

## **MINUTES**

October 2, 2018

Chairman Smith called the City Plan Commission Meeting to order at 7 p.m. in the City Council Chamber.

The following Commission members were in attendance:

Michael Smith, Chairman  
Ken Mason, P.E.  
Robert Strom  
Kimberly Bittner  
Lynne Harrington  
Kathleen Lanphear  
Steven Spirito

Also present were:

Jason M. Pezzullo, AICP, Planning Director  
Stephen Marsella, Esq, Assistant City Solicitor  
Douglas McLean, Principal Planner  
Joshua Berry, Senior Planner  
J. Resnick, Clerk

### **APPROVAL OF MINUTES**

Upon motion made by Mr. Mason and seconded by Mr. Spirito, the Commission unanimously voted to approve the minutes of the September 11, City Plan Commission Meeting.

### **ORDINANCE RECOMMENDATIONS**

**Ordinance 08-18-04** – In Amendment of Chapter 17 of the Code of the City of Cranston, 2005, Entitled “Zoning” (Change of Zone – 1055 Oaklawn Avenue from **A-8** to **C-2**)

The above referenced ordinance was reviewed by the City Plan Commission for the purpose of providing the Council with an advisory recommendation, as required by Section 45-24-52 of the Rhode Island General Laws and Section 17.120.030 of the Cranston Zoning Code.

Ordinance 08-18-04– Requests to change the zoning classification of 1055 Oaklawn Avenue, AP 18/4, Lot 1346, from A-8 (Single-Family 8,000 ft. lots) to C-2 (Neighborhood Business).

## Planning Analysis

The subject corner lot has frontage on its northern lot line on Willow Road and along its eastern lot line on Oaklawn Avenue. The site building was constructed and used as a residential dwelling, but received ZBR approval to use the property as a Professional Office on 8/9/1995. There are no proposed modifications to the site in association with the request for zone change.

The 2010 Comprehensive Plan – Future Land Use Map designates this area as “Highway Commercial/Services” which calls for C-3, C-4 or C-5 zoning. The City of Cranston Comprehensive Plan Land Use Element recommends that the city revise the zoning map to bring it into consistency with existing legal uses and the Future Land Use Map, identifying miss-zoned properties and providing recommended zone changes in Appendix A to the Comprehensive Plan. This particular lot is included in the appendix, with the recommendation of a C-3 zoning designation for this site. The proposed C-2 zoning conforms in that it is more restrictive, not less, allowing less intense commercial uses, which demonstrates consideration of the neighboring residentially zoned community. The Plan Commission finds the request appropriate and consistent with the Comprehensive Plan – Future Land Use Map and Land Use Element.

## Findings of Fact

1. The ZBR approved a Professional Office at this site in 1995, so the request is consistent with the existing use.
2. The proposed change of zone for AP 18/4, Lot 1346 from A-8 to C-2 is consistent with the City of Cranston’s 2010 Comprehensive Plan – Future Land Use Map which designates this area as “Highway Commercial/Services.”
3. The lot is listed in the Comprehensive Plan Appendix A, which identifies the property as miss-zoned and recommends a C-3, a more intense commercial zone than is requested.
4. The request below the maximum commercial intensity is consistent with the existing use and the character of the surrounding area.

Attorney John DiBona, on behalf of his client’s, the Saccoccios’, reiterated Mr. Berry’s introduction. He also stated that the current tenant is a divorce mediator who wishes to purchase the property and, she decided to request a zone change; which would bring the property into conformance with the Comprehensive Plan.

No public comment was offered.

Upon motion made by Ms. Bittner and seconded by Mr. Strom, the City Plan Commission unanimously voted (7/0) to adopt the findings of fact above and forward it along with a recommendation of **approval** to the City Council for the requested zone change.

**Ordinance 08-18-05** – In Amendment of the Cranston 2010 Comprehensive Plan for the City of Cranston, as amended 2012 (*Amendment to the Future Land Use Map for Phenix Avenue, AP 20, Lot 2126 from Residential 3.63 – 1 Units per acre to Residential 7.26 – 3.64 Units per acre*)

**Ordinance 08-18-06** – In Amendment of Chapter 17 of the Code of the City of Cranston, 2005, Entitled ‘Zoning’ (Change of Zone – Phenix Avenue for AP 20, Lot 2126 from **A-20 to A-6**)

Mr. Pezzullo began by describing the following requests: Ordinance 08-18-05 proposes to amend the Comprehensive Plan - Future Land Use Map of the Land Use Element by changing the Land Use Classification [**LUC**] of AP 20 Lot 2126 (0 Phenix Ave). The ordinance proposes to change the LUC for the parcel from **Residential 3.63 – 1 Units per acre to Residential 7.26 – 3.64 units per acre**. This ordinance is submitted in support of Ordinance 08-18-06 which proposes to rezone AP 20, Lot 2126 from

**A-20 to A-6.** He stated that the proposed zone change to A-6 would not be consistent with the Comprehensive Plan without the comprehensive plan amendment, and would not be allowed.

Attorney Robert Murray reiterated Mr. Pezzullo's introduction. He noted that the parcel is located across the street from Western Hills Middle School, and there is a residential neighborhood behind the parcel. He stated that all three new lots would meet all zoning requirements and will be subdivided in the future. He stated that a neighborhood meeting was held where it was agreed that a "substantial no-cut" tree line will be maintained at the time of subdivision. He further stated that there is a moratorium for sewer installation that extends to the Midland Drive until the multi-family Carpionato apartment development project on Scituate Avenue is complete.

Mr. David Izzi, 12 Midland Drive, expressed concern with the fact that the area has recently been determined a flood zone by FEMA. He also expressed concern with flooding (run-off) and traffic. He stated that the "green space" Mr. Murray mentioned is only "for those certain lots, not the entire area".

Mr. Mark Arrea reiterated the concerns of Mr. Izzi. His fiancé expressed concern that other parcels in the area could be re-zoned. She stated that she has photos documenting the existing flooded brook. She also expressed concern with property values.

Ms. Sharon Izzi expressed concern with the precedent this re-zone will set. Mr. Nacenzi expressed concern with the existing A-20 lot and further development.

Attorney Murray responded to these concerns, stating that "we are only concerned with the lots in question". He stated that the proposed lots would enjoy the same A-6 zoning as the existing neighborhood. Regarding drainage/flooding, he stated that it is the developer's obligation to ensure there is zero net runoff. Regarding Mr. Smith's question about topography, Mr. Murray stated that the parcel is relatively flat.

Regarding the re-zone, Mr. Pezzullo stated that the subject parcels misidentified during the 2010 Comprehensive Plan update and "are in isolation". He further stated that "this is a remnant piece of land". He also stated that the parcel to the rear of these is the subject lot is "landlocked". He stated that these parcels should be zoned A-6, consistent with the rest of the surrounding neighborhood. He stated that they are not in the floodplain, however, the larger lot to the south is zoned A-20 and has areas of extensive wetlands. Regarding flooding, Mr. Mason stated that these lots are "somewhat higher" than the intersection of Midland Road and Phenix Avenue.

At the end of the public comment period, the Commission moved to a decision:

*Ordinance 08-18-05:* A motion to accept staff's recommendation of approval was made by Commissioner Mason and seconded by Commissioner Strom. The Commission voted 4-3 (*Commissioners Bittner, Lanphear and Harrington voted nay*). The City Charter requires that a quorum of the entire Commission, (five votes) is required to carry any matter. As the motion did not attain the required five votes, the City Plan Commission can offer no specific recommendation on Ordinance 08-18-05.

*Ordinance 08-18-06:* A motion to accept staff's recommendation of approval was made by Commissioner Strom and seconded by Commissioner Mason. The Commission voted 4-3 (*Commissioners Bittner, Lanphear and Harrington voted nay*). The City Charter requires that a quorum of the entire Commission, five votes, is required to carry any matter. As the motion did not attain the required five votes, the City Plan Commission can offer no specific recommendation on Ordinance 08-18-06.

**Ordinance 06-18-07** – Amending Title 17.24 of the Code of the City of Cranston, 2005, Entitled “Zoning” “Performance Standards Generally” for the regulating of **Compassion Centers**

Mr. Berry presented staff’s recommendation to the City Plan Commission of the proposed council ordinance and explained that the state of Rhode Island considered the expansion of Compassion Centers from its current cap of three within state bounds. Although this expansion did not get passed, the ordinance as proposed is a proactive effort to prepare the City of Cranston in the event that state law enables new Compassion Centers in the future.

The ordinance proposes to limit “Compassion Centers” to industrial zones (M-1 and M-2) only by the granting of a Special Use Permit, applies setbacks from a list of incompatible land uses, establishes restrictions of the land use, and stipulates annual reporting. The ordinance is not to be confused with Ordinance No. 2017-5 which set performance standards specifically for *Licensed Cultivators*, which are cannabis production facilities for Compassion Centers. R.I. Gen Laws sec. 21-28.6-12 provides a definition of Compassion Center which is more expansive, permitting other activities such as but not limited to the distribution of marijuana or related supplies.

He explained that the staff made minor modifications to the proposed ordinance. The purpose of the modifications were to be consistent with the restrictions passed for licensed cultivators and to treat the retail and non-retail aspects of the business appropriately.

Mr. Berry also mentioned that right now there are only three Compassion Centers in Rhode Island located in Portsmouth, Warwick and Providence. The proposed ordinance will also address hours of operation.

Mr. Marsella informed the Commission that these facilities are “heavily regulated by the State”, while cities and towns regulate the zoning. He further stated that Compassion Center licensing costs \$250,000. He stated that cultivators are allowed in M1 and M2 zones by special use permit.

Ms. Bittner expressed concern that there were elements missing from the proposed ordinance. She stated that the State has issued 72 licenses, 5 of which are in Cranston. Mr. Marsella clarified that those licenses were issued to cultivators. She expressed concern with “Cranston becoming a marijuana haven” and suggested further study/review of this ordinance. Commissioner Lanphear stated that the proposed ordinance was a good working first draft.

Mr. Pezzullo stated that the proposed ordinance is “accepted business” of the City Council and by charter requires a recommendation by the City Plan Commission within 45 days of its referral. He reminded the Commission that this ordinance was not created by the Plan Department but rather by the City Council and their counsel at the request of the Administration.

Chairman Smith asked the Commissioners to e-mail their concerns and suggestions to the Plan Department within two weeks.

It was the consensus of the Commission that this ordinance requires further consideration, therefore, upon motion made by Commissioner Lanphear and seconded by Commissioner Bittner, the Plan Commission voted (5/2 – Mr. Strom and Ms. Harrington voted nay) to **continue** this matter to the November 7, 2018, Plan Commission agenda.

## **SUBDIVISIONS AND LAND DEVELOPMENTS**

### **Phenix Woods – Preliminary Plan**

Major Subdivision with street extension  
*10 additional house lots*  
Phenix Avenue  
AP 22, Lots 226 and 227

Mr. McLean explained that the total area of the site is approximately 7.4 acres. The subject property is currently wooded with 2 existing garage structures to be demolished. It is the Plan Department staff recommendation that the existing driveway from Phenix Avenue to the 2 garage structures on the site be abandoned and the driveway apron should be removed to avoid a second point of vehicle access for proposed lot #9. The property is zoned A-20 which allows single-family residential homes with 125' of frontage and 20,000 square foot lot size.

The applicant is proposing to subdivide the parcel by constructing 1,000+/- linear feet of roadway (connecting Wilshire Lane to Phenix Avenue and one new cul-de-sac Brielle Lane) and creating 10 new house lots and 1 drainage utility lot. Approximately 6,000 ft<sup>2</sup> of land would be transferred from the AP 22, Lot 226 to AP 22, Lot 227 as part of this subdivision. All of the proposed new lots will be serviced by public water and private septic. The proposed project is allowed by-right per City Zoning Ordinance and is consistent with the Comprehensive Plan Future Land Use Map with a proposed density of 1.35 units per acre.

Attorney John DiBona stated that the project received Master Plan approval about one year ago. He stated that the proposed project "meets all zoning requirements". Regarding Lot 227, he stated that 6,000 sq. ft. will be added to that lot. He stated that the applicant is seeking a waiver for sidewalk provision.

Mr. Nick Piampiano, P.E., reiterated Mr. DiBona's comments. He added that the Preliminary Plan is "identical to the Master Plan". The project has received RIPDES, and there are no wetlands on site. The project will be serviced by ISDS. A detention basin is proposed on Lot 3. He stated that Brielle Lane will be a 25 ft. wide roadway while Wilshire Lane is a 30 ft. roadway.

Ms. Astrid Morales, 6 Wilshire Lane, stated that she would like the opportunity to meet with the owner of United Home Construction regarding the extension of her sprinkler system to the newly established lawn area she will receive, as well as to ensure that the driveway 'extension' will match the existing driveway. She also expressed concern with relocation of her mailbox and asked who would be responsible for repairs to her pool and foundation should "cracks" occur.

Attorney DiBona assured Ms. Morales that his client will address these matters and "wants to be a good neighbor and will have a son living in one of the new homes".

Dennis and Deanna Phillips, One Wilshire Lane, expressed concern with the development and the loss of "a place for their children to play". They stated that they recently moved to this home and don't know where their property line is and did not know of this proposed development. They requested "Slow Children" signage. They also expressed concern with blasting, the construction schedule, tree removal and "above ground septic".

Mr. Piampiano responded, stating that "they don't have phasing yet". He also stated that "there is no reason to clear cut the existing street trees – only trees required for grading".

Ms. Kesha Courtmach asked if the driveway on proposed Lot 9 would be used. Mr. DiBona stated that the Plan Department staff asked that it not be used. Ms. Harrington asked why "two egresses are needed". Mr. Piampiano responded, stating that it was a staff recommendation at Master Plan.

There being no further public comment, the Commission moved to a vote. Upon motion made by Ms.

Lanphear and seconded by Ms. Bittner, the Commission unanimously voted (7/0) to adopt the Findings of Fact denoted below and approve this major subdivision, with waiver for sidewalk provision and curbing; subject to the following conditions.

### **Findings of Fact**

#### Positive Findings

1. An orderly, thorough and expeditious technical review of this Preliminary Plan has been conducted. Property owners within a 100' radius have been notified via first class mail on 9/21/18 and the meeting agenda has been properly posted. Advertisement for this major subdivision was published in the 9/20/18 edition of the Cranston Herald.
2. The proposed subdivision and its resulting density of approximately 1.35 units per acre is consistent with the City of Cranston Comprehensive Plan's Future Land Use Map which designates the subject parcel as "Residential" allowing 3.63 to 1 residential units per acre".
3. The proposal will not alter the general character of the surrounding area or impair the intent or purpose of the Cranston Zoning Code.
4. There will be no significant negative environmental impacts from the proposed subdivision as shown on the Master Plan.
5. The proposed subdivision promotes high quality appropriate design and construction, will be well integrated with the surrounding neighborhoods and will reflect its existing characteristics.
6. The proposed subdivision will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.
7. The property in question has adequate permanent physical access on Wilshire Lane and Phenix Avenue, improved public roadways located within the City of Cranston.
8. The proposed subdivision provides for safe and adequate local circulation of pedestrian and vehicular through traffic, for adequate surface water run-off and for a suitable building site.
9. Significant cultural, historic or natural features that contribute to the attractiveness of the community have not been identified on site.
10. The design and location of streets, building lots, utilities, drainage and other improvements conform to local regulations for mitigation of flooding and soil erosion.

#### **Conditions of approval**

1. Payment of Western Cranston Capital Facilities Impact Fee in the amount of \$13,895.00 at the time of Final Plat recording.
2. The applicant shall abandon the existing driveway from Phenix Avenue (on proposed lot #9) and remove the existing driveway apron.
3. Provide a performance guarantee in the amount of \$545,000 subject to a separate 2% administrative fee of \$10,900.

### **ZONING BOARD OF REVIEW RECOMMENDATIONS**

**DANIELLO CIMMARELLI (OWN) AND DANIELLO AND SHAYNA CIMMARELLI (APP) Have filed an application to convert an existing vacant house to a commercial day care at 1355 Scituate Avenue, A.P. 36, lot 34; 60,984 sq.ft., zoned A-80. Applicant seeks relief per section 17.92.010 Variances; section 17.24.010 Specific Performance Standards for accessory family apartment. Application filed 9/6/2018. Robert D. Murray, Esq.**

#### **Relief for Proposed Conditions:**

1. Use Variance to allow an existing residential building to be converted to a commercial day care facility on a parcel zoned A-80 and M-2 (building, parking lot, and play area located on the portion of lot zoned A-80). [17.20.010 Schedule of Uses]

2. Dimensional Variance to add freestanding sign to front of property (A-80 zone) totaling 18' ft<sup>2</sup> in area and 6' ft. in height. The maximum limits for signs in a residential zone are 8 ft<sup>2</sup> in area and 4 ft. high. [17.72.010 Signs]

**Relief for Existing Conditions (no proposed modifications):**

3. Dimensional Variance to allow the existing undersized lot. The minimum lot area in the A-80 zone is 80,000 ft<sup>2</sup> and the existing lot contains approximately 60,984 ft<sup>2</sup>. [17.20.120 Schedule of Intensity]
4. Dimensional Variance to allow the existing building to remain in front yard setback. Scituate Avenue contains a special front setback of 75 feet and the building is currently setback 43 feet. [17.20.120 Schedule of Intensity]

**FINDINGS OF FACT:**

1. The subject lot is 60,984 ft<sup>2</sup> in an A-80 and M-2 zone. The existing building, proposed parking lot, and proposed play area are located on the portion of the lot zoned A-80.
2. The proposed use of a commercial day care facility is not permitted in an A-80 zone.
3. Family day care is allowed by-right in a residential zone which would permit up to 6 non-related children to receive day care. The immediate application is requesting a Use Variance to operate a commercial day care that would host approximately 30 children.
4. The applicant proposes to renovate the existing floor plan to accommodate the commercial day care use, including converting the garage space and constructing a play area with appropriate ramps. The day care will be owner operated.
5. No expansions are being proposed to the building. The site plan calls for lot improvements to add a 9-car parking lot in the front yard, ADA compliant ramps leading to the building entrance, and a play area in the rear yard.
6. The subject lot is located on Scituate Avenue – a state-owned major arterial roadway in the City of Cranston.
7. The proposed use of a commercial day care facility is not consistent with the Comprehensive Plan - Future Land Use Map which calls for “*Single Family Residential.*”
8. The Comprehensive Plan - Land Use Goal #3 states: “*Locate new commercial development in western Cranston in highly accessible, strategic locations.*” The immediate application requests a commercial day care facility located in western Cranston on a major arterial roadway (Scituate Avenue) in close proximity to a major job center (western industrial complex on Comstock Parkway) and surrounding residential neighborhoods.
9. The Comprehensive Plan - Land Use Goal #11 states: “*Enhance services and facilities in western Cranston that support future growth.*” Additionally, Land Use Policy #11.1 states: “*Site a new public facilities and services center to support residents and businesses in the western portion of the City.*” Although not a “services center” the immediate application requests a use that could be interpreted as a service that supports residents and business in the western portion of the City.
10. The Comprehensive Plan – Economic Development Policy #7.1 states: “*Promote the development or redevelopment of neighborhood commercial centers to service local market areas to reduce cross-town traffic. New neighborhood village center developments should be focused at Phenix Avenue and Natick Avenue, and Scituate Avenue and Pippin Orchard Road. Redevelopment of neighborhood centers should continue to occur at Pawtuxet Village, Knightsville, and Rolfe Square.*” The immediate application requests a commercial use (not a commercial center) that would service local neighborhoods and job centers in western Cranston to reduce cross-town traffic.
11. The subject lot is immediately surrounded by: a utility owned lot containing overhead power lines abutting Scituate Avenue to the west, undevelopable residential open space abutting Scituate Avenue to the east, the rear property lines of single family homes on Gray Coach West to the north, and 2 vacant residentially zoned lots across Scituate Avenue to the south.
12. As indicated in the enclosed graphic titled “AERIAL EXHIBIT – DISTANCES TO NEAREST RESIDENTIAL STRUCTURES”, the nearest 3 residential structures are located 162 ft., 166 ft., and 232 ft. from the subject structure. This finding is significant because the area immediately surrounding the subject property is not considered a dense residential neighborhood.

13. As indicated in the enclosed graphic titled "AERIAL EXHIBIT – NON-RESIDENTIAL STRUCTURES ABUTTING SCITUATE AVENUE", there are 5 existing non-residential structures with parking areas within approximately 2,000 feet of the subject property abutting Scituate Avenue, including: Al's Greenhouse, Orchard Farms Elementary School, the Newbury Village condominium clubhouse, the Cranston Fire Department Station 6, and the Cranston Christian Fellowship. This finding is significant because the existing conditions on this section of Scituate Avenue contain a mix of residential and non-residential uses. This may serve as an indicator for the appropriateness of allowances for additional non-residential uses in this area.
14. The application requests a Dimensional Variance to add a freestanding sign to front of property totaling 18' ft<sup>2</sup> in area and 6' ft. in height. Freestanding signs are not allowed in residential districts, however monument and building signs are. As a basis for comparison, the maximum limits for signs in a residential zone are 8 ft<sup>2</sup> area and 4 ft. high. The applicant seeks relief to have a sign that is 10 ft<sup>2</sup> greater than the allowed sign area in residential zone, and 2 ft. higher than the allowed sign height.
15. The sign would be setback from the property line by 2 ft. and would be setback from the edge of pavement on Scituate Avenue by approximately 19 ft. The proposed sign location is between 2 street trees and the sign would not be visible from more than 400 feet away on Scituate Avenue. The applicant's stated intent of the sign is to be visible to clients pulling up to the property as a means of confirmation that they have arrived at the correct location.
16. There are 7 existing freestanding signs that are equal to or greater than the proposed sign within 2,000 of the subject property. These signs are located at the 5 non-residential uses as detailed in "AERIAL EXHIBIT – NON-RESIDENTIAL STRUCTURES ABUTTING SCITUATE AVENUE" and well as 2 additional sign at the entrances of nearby residential subdivisions (Alpine Estates and Newbury Village).
17. A nearby non-residential use (Al's Greenhouse) located approximately 350 feet from the subject property currently has a non-conforming sign that is approximately 70 ft<sup>2</sup> and 10 feet tall.
18. The application requests Dimensional Variances for existing conditions of the property relating to:
  - a. Lot size - minimum lot area in the A-80 zone is 80,000 ft<sup>2</sup> and the existing lot contains approximately 60,984 ft<sup>2</sup>.
  - b. Building setback - Scituate Avenue contains a special front setback of 75 feet and the building is currently setback 43 ft.
19. The proposed use of commercial day care does not trigger any additional minimum lot size or minimum building setback standards that would require special consideration in relation to the change of use.
20. As a precedent to consider for this application, the Plan Commission forwarded a positive recommendation on 2 previous use variance applications for commercial day care facilities in close proximity to the subject property. Long-standing Plan Commission members may recall these applications as "Pumpkin Patch 1" and "Pumpkin Patch 2" located in the western industrial complex on Comstock Parkway. It should be noted that these previous use variances were located in industrial zoned land, whereas the immediate application is requesting a use variance in residentially zoned land.
21. The Cranston Development Plan Review Committee (DPRC) reviewed the site plan as part of this application at its 9/19/18 meeting. Following DPRC comments and subsequent plan revisions to address circulation and safety concerns, the DPRC voted to approve this application conditional upon receiving approval for the requested variances.

#### **ANALYSIS:**

The immediate application requests zoning relief in the form of: 1 Use Variance and 3 Dimensional Variances (with 2 of the Dimensional Variances being related to existing conditions). Staff finds that the Dimensional Variances being requested within this application are modest in nature, and subordinate to the consideration of the Use Variance. As such, the primary focus of the enclosed findings of fact and staff analysis is on the appropriateness of the Use Variance, with secondary analysis on the sign variances.

## Analysis of Consistency with the Comprehensive Plan

The following analysis will assess if the proposed Use Variance is consistent with the Comprehensive Plan. The Comprehensive Plan Future Land Use Map designation for the subject property is "Single Family Residential". The proposed use of commercial day care is not consistent with the Future Land Use Map. It should be noted there are several goals and policies contained within the Comprehensive Plan (detailed in findings of fact #8-10) that provide for a general policy direction that could be interpreted as supportive of this type of commercial use in western Cranston. Note that none of the relevant goals or policies speaks specifically to the use of commercial day care, or siting such a use in a residential district. However, the policy framework encourages siting essential commercial services in western Cranston and specifically calls out Scituate Avenue as an ideal location. Staff is of the view that the goals and policies listed herein do not provide conclusive evidence of consistency with the Comprehensive Plan, but they do provide positive findings for your consideration of this application. Based on a review of the Comprehensive Plan Future Land Use Map and the relevant policy direction in the plan, there is evidence both for and against considering a Use Variance for a commercial day care at this location. It is staff's opinion that this evidence provides for an inconclusive finding of consistency with the Comprehensive Plan.

## Analysis of Use, Property, and Surrounding Area

Beyond review and determination of consistency with the Comprehensive Plan, the Plan Commission is within its authority to assess the overall merits of the application and make a recommendation based on relevant planning analysis and the fit with community character. The following analysis will assess if the proposed use is appropriate at this location based on a review of the nature of the use and the existing conditions of the property and surrounding area. It should be noted that per City Zoning Ordinance, the use of "Family day care" is allowed by-right in a residential zone which can allow for up to 6 non-related children to receive care at a home. This is significant because it indicates that the City's regulatory perspective on day care differs from other commercial uses, such as retail, restaurants, or general business. The current regulatory framework suggests that the use of day care is suitable in a residential district if it is scaled appropriately.

The applicant is proposing a commercial day care facility that would host approximately 30 children. The existing building will remain intact and its architecture will reflect a residential style (see enclosed elevations). The applicant is proposing to construct a new parking facility in the front yard and new ADA ramps leading to the front entrance. The building is setback from the property line 43 ft., and the property line is setback from the edge of pavement in Scituate Avenue by approximately 17 ft. The total setback from the building to the edge of pavement is approximately 60 ft. Plantings are provided between the proposed parking area and the street as an aesthetic screening to the roadway and abutting properties. The Cranston Development Plan Review Committee (DPRC) reviewed this application for issues relating to public health, safety, and suitability of the proposed lot improvements. Following a process of DPRC comments and plan revisions by the applicant for vehicle circulation, parking, and directional signage, the DRPC voted to approve this application conditionally upon receiving approval for the requested variances.

Please reference the supporting evidence provided in findings of fact #11-13 and the enclosed graphics "AERIAL EXHIBIT – DISTANCES TO NEAREST RESIDENTIAL STRUCTURES" and "AERIAL EXHIBIT – NON-RESIDENTIAL STRUCTURES ABUTTING SCITUATE AVENUE" (Staff memo). This evidence is provided as a means to assess the surrounding area with regard to nearby residential and non-residential land uses on Scituate Avenue. There are no residential structures directly to the east or west of the subject property on Scituate Avenue, there are no residential structures to the south directly across Scituate Avenue, and the nearest residential property to the north is fronting on Gray Coach West. The nearest 3 residential structures are located 162 ft., 166 ft., and 232 ft. from the subject structure. This evidence suggests that property is not located in a dense, integrated residential neighborhood. Additionally, there are 5 non-residential structures inclusive of parking areas on residentially-zoned land within approximately 2,000 feet of the subject property abutting Scituate Avenue. This provides evidence

that the existing conditions along this section of Scituate Avenue support of a mix of residential and non-residential land uses. It should also be noted that the subject property is located near a major job center in western Cranston on Comstock Parkway. This compilation of evidence suggests that this residentially-zoned property exhibits unique conditions as it relates to the immediate abutting properties and the mix of land uses in the surrounding area. Staff finds that the unique conditions of this property warrant consideration for a commercial day care facility at this location. Further, staff finds that the scale of the proposed day care facility will not alert the character of the surrounding neighborhood and will not be a detriment to the general welfare. This application may provide an asset to families in the community given its location on a major arterial roadway and its proximity to a major job center.

#### Analysis of Proposed Sign

The following staff analysis will assess the proposed Dimensional Variance for the sign. The application materials include an image of the proposed freestanding sign with dimensions of 6 ft. tall, 3 ft. wide, and a total sign area of 18 ft<sup>2</sup> of (double-sided sign). The application materials also include images of a replica of the proposed sign, shown to-scale on the subject property, with the placement and orientation of the sign as proposed in the site plan. These application submission are provided in this memo as "PROPOSED SIGN", "SIGN EXHIBIT – PERSPECTIVE OF PROPOSED SIGN" and "2". Given the size and location of the proposed sign, staff finds that the submitted materials sufficiently meet the intent of City Code Sec. 17.92.010.(E). Variances which calls for: *"Freestanding signs shall also be drawn to scale and accurately located on a scaled perspective drawing of the building and site."*

Freestanding signs are not permitted in residential districts. The closest comparison for an allowed sign in a residential district is a monument sign, which must have its sign face on the ground, be no taller than 4 ft., and be no larger than 6 ft<sup>2</sup> in area. The total amount of sign area allowed by-right in a residential zone is 8 ft<sup>2</sup>. The sign relief being requested is as follows:

- Allow a sign type (freestanding sign) that is not allowed by-right in a residential zone, Allow a sign area (18 ft<sup>2</sup>) that is 10 ft<sup>2</sup> or 125% greater than allowed by-right in a residential zone. Allow a sign height (6 ft.) that is 2 ft. or 50% greater than allowed by-right in a residential zone.

Please reference the supporting evidence provided in findings of fact #14-17. Given the overall scale of the proposed sign, the distance of the proposed sign from the edge of pavement on Scituate Avenue (19 feet), the limited visibility of the sign due to landscaping, and the mix of existing non-conforming signs in the area, staff finds that there is compelling evidence in support of a variance for the sign. The proposed sign is viewed as a modest allowance for a commercial use and is viewed as appropriate if the Use Variance receives positive consideration.

#### RECOMMENDATION:

The Plan Commission acknowledges that applications for Use Variances for commercial uses in residential zones require a high level of scrutiny in their review to avoid creating nuisances to abutting residents. The Plan Commission has identified both positive and negative findings for this application with regard to consistency with the Comprehensive Plan. The Plan Commission finds that this application results in an ***inconclusive*** finding of consistency with the Comprehensive Plan.

The Plan Commission finds that there are additional positive findings for the consideration of this Use Variance specific to the conditions of the property and the neighborhood. Due to the scale and type of proposed commercial use, the unique conditions of the property and surrounding area, and that it will not alter the character of the area or be a detriment to the general welfare, on a motion made by Ms. Bittner and seconded by Mr. Mason, the Plan Commission voted (6/1 – Ms. Harrington voted nay) to forward a ***positive recommendation*** on this application to the Zoning Board of Review.

**GREG S. LEVIN AND LISA F. LEVIN (OWN/APP) Have filed an application to construct an addition to create an accessory family dwelling unit exceeding the allowable square footage at 2 Sage Drive, A.P. 35, Lot 150; 20,569 sq.ft., zoned A-20. Applicants seek relief per section 17.92.010 Variances; section 17.24.010 Specific Performance Standards for accessory family apartments. Application filed 9/6/2018. Robert D. Murray, Esq. Variance Request:**

1. Dimensional Variance to construct an accessory dwelling unit totaling 972 ft<sup>2</sup> exceeding the maximum square footage of 600 ft<sup>2</sup>. [17.24.010 F. Specific Performance Standards - Accessory Family Apartments]
2. Dimensional Variance to construct an accessory dwelling unit that includes an additional exterior entrance that faces a street which does not meet the required performance standards for this use. [17.24.010.F. Specific Performance Standards - Accessory Family Apartments]

**FINDINGS OF FACT:**

1. The subject site is located at the intersection of Sage Drive and Basil Crossing in an A-20 zone (Single-family dwellings on lots of minimum areas of twenty thousand [20,000] square feet) with an approximate area of 20,568 ft<sup>2</sup>.
2. Single-family accessory dwelling units are allowed in all residential zones per the Zoning Code Sec. 17.20.030 (Schedule of Uses) and there are specific performance standards for this use detailed in Zoning Sec. 17.24.010.F. (Specific Performance Standards for Accessory Family Apartments).
3. The future land use designation for this property is Single Family Residential 3.64 To 1 Unit Per Acre.
4. The applicant is proposing to construct an accessory dwelling unit (972 ft<sup>2</sup>) that exceeds the maximum square footage allowed in zoning (600 ft<sup>2</sup>) by 372 feet or 61%.
5. The applicant is proposing to construct an accessory dwelling unit (972 ft<sup>2</sup>) that requests relief from Zoning Sec. 17.24.010.F. This section of the zoning code is as follows:

*“F. Accessory Family Apartments.*

1. *Total floor space devoted to an accessory family apartment shall not exceed twenty-five (25) percent of the entire floor area of the primary dwelling (exclusive of porches or basements) and shall be a minimum of four hundred (400) square feet and a maximum of six hundred (600) square feet in gross floor area. The apartment shall have no more than one bedroom. There shall be no more than one accessory family apartment permitted in a single-family structure.*
2. *Homeowners who install an accessory family apartment shall sign an affidavit stating that the occupant of the apartment is either a parent(s) or grandparent(s) by blood or marriage of the owner of the principal single-family dwelling unit.*
3. *Special permits for an accessory family apartment shall be renewable on a yearly basis by the building inspector, with a maximum fine of one hundred dollars (\$100.00) for every day the apartment is inhabited by a person who is not of the relationship stated in subsection (F) of this section.*
4. *The dwelling containing an accessory family apartment shall retain the appearance of a single-family dwelling with no major structural alterations to the exterior. The accessory family apartment shall have no additional external entrance that faces a street.*
5. *Where sewers are not available, adequate provisions must be made for sewage disposal, including evidence that the on-site septic system is designed to accommodate the additional sewage flow.*
6. *Change of ownership of the principal single-family dwelling within which an accessory family apartment is located shall cause the special permit for the accessory family apartment to be terminated. A change of ownership occurring as a result of the death of a joint owner with the survivor continuing to own the property shall not cause the special permit to be terminated.*
7. *The design of the accessory family apartment shall conform to all applicable standards in the health, building and fire codes.*
8. *A copy of the decision of the zoning board of review granting the special permit for an accessory family apartment shall be recorded with the records of land evidence of the city by the homeowner within thirty (30) days from the date of said decision.”*

6. The applicant cites Rhode Island General Law 45-24-37 as justification for why an additional exterior door is included as part of this application. This section of state law is as follows:

*“(e) Notwithstanding any other provision of this chapter, an accessory family dwelling unit in an owner-occupied, single-family residence shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older. The appearance of the structure shall remain that of a single-family residence and there shall be an internal means of egress between the principal unit and the accessory family dwelling unit. If possible, no additional exterior entrances should be added. Where additional entrance is required, placement should generally be in the rear or side of the structure. When the structure is serviced by an individual, sewage-disposal system, the applicant shall have the existing or any new system approved by the department of environmental management. The zoning-enforcement officer shall require that a declaration of the accessory family dwelling unit for the family member, or members, and its restrictions be recorded in the land-evidence records and filed with the zoning-enforcement officer and the building official. Once the family member, or members, with disabilities or who are sixty-two (62) years of age or older, no longer reside(s) in the premises on a permanent basis, or the title is transferred, the property owner shall notify the zoning official in writing, and the accessory family-dwelling unit shall no longer be permitted, unless there is a subsequent, valid application.”*

**RECOMMENDATION:**

On a motion made by Mr. Strom and seconded by Ms. Bittner, the Plan Commission voted (5/2 – Chairman Smith and Mr. Spirito voted nay) to forward a **positive recommendation** on this application to the Zoning Board of Review.

**WESTERN INDUSTRIAL DRIVE REALTY, LLC (OWN) AND POWERPRODUCTS SYSTEMS, LLC (APP) Have filed an application to install additional signage exceeding that allowed by previous variance at 1 Southern Industrial Drive, A.P. 36, Lots 127,128,129, zoned M2. Applicant seeks relief per section 17.92.010 Variances, sections 17.72.010 Signs, table 17.72.010 (7). Application filed 9/10, 2018. John S. DiBona, Esq.**

**Variance Request:**

1. To allow a 6’ x 6’ illuminated wall sign in addition to four existing 6’ x 6’ illuminated walls signs exceeding the maximum 20’ wall sign height by 4’ and maximum 45 ft<sup>2</sup> area by 135 ft<sup>2</sup> in an M-2 zone. [17.72.010 Signs]

PROPOSAL SUMMARY	Wall Sign Height (ft)	Monument Sign Area (ft <sup>2</sup> )	Total Area (ft <sup>2</sup> )
Wall Sign Area (ft <sup>2</sup> )			
M-2 Maximum	45	50	300
Existing	144	30	174
Proposed	36	0	36
Total	180	30	210
Deviation from Maximum	+135	+4	-90

**FINDINGS OF FACT:**

1. The subject site is located in an Industrial M-2 District (General industry), with an approximate area of 13,000 ft<sup>2</sup>.
2. The use of the site is consistent with zoning and the City of Cranston Comprehensive Plan Future Land Use designation which calls for industrial uses. The proposal does not impair the intent or purpose of zoning or the Comprehensive Plan.
3. The Zoning Board of Review approved a variance request in 2006 to allow 4 wall signs on the eastern building façade and one wall sign on the western building façade in excess of the maximum allowed in M-2 zoning. The wall sign on the western façade was never erected, the approval for which has now expired. The 4 signs on the eastern façade were constructed as approved, each 6’ x 6’ and 4’ above the 20’ maximum height on the building. The application requests permission to install a 5<sup>th</sup> wall sign

consistent with the existing 4 signs on the buildings eastern building façade, as shown on the elevations.

4. The Plan Commission forwarded a positive recommendation of the 2006 variance to the ZBR with the recommended condition that the existing monument sign be removed. Minutes of the ZBR meeting state that the ZBR rejected the condition, “. . . believing the same is no longer necessary, given the testimony presented that the existing monumental sign will in fact be removed.” The monument sign has not been removed, and is still on site today - however, the monument sign is compliant with zoning. Property records indicate that the ownership has not changed since the 2006 approval. The applicant indicated that the monument sign was not removed because not all of the approved signage was erected.
5. M-2 allows a maximum of 300 ft<sup>2</sup> of signage on site, but restricts wall signs to 45 ft<sup>2</sup> maximum area and 20' height. The existing four wall signs measure 6' x 6' each (36 ft<sup>2</sup>) for a total of 144 ft<sup>2</sup> which are 24' high on the wall, thus exceeding the maximum wall sign area by 99 ft<sup>2</sup> and height by 4'. The addition 6' x 6' sign would increase the total wall signage to 180 ft<sup>2</sup>, exceeding the maximum wall sign area by 135 ft<sup>2</sup>. The existing 10' x 3' monument sign is 30 ft<sup>2</sup>, for a total of 210 ft<sup>2</sup> on site, 90 ft<sup>2</sup> under the maximum allowed in M-2.

#### **ANALYSIS:**

The existing building is occupied by Detroit Diesel-Allison, which offers diesel engine repair service. In 2006, the ZBR approved four 6' x 6' wall signs at 24' height on the wall. These signs are not for the business name itself, but for engine brands that the company services. One of the main brands that they service is not represented by a sign, and the variance request is to allow equal treatment in terms of height and area, for the fifth brand sign on the building façade.

The site is located in an industrial zone west of Comstock Parkway north of Scituate Avenue. Southern Industrial Drive and Western Industrial Drive are not throughways, only servicing businesses in the area. There are residential areas to the west and south, so it is likely that the streets will never be connected, therefore, the sign would only impact customers and employees of this is low-traffic industrial area. The building is setback roughly 180' from both Southern Industrial Drive and 100' from and Western Industrial Drive, reducing the impact from the public roads. The new sign is proposed to be consistent with the existing four signs, so the addition of a 6' x 6' sign is not perceived to alter the character of the area, nor undermine the intent of the zoning ordinance or comprehensive plan. As the proposed total sign area on the site is 90 ft<sup>2</sup> under the 300 ft<sup>2</sup> maximum, the variance is merely to allow the imbalance of distribution of permissible sign area be heavy on wall signage and to be 4' above the allowed height.

There are questions raised by finding of fact #4 regarding the testimony presented to the ZBR which led to the decision of the Board to reject a condition to require the removal of existing signage (the monument sign). Planning staff is unable to recall the specifics of the conversation of the Plan Commission or ZBR on this matter, which is a bit curious on face value because the monument sign conforms to zoning in terms of size, location and total signage on site. Staff discussed this issue with the applicant, who stated that a fifth wall sign on the western building façade and another by-right wall sign on the eastern façade were not constructed which would have totaled 238 ft<sup>2</sup> on site. The applicant decided not to remove the monument sign on the grounds that it did not erect two of the other signs that it had initially proposed.

#### **RECOMMENDATION:**

Due to consistency with the 2006 ZBR approval and finding that the sign will not alter the character of the area or detriment the general welfare, on a motion made by Ms. Bittner and seconded by Ms. Harrington, the Plan Commission unanimously voted (7/0) to forward a **positive recommendation** on this application to the Zoning Board of Review.

#### **DISCUSSION** – City Plan Commission agenda format

Mr. Pezzullo stated that he will work together with Ms. Lanphear to label the agenda items differently.

**PLANNING DIRECTOR'S REPORT** – Unified Development Ordinance, Comprehensive Plan Update – Visioning and Public Outreach, Zoning Amendments – LED Signage, Parking

Mr. Pezzullo stated that at the request of the Administration, the Department is working on regulation regarding Air BNB (temporary rentals). He stated that Warwick has agreed to collaborate with Cranston on this matter. He stated that the Department is still working on a unified development ordinance. He stated that the Comprehensive Plan Update – Visioning and Public Outreach, Zoning Amendments – LED Signage, Parking are “still in play”. Chairman Smith urged the Commissioners to re-read the Comprehensive Plan.

**ADJOURNMENT** Upon motion made by Ms. Bittner and seconded by Mr. Strom, the Commission unanimously voted to adjourn at 10:15 p.m.

**NEXT REGULAR MEETING** Wednesday, November 7, 2018 – City Council Chamber, 7 p.m.

Respectfully submitted,

Douglas McLean, AICP  
Principal Planner/Administrative Officer