

**ZONING COMMISSION, 2016**  
**October 13, 2016**  
**Public Hearing – 7:00 P.M**

**Approved:**

- I. Chairman called the meeting to order and roll call was taken.  
Members present: Chairman Richard Bradner, Scott Meyer, Joy Kosiewicz, Maryellen Burnham, Emily Hete, Jim Hower, and Tom Flynn.
- II. Chairman swore in members of the public who wished to speak at the hearing.
- III. Certification of the October 1, 2016 public notice was made and read into the record.
- IV. Zoning Inspector informed the Commission that the Summit County Planning Commission has not reviewed the case as of yet. Mr. Funk presented an overview of Case 16-02, Mic-Ric LLC requesting to rezone three parcels on Montrose Avenue from Residential R-3 to Business B-4, which is a restricted business district. The combined acreage of the parcels is 2.45 acres and approximately .4 acres is currently in the B-4. Mr. Funk demonstrated on screen the location of the property and stated there are roughly 21 homes situated in that area of Montrose Avenue. Zoning Inspector displayed and explained the adjacent properties and their respective zoning districts. Parcel numbers 05-00007 and 05-00186 have frontage on Montrose Avenue. The third parcel, no. 05-00008 is landlocked. Mr. Funk clarified via the screen the areas that Mic-Ric LLC is proposing to rezone and the current, adjacent zoning.

Mr. Funk presented the differences of the Zoning Districts as defined in the Bath Township Zoning Resolution. The “Permitted Use Table” was also presented as it applies to the R-3 vs. the B-4.

- V. Mr. Tony Vacanti, Land Use Counsel with Buckingham, Doolittle and Burroughs, on behalf of the property owner and applicant Mic-Ric LLC and Mr. Joe Saporito, authorized representative of Mic-Ric LLC approached the Commission. Mr. Vacanti submitted a packet to the Commission for the presentation. Mr. Vacanti stated that this is about fair and reasonable zoning, and he understands members of the neighborhood have concerns, but Mic-Ric wants to be a good neighbor. He stated they have engaged many of them in conversations and hope to continue that. Mr. Vacanti wanted to dispel any rumors; some provide comfort and answer questions. He stated under zoning law there are two competing rights: there is the right to fundamental constitutionally protected property rights of the owner to reasonably use his or her or its property in an economically viable manner, and there is the right to the community and the adjacent property owners. Mr. Vacanti asked the Commission to make a recommendation to the Trustees as to find the balance. He believes Mic-Ric has found that balance and are here to request the B-4 zoning noting that a little less than the developed portion of the project is already zoned B-4, restricted business not intense retail zoning.

Mr. Joe Saporito presented to the Commission that they (Mic-Ric, LLC) own the frontage along Cleveland-Massillon Road at 47 and 61 N. Cleveland-Massillon Road and its currently zoned B-1. The owners of Mic-Ric’s father originally constructed a portion of the building in 1974. Both owners have lived in Bath for most of their adult lives. The property directly behind that is partially

zoned B-4. Even if he takes a portion of the split zoned property plus the lot that is already B-4, with the setbacks it is not economically feasible to build a two or three thousand square foot commercial building on a lot. Construction costs make it infeasible. Mr. Saporito said it is the same argument with the R-3 with spending between \$150,000.00 and \$200,000.00 for a single acre/single family lot the size of structure that zoning would allow would only be 2,000 – 3,000 square feet. Somebody who is willing to spend that kind of money on that type of land is going to want to construct a house much bigger. Mr. Saporito presented that there is little to no hope of preserving or redeveloping with respect to R-3 zoning. He shared that over the years the structures that they purchased had depreciated, one house was given to Bath Township Fire Department for a practice burn, one was demolished for safety reasons, and the third was demolished also for safety reasons at the request of Bath Fire and Police. They are asking for the rezone on vacant land.

Mr. Saporito testified that they own the adjacent parcels, adjacent to medium and large retail zoned property. They are also directly across the street from an assisted living facility. If this request is granted it would put them in almost parallel lines with the assisted living facilities property. He informed the Commission that several years ago they were in front of the Committee discussing going for B-1 zoning for all of this property and after discussion with Bath legal counsel and some years passing they re-strategized and, as B-4 is a lesser use, they will surrender the B-1 request for the parcel that is closest to Cleveland-Massillon Road, that is on the map in the Comprehensive Plan as being retail. Mr. Saporito circulated conceptual site drawings, done by Louis Perry, showing the setbacks that would be necessary for a typical building that would fit the B-4 designation as an office/professional building. This is the first step in a long range plan for them to do something economically viable with this land that has been sitting for almost 20 years.

Mr. Vacanti returned to the podium and clarified the contents of his packet to the Commission. Tab A is the Summit County G.I.S. aerials, Tab B is a copy of the property survey, Tab C is a copy of the Comprehensive Plan, in particular map #9. He noted that the project area is outlined on the map and stated if you take away the non-developed portion of that property we are talking approximately half of the property is what they are asking to be rezoned. He noted on the map that half of the property is in red indicating intense retail. They are asking for less impactful rezoning and actually giving up some rights and indicated in the Comprehensive Plan; because they do want to be a good neighbor. Tab D is the draft concept plan which everyone has seen. Tab E are portions of the Comprehensive Plan that describe the purpose of the traditional neighborhood zoning, and the property has no house existing on it so this is inconsistent with that purpose; and the general office use with natural buffering. Tab F is some of the zoning provisions that are implementing the Comprehensive Plan provisions and the purposes behind the R-3 zoning and B-4.

Regarding the fair and reasonable balancing, Mr. Vacanti stated the owner would like to use the property in an economically viable manner as entitled to under law. He believes there are five primary points why this proposal is fair and reasonable. He stated he believes that under the zoning code, the Comprehensive Plan and, in general, Ohio law: 1.) A little less than half of the project area is already B-4 but is not economically viable. 2.) The Applicant is contemplating having an access point on the already B-4 zoned property, as close to Cleveland-Massillon as possible. 3.) The majority of the R-3 property is going to be used for parking but also green space with a ten foot buffer and ½ an acre will remain wooded. 4.) Under the Comprehensive Plan a little less than half of the property is already designated as it should be zoned, high intense commercial retail, which is more impactful and that is not what they are requesting; they are requesting the most restrictive zoning possible to accommodate the adjacent residential area. 5.) The current zoning is not econ-

omically viable. It is not designed to promote new residential development; it's designed to preserve and maintain the current traditional housing stock. One of the parcels is split zoned so there is not much they can do. Mr. Vacanti repeated they are seeking the economic viability, which is a goal under Ohio Law, and are protecting natural resources and green space which are goals of the Comprehensive Plan. The Commission engaged in discussion and Mr. Vacanti clarified, parcel C under tab A that is landlocked, did not include setbacks in his analysis, so there is more green space because it has one 50 foot setback and one 75 setback requirement. Mr. Saporito estimated that anything 10,000 square feet and up becomes feasible to them to generate an income producing situation. Mr. Vacanti answered additional questions from the Commission and then concluded his presentation.

VI. Citizens' comments in favor (2):

Mr. Wesley Noland, 247 Fairway Drive, stated prior zoning, cutting the lot in half, the adjacent zoning is business on both sides. His one concern is the applicant wants a 100 car parking, it is a lot of water instead of green space, maybe something for their runoff. He said he wouldn't restrict it as there are a lot of empty small offices, a larger office the more viable for a larger business. You get better tax revenue. He thinks it is getting out of hand when your taxes are as much as your house payment in Bath - and then there are the levies. Mr. Noland was in favor of the rezoning.

Mr. Dave Comernisky, 1110 Duncan Spur, stated he is in commercial real estate and has done work in this specific area as well as around this area. Mr. Comernisky asked for the aerial and said one of the things to be concerned about is how this proposed big building will be maintained. If you look at their current building on Cleveland-Massillon Road you will see that it is very well maintained and presents a good sight line and is a positive thing in terms of office type development/use. He stated the low impact zoning would be useful and the Applicant is willing to give extra buffer space. And that shows that they want to work with the community in putting together a quality project that is aesthetically pleasing.

VII. Citizens' comments in opposition (19 plus written correspondence):

Karen Robinson, 3401 Montrose Avenue, stated she met and talked with the attorney and also met representatives as she came out of the assisted living facility. She visits with the residents there and they are wonderful and walk out there consistently. Ms. Robinson stated as she was coming out of there she spoke with the gentlemen and asked if they ever tried to sell the property and one of them said "why would anyone want to build next to a parking lot". She feels that says a lot.

Bonnie Griffith, 3382 Montrose Avenue, and she was very glad to see that the Commission had an opportunity to visit their street. She feels they are the forgotten community in Bath and when people come and visit they say "I never knew this was here." During the day it is kids riding bikes, assisted living people coming out for fresh air and the beauty, kids going to the school bus which stops at the corner of Montrose and Cleveland-Massillon. Kids are walking back and forth to the bus stop every day and it is concerning to her. Traffic is a safety issue; she is asking to preserve her neighborhood because that is the crux of why they live here.

Jay Ward, 3451 Montrose Avenue, stated the Applicant keeps talking about the lot being vacant but when they were purchased there were houses on them. The houses fell into disrepair and they did end up taking them down. However, everyone that lives on Montrose has an older home and have maintained them so they aren't a fire hazard, they are not an eyesore or unsafe. Mr. Ward stated he can't help that it is a burden on the landowner now, if you would have left the houses and taken care

of them the way the rest of the owners have they would still be good houses. He stated their street is very narrow and additional people and cars will create a traffic issue. There were homes then, there is no reason there is no homes there now.

Dick Sutherland, 3465 Green Drive, shared that ten years ago he was in this same room for the same reason. The same things heard already from these residents are still valid. They take pride in being part of Montrose. Developers are coming in and trying to whittle away just a little bit more. He would hate to see this location turn into a black topped, 100 space, parking lot. Increased traffic is a concern. He feels property valuation will go down the tube if this is approved. Mr. Sutherland stated we are trying to get people to come to Bath; we don't need another parking lot. He is upset because we encourage residential areas and all of the houses are well maintained, they all know each other and support each other and people's lives are at stake. The assisted living residents will be miserable and he thinks this application is miserable. He hopes that they will be listened to and that the Applicant will go someplace else.

Mr. Chairman called a recess from 8:13 until 8:25 p.m.

Mary Fargo, 3411 Montrose Avenue, said she has lived here since 1999. Referring to an aerial on screen, and stated all the commercial property, all the black top, all the concrete; I grew up around here and remember when the theatre was out on Route 18. Now you have a person who wants to build on property that they really never took care of and let go into disarray. If you let this come in they will take away our sanctuary. Ms. Fargo loves the greenery, her home, works hard, walking her dogs and takes pride in her home. All along Route 18 there are "For Lease", "For Sale" signs and many open office spaces available. Why are they picking on them; go somewhere else, leave them in peace.

Mr. Edward Stetz, 3464 Montrose Avenue, stated he lives at the house immediately to the east and someone said earlier they didn't know why the zoning doesn't match the lot lines. He said it is there so you have consistent zoning 450 feet off Cleveland-Massillon Road. If you start to erode that it is like a domino effect. Mr. Stetz also stated that not only have the Township Trustees done the zoning plan, approved the zoning the way it is and this is the way the owner purchased it, but the voters also approved a JEDD. And one of the reasons they did it was to prevent annexation, incremental taking of property and altering the zoning. It should stay zoned R-3.

Mr. Lance Pearce, 3431 and 3441 Montrose Avenue stated the property has been in his family for 88 years. He thinks this is a unique area and people move into Bath because they want to live in a quiet, private area. The idea that we are going to be pushed out of this; it's being pushed down their throats. He does not feel sorry for anybody that has to pay property taxes on an empty lot. We all pay property tax and we pay handsomely and so we expect the services from Bath and expect them to protect their way of live. Mr. Pearce said the owners live in Bath – why don't they build this on his street. Montrose is big enough in his opinion; there is enough stuff going on there and we don't need any more of a tax base coming off of commercial property. This is not fair and the residents need to have a say in it.

Mr. Chairman swore in Mr. Mark Feakes.

Mr. Mark Feakes, 3486 Green Drive, questioned "how much of the Township land that is already zoned commercial is available still for development?" Mr. Funk said it is not a statistic that is tracked. Mr. Feakes then commented on noise from a personal standpoint saying he is often want-

ing to sleep at 10:00 a.m. and having Arden Court right in his back yard there landscapers show up at 8:00 a.m. When they come to collect their trash it shakes his whole house. So not only traffic would be an issue but also the maintaining of the property creates a lot of noise for residents in this area.

Mr. John Grafton, 3452 Montrose Avenue, spoke saying he has seen the entire neighborhood change, has been very appreciative of what the Bath Township Trustees helped him in doing by closing the entrance into Clouse Avenue. That was before Stark and Newman built the shopping center. There are no sidewalks on Montrose Avenue so that was a great thing to help preserve this residential neighborhood. Stark and Newman worked with them regarding their commercial development and they built a mound to separate their development from the residents. So they have a beautiful treed and landscaped area because of the agreed upon 50 foot easement the came together and agreed on. Mr. Grafton would hate to see the area further eroded and disagrees with them saying they want to be good neighbors when they bought the properties with houses on them, they let them run down, to where they the neighbors had to call to try and get them razed in order to preserve the neighborhood.

Mr. Jim Adams, 3408 Montrose Avenue, said he lives right down the street from the proposed site. He agrees with all of the other comments about the facts regarding the houses that used to be there; and so Mr. Adams was not overly concerned about the amount of money the Applicant spent on them. He noted one of the Comprehensive Plan's goals (page 28) is to "Sustain Neighborhood Values; residential neighborhoods, including those abutting Route 18 along the southern portion of the Township, will remain stable and attractive residential environments for families." Mr. Adams said we already have 450 feet in from Cleveland-Massillon so if the Applicant is allowed to move east then there is no reason why the assisted living facility wouldn't come back at some point and want to build a parking lot behind their building and then it's a domino effect all the way down the road.

Mrs. Karen Feakes, 3486 Green Drive, stated she has live in Bath for six years and love that it has been wonderfully preserved. They have had a lot of new families move in and would like to see the sidewalks being put in and for walking access to shopping to also have a sense of community. Mrs. Feakes feels if you stick up a bunch of buildings and parking lots that doesn't really draw a sense of community. She would like to the Commission to take into consideration that there are people who want to have access by foot and not just by car to get to the grocery store and be able to get to local shops. Mrs. Feakes stated that that is something that is really lacking in their community.

Mr. John Klimo, 3398 Montrose Avenue, stated he has a concern with the road. It is a chip and seal road. It's a narrow road and they literally have to straddle the berms to pass each other. When the assisted living center has family functions cars are all the way down to the first house which makes Montrose Avenue a one way street. So if you put a building there and those employees have to exit while the assisted living is having a function, there's going to be a big traffic issue. Mr. Klimo said another issue is about putting in a traffic light in; then you have a light within 100 yards at Lowes that will become an issue. To the best of his knowledge when the development went in there were deed restrictions put in to restrict commercial use on those properties. If the applicant would have maintained the homes on the property properly, and rented properly, we wouldn't have an issue of vacant property and they wouldn't have an issue losing money on property that is now vacant.

Mr. Bob Konstand, legal counsel to the Township, clarified to the audience that deed restrictions are

a private agreement between the homeowners. The Township has no legal authority to enforce private deed restrictions. Obviously if deed restrictions prohibit commercial property use in a residential area that up to you as property owners to enforce that; seek out separate counsel and take it from there. It cannot be a consideration for the Zoning Commission because it was a private agreement.

Mrs. Nancy Trexler, 3461 Montrose Avenue, read a letter from Evelyn Darilus who lives at 3391 Montrose Avenue. See exhibit in the ZC-16-02 Mic-Ric File. Mrs. Darilus firmly opposes switching any lot that was zoned residential to being rezoned as a business. Keep Bath rural and residential. Mrs. Trexler was concerned with the rezoning because of traffic. Right now they have people turning around in and out of their driveway. Her kids have to walk down to the school bus because the bus can't turn around and this has been a concern to them. Mrs. Trexler firmly opposed.

Mr. Phil Trexler, 3461 Montrose Avenue, stated that while listening to Mr. Vacanti's opening remarks he struggled to find where this is a fair and reasonable proposal. Mr. Vacanti's five reasons of why this should be proposed were all about the economics for the property owners. Mr. Trexler sees this as they are playing a game of monopoly. Montrose Avenue is stretched to its limits already. The active elderly residents are walkers and there is already a lot of traffic coming out of there. If you put a 100 car parking lot across the street from there I think the turnover rate of cars would be 200 to 300 cars a day. Mr. Trexler went on to say there are plenty of one million dollar homes sit on one acre or less. This proposal will severely impact their quality of live, safety, thieves and or strangers and also environmental factors. The zoning map line has been drawn and has been for years and is there for a reason. If you let this go through how are going to say no the next person who comes in for a rezoning request. Denying these folks is keeping with the existing zoning laws.

Mrs. Christina Pivarski, 79 Clouse Street, stated she is a licensed realtor and a certified property manager and deals with real estate all day long. She told the Commission that a commercial space at the end of their road will definitely take their property values down. Mrs. Pivarski bought here two years ago in order to have a family and doesn't like the idea of not being able to send my child down the road on a bicycle and have to worry about there being a commercial building there. She also doesn't understand, as she is a landlord, if you buy a property you take care of it if you're worried about your investment. She can't understand why the properties were let go. As a landlord, as a realtor and as a home owner she cannot understand why these properties were let go. "Why not make it a park?"

Don Weintraub, 3477 Green Drive, stated when he returned from Viet Nam, I looked for a quiet place to live and was told Bath was the place. But every 10 years I have to fight off somebody else who is trying to take my property from me. He didn't fight for this and was told by Trustee after Trustee to not worry, Bath is not going to sell you down the road. He is still waiting for his name to be carved in the brick at the memorial center. Mr. Weintraub said they bought the property with houses on it and they let them fall apart so they become raw land again just so they could build commercial properties. They bought this land as an investment. I don't understand what Bath is doing. Don't push that line further than 450 feet.

Mrs. Susan Klimo, 3398 Montrose Avenue, stated there were questions she had for the business that wants to come in. They say they are doing low impact, if they're doing low impact why are they adding 100 parking spaces? To her that is not low impact. Dimitroff's is going out of business, go

buy that. She shared that the neighbors got a petition together basically saying no to the Montrose rezoning change. Mrs. Klimo read the petition into the record.

Mr. Trexler asked for the emails that had been sent to be read and Mr. Chairman asked for him to present them to Mr. Funk. The Zoning staff was in possession of said emails/letters.

Mr. Ken Shane, 3381 Montrose Avenue, stated this is probably the 4<sup>th</sup> time we've had this kind of challenge to their neighborhood. His is speaking up for his grandchildren who are living with them now. The grandchildren like to ride bikes, go in the street, have no sidewalks and going to the bus stop is like the Wild West in the morning. He mentioned a casualty in Norton where a bus ran over a kid. This rezoning would increase chances of stuff like that. Mr. Shane could not conceive of 100 more cars on the street. If people want to be a good neighbor build a house on the property, maintain it, make it look nice.

Mrs. Jill Adams, 3408 Montrose Avenue, stated they were very fortunate when they found that little spot that they call home on Montrose Avenue. Her husband and her went through Hurricane Katrina and came up and bought this house. It is a wonderful neighborhood and the people welcomed them. To think that this building wants to come down to the end of our street and start destroying our neighborhood upsets them. If emergency vehicles cannot get down our street because of that stupid building, if that is more important than people's lives then rezone it, but this is where it all begins. Mrs. Adams stated they have homes; they have lives, keep it where it is because it doesn't stop.

Mr. Konstand informed the audience on the process for a rezoning request detailing the steps that will be forthcoming.

VIII. Mr. Chairman closed the hearing. Motion to table the hearing until after the Summit County Planning Commission hears the case on October 20<sup>th</sup> and submits their recommendation. All were in favor.

IX. Chairman adjourned. **Note:** at approximately 3:00 P.M. October 19, 2016 Mic-Ric LLC submitted a request to withdraw their application at this time.

**Next meeting to be: TBA at 7:00 p.m. in the Trustee Conference Room. (Minutes to be approved: September and October.)**