

**BEFORE THE PLANNING COMMISSION
PEPPER PIKE, OHIO**

**IN RE: VARIANCE REQUEST OF MEDINA)
CREATIVE HOUSING, INC., AND)
URSULINE ACADEMY OF CLEVELAND)
FOR CERTAIN PROPERTY WHICH HAS)
THE STREET ADDRESS OF 2600 LANDER)
ROAD, AND HAS THE PERMANENT)
PARCEL NUMBER 871-08-009 IN)
CUYAHOGA COUNTY’S RECORDS)**

**FINAL ORDER OF THE
PLANNING COMMISSION AND
CONCLUSIONS OF FACT**

INTRODUCTION

This matter is before the Planning Commission of the City of Pepper Pike (“Commission”) pursuant to an application for a variance. Medina Creative Housing, Inc., (“Applicant”), was granted authority to apply for the variance by co-applicant, the Ursuline Academy of Cleveland, (“Owner”). The property that is the subject of the requested variance consists of 42 acres, has a mailing address of 2600 Lander Road,¹ and is known in the records of Cuyahoga County as Permanent Parcel No. 871-08-009 (the “Property”).

VARIANCE APPLICATION

In February of 2021 the Applicant, through its legal counsel, filed an application² (“Application”) to obtain a variance to extend an existing nonconforming use pursuant to Section 1262.03 of the Pepper Pike Codified Ordinances (“Codified Ordinances”).³

The Applicant requested authorization to extend the current nonconforming use that is located on the Property from its current configuration. The current nonconforming use is composed of sixty-eight (68) dwelling units occupied by members of the Ursuline Sisters of Cleveland. The residences are located in a three-story building known as “Merici Crossings”. The proposed extension of the nonconforming use would accommodate twenty-five (25) additional dwelling units, which are proposed to be located in a group of single-family attached buildings. The intended occupants of these additional dwelling units would be adults with intellectual and developmental disabilities.

Included in the Application submitted to the Commission, both initially and as supplemented, are the following documents:

¹ While the Property has an address on Lander Road, the Property no longer has frontage on Lander Road. The Property was split from the property that fronts on Lander Road (Ursuline College), but maintained its street address. The only street frontage of the Property is on Fairmount Blvd.

² All the documents identified in this Final Order of the Commission and Conclusions of Fact can be found in the Pepper Pike Planning Commission files relating to the Property.

³ The Codified Ordinances of the City of Pepper Pike are available on-line here:
<https://codelibrary.amlegal.com/codes/pepperpike/latest/overview>

- 1) A letter from Applicant's Counsel to the Planning Commission dated February 11, 2021;
- 2) A Lease and Development Agreement between the Applicant and the Owner;
- 3) A document titled "Medina Creative Housing Variance Considerations";
- 4) A conceptual site plan showing 25 dwelling units in several single-family attached buildings with an office/community/maintenance building and an access drive from Fairmount Boulevard;
- 5) A revised conceptual site plan showing 25 dwelling units with one less building and access from the Merici Crossings driveway, rather than from Fairmount Boulevard.
- 6) Various pictures of existing housing facilities owned and managed by the Applicant.

HEARINGS, EVIDENCE AND TESTIMONY

Pursuant to the provisions of Section 1262.03, which governs the variance process in Pepper Pike, the request by the Applicant was scheduled for public hearings before the Planning Commission, and notice was published and sent to neighboring property owners. On March 1, 2021 and April 19, 2021, the Commission heard testimony and took evidence regarding the application. That evidence and testimony are incorporated by reference in this decision.⁴

Applicant, through Dianne DePasquale-Hagerty, its Executive Director, elaborated upon the contents of the application. Ms. DePasquale-Hagerty testified that the proposed project consists of twenty-five (25) one and two-bedroom single story attached dwelling units intended to provide independent living for adults with intellectual and developmental disabilities. The twenty-five (25) dwelling units would be attached in ten (10) buildings. (See the conceptual site plan submitted as a part of the Application.) Support for the residents would be tailored to the individual special needs of the residents. The residents would be assisted by individual direct care providers who would not reside on the Property. Ms. DePasquale-Hagerty testified that the nature of the assistance provided by the direct support providers would vary based on the needs of each individual resident. She stated that ninety-nine percent (99%) of the residents do not drive, and that transportation services would be provided. She testified that the Applicant currently owns and manages 81 housing units for intellectually and developmentally disabled adults. She testified that the Applicant has a 99-year lease with the Owner to occupy three (3) acres of the 42-acre site.

Jennifer Wintner, who is legal counsel for the Applicant, stated her opinion that the existing nonconforming use on the Property is mission-based multi-family housing. (TR:3/1:P.11:L7-13) She noted that the Property is the only property in the City classified as a U-2 Public Building District that contains permanent housing. (TR:3/1:P.16:L.19-21) She testified that there are no zoning classifications in the Codified Ordinances that provide for housing for intellectually and developmentally disabled adults or that address housing at the density that is proposed for this project. Consequently, no existing zoning district will accommodate this proposed use. (TR:3/1:P.18:L.11-17) Attorney Wintner reviewed her written analysis of the twelve standards for variances contained in Section 1262.03(d) of the Codified Ordinances asserting:

⁴ References to the transcript shall be by hearing date, page, and line, e.g., (TR:3/1:P.11:L.7-13) cites to the transcript of the hearing of March 1, 2021, page 11, lines 7-13.

- 1) There can be no beneficial use of the property without the variance.
- 2) Any active use of that land must be physically compatible with Merici Crossings as well as programmatically compatible with the Owner's mission.
- 3) The requested variance is not substantial.
- 4) The variance will not alter the character of the neighborhood, but it will allow the continuation of a use that has been in place for the last sixty-three years.
- 5) The proposed architecture for the new homes is single family in character as well as scale, making it compatible with existing homes in the area.
- 6) The variance will not adversely impact the delivery of governmental services.
- 7) That housing of the type proposed cannot be accomplished without a variance.
- 8) That granting the variance will be consistent with the spirit and intent of the Codified Ordinances and would provide substantial justice for the Applicant and the Owner.
- 9) The general intent of the U-2 district is to permit uses that benefit the public, and it is in the public interest to have housing that can accommodate the community's most vulnerable citizens.
- 10) That the circumstances are unique to the Property and are not shared by any other property because the Property is the only U-2 District property on which permanent housing is located. Therefore, it is the only property zoned U-2 District for which this same variance could be requested.

(See document "Medina Creative Housing Variance Considerations", submitted with Application and the relevant testimony (TR:3/1:P.9:L.18 - P.19:L.21).)

Sister Ritamary Welsh, President of the Ursuline Sisters of Cleveland, testified that the Owner authorized the submission of the application on the Property and that the Owner supports the application. (TR:3/1:P.18:L.22 - P.19:L.4-8). She then spoke of the history of the Ursuline Sisters in the City of Pepper Pike. (TR:3/1:P.19:L.8 - P.20:L.13). There was also an explanation of how she believed residential housing was an appropriate extension of the existing use of the property, although it was not a permitted use of the property, which led to the decision to permit Medina Creative Housing to seek the variance which has been requested. (TR:3/1:P.20:L.14-P.21:L.17).

Various persons testified regarding the desirability and need for facilities such as the one being proposed and its importance to the intellectually and developmentally disabled community. There was testimony that such a facility would provide a public benefit, and specific benefits to family members. (TR:3/1:P.24:L.19-P.28:L.24; P.83:L.20 - P.85:L.4; P.101:L.17 - P.109:L.14; P.110:L.1 - P.112:L.25).

Several persons testified regarding potential impacts arising from the proposed project including impacts on property values, disturbance of wetlands, light trespass and glare from Merici Crossings, traffic impacts, drainage impacts, public safety impacts, and possible changes to the character of the neighborhood as a result of the increased density. (TR:3/1:P.85:L.25 - P.93:L.15; P.94:L.12 - P.95:L.17; P.95:L.25 - P.97:L.11; P.97:L.16 - P.99:L.15; P.99:L.19 - P.101:L.12; P.114:L.10 - P.119:L.12; P.119:L.15 - P.123:L.15)

At the second hearing, on April 19, 2021, the Mayor acknowledged receipt of numerous pieces of correspondence, via email and regular mail, which enthusiastically supported the proposed variance, and supported facilities for the special needs community; he noted that the City shared these correspondents' support for the special needs community. (TR:4/19:P.3:L.18 – P.5:L.18)

The Applicant, through Ms. DePasquale-Hagerty, testified that the site plan had been modified to reduce the number of buildings and to eliminate the proposed curb cut on Fairmount Boulevard. (TR:4/19:P.10:L.5-23) She testified that their proposed use would be less intensive in nature than the uses permitted by right in the U-2 Public Buildings District. (TR:4/19:P.10:L.24 – P.11:L.4). She also noted that this project would not serve as a precedent for other U-2 parcels in the City which do not have preexisting residential use. (TR:4/19:P.11:L.5-8)

Attorney Wintner reiterated her opinion that the existing nonconforming use is mission based multi-family housing and that the requested extension is the same use. (TR:4/19:P.20:L.3 - 8) She stated that the former facility on the Property had 150 dwelling units on the 42-acre property. (TR:4/19:P.20:L.9-11) She asserted that the existing 68 nonconforming dwelling units in Merici Crossings and the 25 proposed dwelling units would total 93 dwelling units, which is a net density of 2.2 dwelling units per acre, which would still be less dense on the 42 acres than the previous nonconforming facility. (TR:4/19:P.21:L.17-23) She stated that the two combined nonconforming facilities would only occupy about 16% of the land area of the Property. (TR:4/19:P.26:L.4-7) Attorney Wintner pointed out other existing developments within the City that have greater densities and/or building ground coverage than what would result on the Property if the variance were approved. (TR:4/19:P.26:L.21 – P.30:L.24)

Robert Brown, as professional City Planner, testified that the resulting use would be less intensive than the earlier nonconforming use; that the surrounding area is somewhat diverse in nature; and that the single-family attached design of the dwelling units would be compatible with the surrounding area. (TR:4/19:P.41:L.10 – P.46:L.19)

Attorney for the Owner, John Slagter, asked that the signed lease agreement between the Applicant and the Owners, submitted to the City, be incorporated into the record. (TR:4/19:P.53:L.9-15) He stated that the units to be constructed would be restricted to occupancy only by intellectually and developmentally disabled individuals. (TR:4/19:P.54:L.20-25) Mr. Slagter stated that the matter before the Commission was not site plan approval. (TR:4/19:P.56:L.15-18)

Sister Ritamary, testified on behalf of the Owner that the Sisters intend to sponsor two of the proposed 25 units. (TR:4/19:P.68:L.24 – P.69:L.7) Sister Susan Durkin, former Director for the Sisters, and Mr. Thomas Chema, consultant to the Owner, both testified that other uses were considered and explored for the remainder of the Property, but that there were currently no active proposals or agreements for development or use of the remainder of the Property. (TR:4/19:P.70:L.17 – P.77:L.10; P.81:L.16 – P.82:L.2) A representative of the Western Reserve Land Conservancy testified that their organization had some interest in a conservation easement on the northern most part of the 42 acres. (TR:4/19:P.16:L.21 – P.87:L.22)

There were numerous residents who spoke in favor of and opposition to the project, citing similar reasons and concerns as those expressed during the March 1st hearing, and counsel was permitted to cross-examine those who testified. (TR:4/19:P.117 – P.216)

On June 1, 2021, Mr. George Smerigan, the City’s Planning Consultant, issued a professional opinion report. (“Smerigan Report”). On June 17, 2021, Mr. Smerigan testified before the Commission regarding his professional opinion report, after giving his qualifications as a city planner.(TR:6/17:P.5:L.8 – P.32:L.16) The following can be gleaned from his report and testimony.

Mr. Smerigan noted that Section 1268.02(b) of the Codified Ordinances states “*A nonconforming use shall not be extended or expanded.*” He further noted that the language contained in Chapter 1268 of the Codified Ordinances is intended to limit the size, scope, nature, and locations of nonconformities and to provide for their eventual amortization and elimination. Mr. Smerigan testified that the explicit limitations contained in Section 1268.02(b) are modified by Section 1262.03(c)(2) which specifically grants the Planning Commission the authority to: “*Permit the substitution or extension of a nonconforming use or building upon the lot occupied by such use or building at the time of the passage of this Zoning Code.*” Mr. Smerigan opined that the City’s ordinances expressly do **not** permit any expansion or enlargement of a nonconforming use; however, the Commission may permit, subject to appropriate findings and determinations as required by Section 1262.03(d), the “substitution or extension” of a nonconforming use to a different location on the same property than it currently occupies, provided that there is no expansion or enlargement associated with such substitution or extension.

Mr. Smerigan stated his opinion that the existing nonconforming use is institutional housing, or group quarters, for a very limited special segment of the population. Specifically, the current institutional residential use is composed of members of the Ursuline Sisters of Cleveland. Mr. Smerigan further testified that the Applicant is seeking to construct institutional housing or group quarters for another very limited special segment of the population: adults with intellectual and developmental disabilities.

Mr. Smerigan confirmed the Applicant’s testimony that the original nonconforming institutional housing or group quarters on the Property contained a total of 150 dwelling units with a net density of 3.57 dwelling units per acre. He further observed that the original nonconforming use was part of a combination of uses and buildings that occupied 8.44 acres of the Property. He opined Section 1268.02(b) requires that any extension or substitution of the nonconforming use cannot exceed, expand, or enlarge the original nature, scope, size, or intensity of the original use. Mr. Smerigan observed that in 2017 the Commission granted an extension and substitution of the nonconforming use to the Owner to permit the construction of a smaller single building facility known as “Merici Crossings” on the Property. He testified that the extension or substitution, as approved by the Commission, contained a total of 68 dwelling units of institutional housing or group quarters for the same very limited special segment of the population and occupied a total of 3.82 acres of the Property. He observed that the substitution or extension approved in 2017 was approved with substantial setbacks from both Fairmount Boulevard, where there are single-family residences, and from the westerly property line that abuts the single-family residences on Wendy Hill Drive to provide protection for and minimize impacts on those adjacent single-family residences.

He concluded that any substitution or extension approved by the Commission would have to be located solely on the Property; would have to consist of institutional housing or group quarters for a very limited special segment of the population and that the institutional housing or group quarters could not exceed a total of 150 dwelling units, a net density of 3.57 dwelling units per acre, or the facilities associated with such nonconforming use occupy more than 8.44 acres of land when considered in combination with the Merici Crossings facility. He further opined that any extension of the nonconforming use should respect the setbacks established by the Commission in granting the previous extension for Merici Crossings.

Mr. Smerigan provided his analysis of the twelve variance criteria set forth in Section 1262.03(d) of the Codified Ordinances concluding in part that:

- 1) The applicant has beneficial use of the property without the variance.
- 2) That the variance would not be substantial if it was limited to 25 dwelling units of institutional housing or group quarters for a very limited special segment of the population, did not occupy more than 4.62 acres of land, and complies with the same setbacks previously determined and established for Merici Crossings.
- 3) If the proposed use is limited to twenty-five (25) dwelling units of institutional housing or group quarters for a very limited special segment of the population covering less than 4.62 acres of land and located in compliance with the established building setbacks for the existing nonconforming use, then there should be no change to the character of the neighborhood or interference with the use or rights of adjoining properties as the Commission has previously determined that a smaller and less dense version of the prior nonconforming use is appropriate at those established setbacks.
- 4) If there is no enlargement or expansion of the nonconforming use, there should be no adverse impacts on the delivery of governmental services.
- 5) The Applicant and Owner could seek text and/or map amendments as an alternative to a variance.
- 6) An extension that is consistent with the standards established for the previous extension and which does not result in any enlargement or expansion of the nonconforming use would be consistent with the spirit and intent of the Codified Ordinances and would provide substantial justice.
- 7) The Property is unique in that it is the only U-2 Public Buildings District that contains institutional housing or group quarters intended to be occupied as permanent residences.

Mr. Smerigan testified that in his professional opinion the use variance requested for the extension of the existing nonconforming institutional housing and group quarters can be approved on the Property provided that:

- 1) The approval is for a maximum of twenty-five (25) dwelling units limited to providing housing for adults with intellectual and developmental disabilities in a

- single-family attached configuration to be operated by the Applicant in a manner consistent with the formal representations made to the Commission.
- 2) The ground coverage of the buildings, parking, and improvements associated with the extension not exceed a maximum of 4.62 acres so that the maximum combined ground coverage of the existing nonconforming use and the proposed extension of the nonconforming use do not exceed the ground coverage of the original nonconforming use, which has been determined to be 8.44 acres.
 - 3) The extension maintains the established minimum front setback from the northerly right-of-way line of Fairmount Boulevard of 250 feet, the established minimum side setback from the westerly property line abutting the adjacent U-1 Single Family Residential properties fronting Windy Hill Drive of 300 feet, the minimum side setback from the easterly property line abutting the Ursuline College property of 50 feet, and the rear setback line abutting the U-1A Townhouse District of 650 feet.
 - 4) That the extension and the existing nonconforming use remain on the Property, which parcel shall not be subdivided in a manner that increases the net density or ground coverage of the nonconforming uses above those of the original nonconforming use.
 - 5) That a site development plan for the extension shall be submitted for approval in conformance with all of the standards and criteria set forth in Chapter 1275 Site Development Plans.
 - 6) That upon completion of the extension, the entire property shall comply with the thirty percent (30%) open space requirement of Section 1270.02(b).

Mr. Smerigan further opined that without compliance with the six stipulations that he noted, the requested variance for extension of an existing nonconforming use would not meet the appropriate standards necessary for the Commission to make a positive finding and determination and that the variance request would then have to be denied.

Mr. Smerigan was cross-examined by Owner's counsel. (TR:6/17:P.35:L.8 – P.95:L.13) Under cross-examination he stated that the front and western side setbacks noted in his professional opinion report were based on the setbacks established by the Commission for the extension granted in 2017. (TR:6/19:P56:L.23 – P.60:L.6) He testified that minimum setbacks, maximum density, and maximum ground coverage limitations were standard zoning control mechanisms intended to reduce and control impacts of a use on adjacent properties. (TR:6/19:P.59:L.15 – P.60:L.14) Mr. Smerigan further testified that, in addition to the proposed extension of the nonconforming use, the Property could still be used for any of the permitted uses in the U-2 Public Buildings District subject to compliance with the District requirements relating to maximum percentage of building ground coverage and minimum percentage of open space (TR:6/19:P.71:L.23 – P.72:L.19). In response to questioning, Mr. Smerigan testified that it would be possible to subdivide the Property provided that the division did not cause the net density of the nonconforming use to exceed a net density of 3.57 dwelling units per acre or the building ground coverage to exceed the U-2 Public Buildings District maximum of forty percent (40%). (TR:6/19:P.72:L.20 – P.74:L.22)

Mr. Slagter commented that the Commission has the authority to establish minimum standards for uses and variances, but that he preferred that the setbacks and standards be set as part of the site development plan approval rather than the approval of the use. (TR:6/19:P.111:L.9-17)

CONCLUSIONS OF FACT

These Conclusions of Fact are predicated upon reviewing and weighing all the evidence and testimony in the record. Based upon the foregoing, the Commission hereby makes the following findings:

- 1) The variance requested by the Applicant and Owner seeks an extension of a nonconforming use on the Property.
- 2) Section 1268.02(b) of the Codified Ordinances states “*A nonconforming use shall not be extended or expanded.*”
- 3) Notwithstanding the injunction of Section 1268.02(b), Section 1262.03(c)(2) grants the Commission authority to “*Permit the substitution or extension of a nonconforming use or building upon the lot occupied by such use or building at the time of the passage of this Zoning Code.*”
- 4) This Commission recognizes that Section 1262.03(c)(2) is an exception to the general rule, stated in Section 1268.02(b), that a nonconforming use “shall not be extended or expanded.”
- 5) Section 1262.03(d) lists twelve criteria to be considered by the Commission in determining whether a variance should be granted.
- 6) The Commission, therefore, has the legal authority to approve the requested variance, if the criteria support such a variance.
- 7) The Applicant and Owner both testified that they desire to construct a total 25 dwelling units, the occupancy of which would be limited to adults with intellectual and developmental disabilities. The proposed dwelling units would be constructed as single-family attached dwellings and the facility would be operated and managed by the Applicant.
- 8) The Owner testified that the Applicant submitted the application with the Owner’s knowledge, consent, and support, and verbally advised the Commission that it was joining in the application. The Owner further testified that it intends to provide support to the proposed facility.
- 9) The Property is zoned into the U-2 Public Buildings District.
- 10) Dwelling units, of any kind, are not listed as a permitted use in the U-2 Public Buildings District. Dwellings in the U-2 Public Buildings District have never been a permitted as principal use, but until 2006 dwellings had been permitted as

“accessory” uses in the U-2 District. Pursuant to Ordinance No. 2006-02, dwellings removed as permissible “accessory” uses in the City. Therefore, any type of dwelling unit existing in a U-2 Public Buildings District is now a nonconforming use.

- 11) The Property has been occupied and used by the Owner for many years. The use of the property historically included a combination of both permitted uses and uses that are now lawfully nonconforming uses.
- 12) In 2017 the Commission, at the request of the Owner, granted an extension and substitution of the established nonconforming use to another location on the Property. This approval authorized the construction of the facility now known as “Merici Crossings.” Merici Crossings was smaller, both in ground coverage and in the number of dwelling units, than the original nonconforming residential use of the property. As part of that approval, the Commission established minimum setbacks for the building that would contain the extended nonconforming use. These new setbacks were established with relation to the Fairmount Boulevard right-of-way, which is a predominantly residential street, and the westerly property line abutting the rear yards of the residences on Windy Hill Drive.
- 13) Section 1262.02(b) of the Codified Ordinances states that “*The Commission may, in individual cases, after public notice and hearing set forth herein and **subject to such conditions and safeguards as it may establish**, permit exceptions to and variations from the district regulations established by this Zoning Code as provided in Section 1262.03 hereof.*” (Emphasis added) Pursuant to this section, this Commission is vested with the authority to place “conditions and safeguards” on any variance that it grants.
- 14) The Commission does not concur with Attorney Wintner that the existing nonconforming use on the Property is “mission based multi-family housing.” The character of the original facility was never one of traditional multi-family housing. During the approval of the previous extension of the nonconforming use, Merici Crossings, the Commission never considered the facility to be merely a “multi-family housing project.” Rather, the Commission finds that Mr. Smerigan has accurately characterized the existing nonconforming use of Merici Crossings as “institutional housing” or “group quarters for a very limited special segment of the population.” That very limited special segment of the population, occupying Merici Crossings, are the members of the Ursuline Sisters of Cleveland.
- 15) The Commission further concurs with Mr. Smerigan’s assessment that the Applicant’s proposal is also to build “institutional housing” or “group quarters for a very limited special segment of the population.” The limited special segment of the population to be served by the Applicant is adults with intellectual and developmental disabilities. As such, the Commission finds that the proposed use is similar in character and nature to the existing nonconforming use.

- 16) This Commission finds and determines, as a condition of this variance, that the extension of the nonconforming use on the Property cannot serve broader segments of the population or the general public. As proposed, the variance requested by Applicant meets this necessary condition. The proposed extended nonconforming use is “institutional” in character.
- 17) The Commission finds and determines, as a condition of this variance, that the number of units of the extended, nonconforming use cannot exceed the total number of dwelling units or net density of the prior use. Neither can it cover a larger proportion of land area than the prior nonconforming use of the Property. If the proposed extension or substitution covered a greater area and/or were developed to a greater density, such a use would violate the language of Section 1268.02(b) of the Codified Ordinances that prohibits the “expansion” of nonconforming uses.
- 18) The Commission finds that the prior action of approving Merici Crossings, which permitted the reasonable extension of the nonconforming use, was authorized with the understanding that the Owner was going to demolish the old structures on its property, which would result in a reduction of the size of the nonconforming use. The reduction of the size of a nonconforming structure is expressly permitted by Section 1268.03(a), and the Commission’s action was consistent with this principle. The Owner has met its obligation to demolish the old structures.
- 19) The Commission finds and determines that the Property is being used, and will yield a reasonable return, without the variance. Nonetheless, as the proposed variance is reasonable (assuming appropriate conditions and safeguards attend the approval), the failure of the Applicant and Owner to prove this factor does not warrant denial of the variance request.
- 20) The Commission finds and determines that, with the appropriate conditions and safeguards identified in this document, the proposed variance will not be substantial.
- 21) The Commission finds and determines that, with the appropriate conditions and safeguards identified in this document, granting the variance will not substantially alter the neighborhood or interfere with the use and rights of adjacent property owners. The proposed variance will permit a use that is less intensive than the prior use of the previously developed area of the property.
- 22) The Commission finds and determines that granting the variance will not adversely affect the delivery of governmental services.
- 23) The Commission finds and determines that the Property was purchased prior to the enactment of the applicable zoning restriction (e.g., the elimination of accessory residential use in 2006). This fact is implicit in the discussion of the Owner’s “nonconforming use” of the property.

- 24) The Commission finds and determines that the Applicant and Owner have no alternative method, other than a variance or a complete rezoning of the property, of addressing construction of the proposed project. If the Applicant is going to be permitted to construct an institutional, residential project on the Property that is in the U-2 Public Buildings District, a variance is required.
- 25) The Commission finds and determines that, with the appropriate conditions and safeguards identified in this document, the spirit and intent of the Codified Ordinances can be observed, and substantial justice done.
- 26) The Commission finds and determines that, with the appropriate conditions and safeguards identified in this document, the granting of the variance will not be contrary to the general purpose, intent, and objective of the district.
- 27) The Commission finds and determines that the Property has unique conditions or circumstances not shared by other U-2 Public Buildings District properties. This is the only U-2 District property in the City which has existing permanent residential facilities located on it.
- 28) The Commission finds and determines that the practical difficulty is not the result of actions taken by the Owner.
- 29) The Commission finds and determines that, with the appropriate conditions and safeguards identified in this document, the variance will not adversely affect public health, safety, or general welfare.
- 30) The Commission finds and determines that, subject to the appropriate conditions and safeguards identified in this document that limit the intensity, ground coverage, and location, the variance will be the minimum necessary to grant the relief that Applicant has requested.
- 31) The Commission finds and determines that the original nonconforming use on the Property contained a total of 150 dwelling units in the form of institutional housing or group quarters and that the net density was 3.57 dwelling units per acre.
- 32) The Commission finds and determines that of the original nonconforming use on the Property covered or occupied 8.44 acres.
- 33) The Commission finds and determines that the Merici Crossings extension and substitution contains a total of 68 dwelling units in the form of institutional housing or group quarters and occupies 3.82 acres of the Property.
- 34) The Commission finds and determines that the proposed project will be an extension to the existing nonconforming use on the Property. The Merici Crossings and the Applicant's project shall be considered a single nonconforming entity for purposes of

zoning code compliance. The combined dwelling units count; density per acre; and ground coverage cannot exceed those of the original nonconforming use as set forth in Finding Nos. 31 and 32 hereof.

- 35) The Commission finds and determines that the additional 25 dwelling units constitute an increase in the size, density, and ground coverage of the previously approved nonconforming use extension known as Merici Crossings. If this extension of a lawful nonconforming use is sited in the location of the principal buildings that contained the prior nonconforming use, then it would constitute a reasonable use of the property that is permitted under the City's Zoning Code.
- 36) The Commission finds and determines that the front setback of two hundred fifty feet (250') from Fairmount Boulevard and the side yard setback from the western property line of three hundred feet (300') constitute reasonable limitations of the proposed extension in the context of this request for a variance.
- 37) The Commission takes notice of the fact that all of the members of the Commission at the time of this decision were on the Commission at the time of the approval of the Owner's request to build Merici Crossings.
- 38) The Commission finds and determines that its decision in this case is consistent with the understanding of the Commission, at the time of the approval of the Merici Crossing project, that there could be a development on the area of the property where the Owner's prior development was located.
- 39) The Commission finds and determines that when it approved Merici Crossings that it never intended to permit a large expansion of the nonconforming residential use of the Property, but rather intended to permit the Owner to continue its reasonable use of the Property.
- 40) The Commission finds and determines that the approval of the Applicant's proposed extension of the nonconforming use, as proposed and with the reasonable conditions and safeguards provided herein, constitutes a reasonable use of the property that meets with the requirements of the City's Zoning Code.

FINAL ORDER

In consideration of the facts identified herein, the Applicant's request for a variance to extend the existing nonconforming use of institutional housing or group quarters for a very limited special segment of the population on the Property, pursuant to Section 1262.03(c)(2) of the Codified Ordinances, is hereby approved subject to the following conditions and safeguards:

- 1) This approval is for a maximum of twenty-five (25) dwelling units of institutional housing or group quarters.
- 2) The use of the dwelling units shall be limited to providing housing for adults with intellectual and developmental disabilities in a single-family attached configuration to be operated by Medina Creative Housing, Inc. in a manner consistent with the formal representations made by the Applicant and Owner to the Commission.
- 3) The ground coverage of the buildings, parking, and improvements shall not exceed a maximum of 4.62 acres.
- 4) The buildings and related improvements associated with the extension maintain the established minimum front setback from the northerly right-of-way line of Fairmount Boulevard of two hundred fifty feet (250') and the established minimum side setback from the westerly property line of three hundred feet (300').
- 5) No parcel splits or subdivision of the Property shall be permitted that would result in the placement of the nonconforming use on a new or different parcel or that would result in the net density of the institutional housing or group quarters exceeding 3.57 dwelling units per acre. Parcel splits that do not violate this provision are permitted.
- 6) The Owner may place other uses that are listed as permitted uses in the U-2 Public Buildings District on the Property, subject to compliance with the maximum building coverage and minimum open space requirements for the District.

MAILING OF ORDER

The Commission directs the Secretary of the Board to mail a copy of this Final Order, with Conclusions and Findings of Fact, to the Applicant, Applicant's counsel, the Owner, Owner's counsel and to any other person requesting this Order, by regular mail. The Secretary of the Board shall note the date of mailing in the records of this Commission. The decision of this Commission shall be deemed final upon the date the Secretary of the Board mails this document as provided herein.

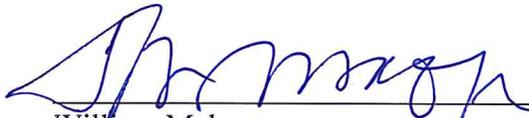
IT IS SO ORDERED.

Adopted this 2nd day of August, 2021.

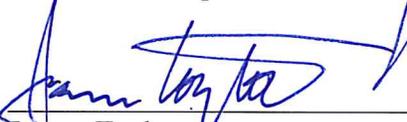
PEPPER PIKE PLANNING COMMISSION


Richard Bain, Chairman


Richard Leskovec


William Melsop


David DeWolf


James Taylor

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the above Final Order of the Planning Commission and Conclusions of Fact this 4th day of August, 2021.


Secretary of the Board