres. The request was to rezone the existing C-2 District's office use to a C-3 Commercial District to permit the establishment of a beauty parlor. The Planning Commission disapproved this rezoning request, citing traffic concerns and the potential impact on the surrounding residential area.

Based on the following reasons, Staff cannot support this rezoning request:

- \*The proposed change would be incompatible with the adjacent residential neighborhood;
- \*The C-2 Commercial District permits a number of commercial uses more compatible with the contiguous residential area (thus, the property owner is not being denied profitable use of his land);
- \*There already exists plenty of developable land zoned C-3 Commercial;
- \*The size of the proposed site is considerably smaller than any other C-3 Commercial District in Copley Township;
- \*The proposed rezoning location would not qualify as a regionally important shopping district with a concentration of similar facilities in quantity;
- \*The proposed rezoning would qualify as a "spot zoning";
- \*An approved rezoning could spur future zoning changes along this corridor, thus promoting "creeping commercialism";
- \*Although a plan for a pharmacy has been submitted, once rezoned the properties could assume any permissible use of the C-3 Commercial District;
- \*There are too many conflicts with the Copley Township Comprehensive Land Use Plan
- \*A rezoning would go against precedent.

Staff feels that the existing zoning should not be changed, as it appropriately fits the surrounding residential neighborhood while still offering important community services. Staff recommended to the Summit County Planning Commission that the proposed rezoning be **disapproved with due consideration of comments.**

Ms. Ferencz read the purpose Section from the C-2 and C-3 District into

the record.

Mr. Frye asked for additional comments from the floor. None were offered.

**Ms. Ahern moved to close the public hearing, Ms. Scott, second. Mr. Frye called for the vote. Mr. Stein, aye, Ms. Ahern, aye, Mr. Craig, aye, Ms. Scott, aye, Mr. Frye, aye. The motion carried.**

Mr. Wasick stated that the Summit County Planning Staff did a wonderful job on their write-up. It carries great weight. It seems that the Zoning Commission does not have a problem with drugstores in general. In this case, there are 4 properties and they are asking to rezone only two of them. It appears that the applicant owns at least three of the properties, maybe four. The property was purchased in 1981 when the zoning was something other than C-2. In approximately 1992, the C-2 was established for the four properties. The applicant, seven years later bought two of the properties knowing that they were C-2. Therefore, you probably can't claim too much of a hardship even though that is not one of our standards here. He purchased the properties knowing that they were non-conforming residential in a C-2 District. It appears that was done to protect the area at that time, the same as we are doing today. The ten reasons listed by the Summit County Commission Staff, they look strong and I support them.

Ms. Ahern stated that the problem with switching from a C-2 to a C-3 we are not looking out for the best possible outcome for the residents in that area. We would be opening this up for retail and that is not conducive to this area. The property can be used as office, just because the right buyer hasn't come along, isn't a reason to rezone these two parcels. There is C-3 property available on Rothrock Road. The Goals of the Comprehensive Land Use spell this all out.

Mr. Frye stated that he did not find the argument regarding Rothrock Road to be convincing. Mr. Frye stated that he has read all of the documentation that has been presented.

**Ms. Scott moved to recommend to the Board of Trustees to deny the rezoning for WXZ Development based on the testimony presented this evening and the recommendation from Summit County Planning for the rezoning of the properties from C-2 to C-3, Ms. Ahern, second. Mr. Frye called for the vote. Mr. Stein, aye, Ms. Ahern, aye, Mr. Craig, aye, Ms. Scott, aye. The motion carried.**

Request from the Zoning Department to set a public hearing for the following map amendment:

Applicant: **John Paul Paxton**  
Landowner: **John Paul Paxton**  
Location: **1386 N. Jacoby Road**  
Currently: **R-2 Residential**  
Proposed: **C-3 Commercial**

**Ms. Scott moved to accept and set a public hearing for the above map amendment request for May 7, 2007 at 6:00 p.m., Ms. Ahern, second. Mr. Frye called for the vote. Mr. Stein, aye, Ms. Ahern, aye, Mr. Craig, aye, Ms. Scott, aye. The motion carried.**

Ms. Ahern moved to approve the minutes of February 12<sup>th</sup>, Ms. Scott, second. Mr. Frye called for the vote. Mr. Stein, aye, Ms. Ahern, aye, Mr. Craig, aye, Ms. Scott. The motion carried.

NEXT MEETING DATE: April 2, 2007.

With no further business to come before the Board, the meeting was adjourned at 7:48 p.m., with a motion by Mr. Stein, Ms. Ahern, second. Mr. Frye called for the vote. Mr. Stein, aye, Ms. Ahern, aye, Mr. Craig, aye, Ms. Scott, aye. The motion carried.

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Bill Frye, Chairman

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Sue Schultz, Secretary