

**Meeting Notes from Monday, February 5, 2018 meeting of the UAC Zoning Committee:**

**6:00 PM – Business/administrative session.**

- Discussion of agenda
- Welcome to Matt Beaton - overview of zoning committee & commercial zoning
- Rooming Houses – Council Member Michael Brown is new assistant. Aaron met with him to discuss rooming house issue. “Illegal Group Homes” (correct name) getting more creative in Old North Columbus.
- Next month Laura Bidwa will present Weinland Park residential guidelines

PRESENT: Susan Keeny, Rory Krupp, Brian Williams, Craig Bouska, Seth Golding, Pasquale Grado, Aaron Marshall

EXCUSED/ABSENT:

VISITORS: Matt Beaton

**6:30 PM – Applicant(s):**

1. **352 W. Lane Avenue** – variances for a proposed restaurant use in the existing convenient store that is in front of the former Holiday Inn on Lane Ave. Applicant/presenter is Attorney is Jeff Brown.

**Project Information/Applicant Presentation:**

- Applicant presented project for a preliminary review in December 2017.
- *Information previously presented that remains the same:*
  - The project is a restaurant space proposed in the convenience store, Get GO, located near intersection of W. Lane Ave. & Olentangy River Rd., in front of OSU dorms (former Giant Eagle store).
  - Property is a sub-lease from the Get Go.
  - Since property is leased, modifications have to be more limited; the building cannot be torn down.



Get Go Store



OSU Dorms (Lawrence Tower) behind Get Go

Store

- The proposed restaurant will serve wood-fired pizza. It is a new assembly use (eating and drinking establishment) in a retail space. This requires more parking.
- The owner had a pizza business in the campus area near High St.

- There will be a patio proposed in front of the building at grade.
- The intended market is not only OSU 'Game Day' visitors, but also university residents and residents of Upper Arlington. Being close to the Lane Avenue Bridge places this property at a location that may attract people from outside the University District.
- *New project data/changes from previous presentation:*
  - Project is changed from a 2-story building to a single-story building. Cost prohibitive to add 2<sup>nd</sup> floor.
  - There is no rooftop patio – just outdoor patio in front of the building.
  - Screening will be added in front of the parking lot at Lane Ave. – new brick knee wall.
  - Parking requirement reduced from 45-16 to 31-17. (parking *deficit* reduced from **19 to 14**)
- The variances being requested are:
  - Section 3325.33, Setback Requirements: to reduce the parking setback to zero.
  - Section 3325.81, Parking and Circulation: to permit parking and circulation aisles between the principle building and the street right-of-way. (*exist. condition*)
  - Section 3325.361 (A), Landscaping and Screening: to eliminate the landscape screening along Lane Ave. (*exist. condition*)
  - Section 3325.313 FAR Standards: to reduce the min. FAR from 1 to 0.36 (*exist. condition*)
  - Section 3312.21 Landscaping and Screening: to eliminate interior landscaping and perimeter landscaping for the parking lot. (*exist. condition*)
  - Section 3325.361 (C), Landscaping and Screening: to permit existing dumpster to remain along the east side of the building. (*exist. condition*)
  - Section 332.49, Min. number of parking spaces required: to reduce the number of parking spaces from **31 to 17**.
- Existing trees and landscaping at the rear of the building – between the Get Go and the multi-unit dormitory housing) will remain as is.
- Existing dumpster enclosure to the east will remain as is.

**Discussion/Comments/Observations:**

- Question: Has there been any discussion with Riverwatch regarding shared or leased parking?  
Response: Not at this time.
- Question: Can patrons park in the lot to the east? Response: That is a paid parking lot.
- Question: Is the lot to the east full? Response: Not really full.
- Comment that this is a walkable destination - for students.
- The project was sent to staff at OSU Student Life for their comments since the project was directly in front of student housing. Questions they had involved: *hours of operation, whether or not alcohol would be served, if the outdoor patio would be used for tailgate parties, potential noise from the outdoor patio, planned outdoor events, outdoor sound system, deliveries, trash pick-up, all trash in dumpster, possible oil/grease trap.* Questions/concerns were addressed by attorney for applicant. Robert Lyons from the Office of Student Life was satisfied and stated that their office was “excited to see the site developed into something the students will use”.
- Committee felt that this was an appropriate use for this property and would help activate this end of Lane Avenue. It was supportive of this BZA variance request.

**Motion to approve the request for variances for the project located at 352 W. Lane Ave.: Bouska; seconded: Krupp. For–7; Against–0; Abstentions– 0. – Request for variances is approved unanimously.**

2. **1334 Neil Avenue** – variances to renovate historic stone church into a coffee shop and apartments. Presenters were Sarah Mackert, architect and attorney Jeff Brown.

**Summary of Project Information:**

- Historic stone church is located at the SE corner of 6th & Neil.
- Church is 11,623 sq. ft.; separate building is 2,120 sq. ft. and has 2 existing apartments
- Proposal is to convert church sanctuary into a Stauff's Coffee Shop, and the offices & meeting spaces converted into 4 apartments.
- The existing structure to the rear will be a 2-unit apartment building
- This is an adaptive use of a vacant building and former church.
- Built in 1876; Presbyterian Church
- Stone load-bearing walls, wood arches, stained glass – this will all be maintained
- There is no parking on site. Rough parking estimates are approximately 43 total required parking spaces.
- Would like this to be useable by the adjacent community – a community gathering spot

**Applicant Presentation:**

- This is an R4 zoning district

- Council variance request is needed to have a coffee shop and 6 dwelling units in 2 existing buildings in an R4 zone.
- **Building 1** – West Building (Church Building);                      **Building 2** – East Building (House)
- Variances being requested are:
  - Section 3332.039, R4 Residential: to permit a coffee shop in the 1<sup>st</sup> floor of the former church along with 4 dwelling units in Building 1 and a 2-family dwelling in Building 2.
  - Section 3332.15, R4 Area District Requirements: to permit a principal building & a 2-family on a lot which is less than 11,000 sf (approx. 10, 332 sf).
  - Section 3325.705, Supplemental Parking Requirements: To permit existing parking spaces in the side yard of Building 2 (*exist. condition*) & to have parking spaces without a curb or other permanent barrier (*exist. condition*).
  - Section 3325.801, Max. Lot Coverage: to increase the lot coverage from 25% to 57% of lot area for buildings (*exist. condition*)
  - Section 3332.22, Building lines on corner lots – exception:
    - Building 1: to reduce the building & parking setback along Neil Ave. from 23' 1" to 22' 4" (*exist. condition*) & along 6<sup>th</sup> Ave. from 15' 10" to 0 ft.
    - Building 2: to reduce the building setback along 6<sup>th</sup> Ave. from 15' 10" to 0 ft.
  - Section 3325.805, Max. floor area ration (FAR): to increase the FAR from 0.4 to 1.3.
  - Section 3325.805 Max. side yard required:
    - Building 1: to reduce the max. side yards from 12 ft. to 5 ft. (*exist. condition*)
    - Building 2: to reduce the max. side yards from 12 ft. to 9 ft. (*exist. condition*)
  - Section 3332.26, Min. side yard permitted:
    - Building 1: to reduce the min. side yard on the south side from 5 ft. to 0 ft.
    - Building 2: to reduce the min. side yard on the west side from 5 ft. to 0 ft. (*exist. condition*)
  - Section 3332.27, Rear Yard:
    - Building 1: to reduce the required rear yard from 25% of the total lot area to 0.02% (*exist. condition*)
    - Building 2: to reduce the required rear yard from 25% of the total lot to 0.03% (*exist. condition*)
  - Section 3332.28, side or rear yard obstruction: to permit parking in the side yard of Building 2 (*exist. condition*)
  - Section 3321.05, Vision Clearance: to permit the exist encroachment into the vision clearance at Neil Ave. & 6<sup>th</sup> Ave. (*exist condition*)
  - Section 3325.809, Landscaped area & treatment: Building 1 – to reduce the landscaped area in the rear from 10% of lot area to 0% (*exist. condition*)
- Existing church structure & building footprint will remain nearly the same except for ramp, stairs and access.

#### Discussion/Comments/Observations:

- Question: Will this be solely a coffee shop? Response: At present the plan is for Stauff's to have a coffee house.
- Concern that in future, this could become a bar, hookah bar, office.
- Council Variance is to allow the new use – coffee shop
- Concern: Bike pad seems very close to corner – a tight space. Response: Located it in accessible spot, but could investigate alternate locations
- Question: Is there no chance to investigate parking within 750 ft. to lease, even though parking not a variance request? Response: Does not appear to be any close by
- Susan noted that 2 nearby churches – H2O & King Ave. United Methodist have parking lots and may be willing to lease some spaces during the day. Applicant was asked to pursue this.
- Neighbor commented that would be fun to have neighborhood coffee shop, but lack of parking is big concern. Apartments and houses along 6<sup>th</sup> Ave. do not have on-site parking. Everyone parks in street.
- Short North parking study implementation will probably affect parking along Neil – permit parking, metered zones, etc.
- It was mentioned that most customers would be walking from the neighborhood rather than driving, but there are no guarantees that this would happen.
- Concern also with renovations on a historic church that's in pristine condition. Urge owner to do minimal work on exterior to maintain stone and stained glass. Ramp structure is imposing along 6<sup>th</sup> – could detract from exist. stone façade. There was more discussion about design elements, but discussion was stopped as this is not a part of the zoning variance.
- As many of the variances are due to the existing condition, and as a large historic building would be saved and repurposed rather than demolished, the committee was supportive of the variance requests. Still big concerns with lack of parking & final execution of details, but overall, the proposed project was thought to be a positive addition to the neighborhood

**Motion to approve the request for variances for the project located at 1334 Neil Avenue: Golding; seconded: Williams. For-7; Against-0; Abstentions- 0. – Request for variances is approved unanimously.**

3. **Medical Center Rezoning & Parking variance** – preliminary presentation of requests for rezoning and parking variances for OSU properties located south campus area. Erin Prosser from Campus Partners, Peter Jenkins, Director of Real Estate for OSU and Greg Fortney, OSU.

**Project Information/Applicant Presentation – Parking Variance:**

- This was a preliminary presentation to discuss the proposed new tenant for the current Aveda hair salon at corner of Neil and 10<sup>th</sup>.
- New use would be a relocated restaurant – requires more parking
- Preliminary parking calculations:
  - Restaurant use: 1<sup>st</sup> floor = 31 required parking spaces
  - Office use: 2nd floor = 6 parking spaces
  - Basement offices – 5 parking spaces
  - TOTAL potential required parking spaces = **42 spaces.**
- Proposed restaurant tenant’s business is 86% carryout
- OSU leases this parcel - 48 year long-term-lease
- Proposed tenant is a long-time campus favorite.

**Project Information/Applicant Presentation - Rezoning:**

- 12 parcels on Neil Ave. between 11<sup>th</sup> & 9<sup>th</sup> have zoning that is different from the “University College Research Park District” (UCRPD) than the majority of properties in this area have
- These parcels are already owned or leased by OSU.
- A single zoning category would make more sense in this area that is so close to campus.
- Adjacent properties are currently institutional use.

**Discussion/Comments/Observations:**

- Comment that it makes sense to have a consistent zoning in this area rather than have isolated parcels with different zoning
- Re-zoning would be to a “Limited University College Research Park District” (LUCRPD) - this re-zoning would have some ‘limitation text’ in it.
- The committee thought the proposed re-zoning, in concept, seemed to be appropriate.

**This was a preliminary meeting. No vote was taken.**

4. **1337-1345 Hunter Avenue** – variances for 2 properties on Hunter to add carriage houses to the rear yard of each property. Presenters: Dave Perry & architect Karrick Sherrill. This is the second meeting with the applicant.



**Alley & Rear Yard**



**Front Elevations**



**Rear Elevations**



**Alley Looking South**

**Project Information/Applicant Presentation:**

- The project includes the renovation of two existing 2-unit apartments into two single family houses. The existing 2-family dwelling units are legal units.
- Also proposed are new carriage houses in the rear – parking at grade, dwelling units above.
- Adding a dwelling unit above each proposed garage would be a change of use due to the addition of a 2nd dwelling unit with no street frontage on an R4 lot.
- Density is neutral: There will still be 2 units per lot. No additional units are being added.
- 6 parking spaces to be provided on site. 8 parking spaces are required by code.
- Last month the carriage houses were shown attached at the property line (zero lot line), creating one large carriage house.
- The committee felt the single carriage house was too large and more suggestive of apartment building than carriage house. They recommended that the single carriage house be separated into 2 carriage houses, one for each parcel.
- The proposed new carriage houses will be 700 sq. ft. of apartment above a 700 sq. ft. 3-bay garage.
- Changes to the previous plan did include separating the carriage house & pulling the carriage houses closer to the alley to create more green space in the rear yard. It was felt that backyard space was more important than setback to alley. One carriage house moved from a 4 ft. to a 2 ft. setback; the other moved from an 8 ft. to a 4 ft. setback.
- 10 variances for the project are as follows:
  - Section 3332.039, R-4 Residential District, to permit two detached single family dwellings on each parcel, consisting of the change of use of the existing two-family dwelling on each parcel to a single-family dwelling and a new carriage house with a single dwelling unit on the second floor and ground level parking on the first floor.
  - Section 3312.49, Minimum Numbers of Parking Spaces Required, to reduce required parking from four (4) spaces for each parcel for two (2) detached dwelling units on each parcel to three (3) spaces on each parcel.
  - Section 3332.05(A)(4), Area District lot Width Standards, to reduce the required lot width from 50 feet to the existing 31.4 feet.
  - Section 3332.15, R-4 Area District Requirements, to permit two (2) detached single family dwellings on the existing 4,710 square foot lot.
  - Section 3332.19, Fronting, to permit the rear carriage house dwelling unit to not front on a public street.
  - Section 3332.25, Maximum Side Yards Required, to reduce maximum side yard from 6 feet to 4 feet for the existing dwelling at 1345 Hunter Avenue and from 6 feet to 4.7 feet for the two carriage houses.
  - Section 3332.26, Minimum Side Yard permitted, to reduce the minimum side yard from three (3) feet to 1.4', 1.0' and 0' for the existing dwellings at 1337 Hunter Avenue, 1345 Hunter Avenue and to 1.7 feet for each of the detached carriage houses, respectively.
  - Section 3332.27, Rear Yard, to reduce rear yard for each carriage house from 25% of lot area to 0% lot area, subject to providing rear yard as depicted on the Site Plan.
  - Section 3325.801, Maximum Lot Coverage, to increase the permitted lot coverage from 25% of lot area to 49% for each parcel.
  - Section 3325.805, Maximum Floor Area Ratio (FAR), to increase the permitted FAR from 0.40 to 0.62.

**Discussion/Comments/Observations:**

- Question: Why are there so many variances? Response: The variances are needed to conform to existing conditions.
- Committee appreciated applicant's restoring existing houses back to single family dwelling units as they originally were
- Some concern expressed over the height of the new carriage houses. Response: Carriage houses only 15 ft. from grade to eave and 27 ft. to ridge – not overly tall.
- Question: Will these be rentals or sold separately? Response: 4 units will be rented.
- Question: What will rent be? Response: Approx. \$900 per month
- Committee agreed that separating carriage house broke up scale of structure and made it more compatible with neighborhood.
- Architect commented that owner of these properties, Kevin Lykens, is invested in area and wants to create projects that contribute to neighborhood.

**Motion to approve the request for variances for the project located 1337-1345 Hunter Ave.: Williams; seconded: Bouska. For–5; Against–0; Abstentions– 1. – Request for variances is approved. (Golding left meeting before vote).**

5. **1444 N. High St.** – variances to add a 3-story mixed-use building with ground floor commercial and 5 dwelling units above in front of 2 existing apartment buildings with 45 units total in an ARO zone. Presenters: Dave Perry & Wayne Garland, Buckeye Real Estate.

**Project Information/Applicant Presentation:**

- Site is zoned ARO, Apartment Residential Office. High Street is zoned mainly C4-Commercial.
- Existing 2 apartment buildings on site have 45 units and are oriented perpendicular to High St.
- Current building access is from the interior of the property.
- Existing staggered setbacks are from 36 ft. to 46 ft.
- Proposed 3-story building will front along High St. with access from a central entry point
- Proposed 2900 sf commercial/retail and (5) 2-bedroom units above.
- Ground level commercial with 2 floors of apartments above.
- There is no zoning district that would include the proposed new building without resulting in the 2 existing apartment buildings becoming non-conforming uses.
- Variances being requested are:
  - 1). Section 3333.04, Permitted Uses in AR-O Apartment Office District, to permit 2,900 square feet of ground level retail, office and/or restaurant uses.
  - 2). Section 3312.49, Minimum Number of Parking Spaces Required, to reduce parking for 2,900 square feet of commercial use (retail, office, restaurant) at the restaurant rate and five (5) two (2) bedroom dwelling units from 20 and 5, respectively, as reduced by Section 3325.381, Parking and Circulation (Regional Commercial Subarea, University District Zoning Overlay) to zero (0) parking spaces for the proposed new building.
  - 3). Section 3321.07(B), Landscaping, to reduce additional trees at the rate of one (1) tree per 10 dwelling units from one (1) tree to zero (0) new trees for the proposed five (5) new dwelling units.
  - 4). Section 3333.15(C), Basis of Computing Area, to increase permitted lot coverage (building coverage) from 49% to 71% with the proposed building.
  - 5). Section 3333.255, Perimeter Yard, to reduce perimeter yard from ten (10) feet to zero (0) feet for the proposed new building for applicant to build to the north and south property lines while a west property lines, while the south and west perimeter yards substantial exceed the required perimeter yard, but applicant proposes to reduce the north perimeter yard from 21.5 feet to 15 feet.
- The new building will connect with the existing 2 apartment buildings.

### Discussion/Comments/Observations:

- Proposed building fills in the gap along High Street. Seems very appropriate.
- Question: Why the single entry door into the new building? Why not separate entrances to commercial storefronts along High St? Response: Single door adds a little whimsy to the High St. streetscape. A single common vestibule is created.
- Building height different from adjacent buildings and compliments them without replicating the same type of storefronts all along High St.
- Question: Where is parking? Response: No parking on site. Renters will use Euclid lot across the alley or park at Gateway garage.
- Question: What is impact on existing Lantern buildings? Will new building block windows in the existing apartments? Response: There are few windows along High St. The main access and windows are along the length of the building facing the interior courtyard.
- Building is in the Impact District and will have required design review.
- Committee liked the zero setbacks along High St. New building engages that block better than current buildings do. Slightly taller height adds variety to streetscape yet is compatible with adjacent structures.

**Motion to approve the request for variances for the project located at 1444 N. High St.: Grado; seconded: Williams. For–5; Against–0; Abstentions– 0. – Request for variances is approved unanimously. (Bouska recused himself from meeting).**

6. **99 E. 11<sup>th</sup> Ave.** – variances to redevelop 5 lots with 2 apartment buildings. Presenters: Dave Perry & Wayne Garland, Buckeye Real Estate.

### Project Information/Applicant Presentation:

- Property is located on the south side of E. 11<sup>th</sup> and near the Gateway Garage.
- It is not in the High St. sub-area, but in transition area between density of High St. and lower scale residential units.
- Zone is AR4 – Apartment Residential
- Proposal is to develop site with 2 apartment buildings with 24 units, total.
- 56 bedrooms; 56 parking spaces.
- 1991 parking formula discouraged tall, dense buildings. Urban development changed since then on main traffic corridors.
- Required variances are as listed:
  1. Section 3325.705, Supplemental Parking Requirements, to permit pavement of part of the west perimeter yard for a driveway to enclosed and surface parking.
  2. Section 3325.903(A), Landscaped Area and Treatment, to reduce 5% of lot area (1,532 SF) as landscaped area and located behind the most rear portion of the principal residential building(s) to 1.1 % +/- (340 +/- SF).
  3. Section 3325.907(A)(B), Parking, to increase lot area devoted to parking and maneuvering from 35% to 70%, while 70% includes enclosed parking, but surface parking/maneuvering is 29% +/- of lot area.
  4. Section 3325.911(C), Building Separation and Size, to increase the permitted calculated floor area of the building fronting E. 11th Avenue from 10,200 square feet to 26,580 square feet.
  5. Section 3325.909(A)(B), Building Lines, to reduce the E 11th Avenue building setback from 15 feet to 8 feet to the closest point of enclosure for entrances and with the primary building façade at a 22 foot setback, and to increase the maximum setback from 16.5 feet to 22 feet.
  6. 3325.915(B), Height, to increase building height to 35 feet.
  7. Section 3333.255, Perimeter Yard, to reduce perimeter yard from 17.5 feet to five (5) feet on the east perimeter yard and from 17.5 feet to nine (9) feet along the south property line and to permit pavement in the south and west perimeter yards, as depicted on the Site Plan.
- Applicant wanted to create a tight streetscape that would have the feel of a neighborhood.
- Parking is beneath the units and entered from the interior of the block
- Trees and landscaped screening are along E. 11<sup>th</sup> and at the parking entrance.

**Discussion/Comments/Observations:**

- Rory stated that there may be push back from neighbors who want more single family units.
- Comment that this may set precedent for 'row house-type' units in place of single family houses. Response: More density requires more attention to detail and design.
- There is a fear of consolidating properties to achieve density and more return on investments. There should be limits to how wide a consolidated building can be in a neighborhood.
- Comment that already similar type 'trolley car' row house units along E.11<sup>th</sup> that enhance character of street and have a residential scale - details!
- Recommendation that applicant meet with Weinland Park Housing Committee to present plan and get their feedback before we vote on these variances. Rory and Brian will follow up with contact information.
- Pasquale withdrew his motion so that the applicant could receive community input before returning to zoning committee for a vote.
- Applicant will schedule meeting with Weinland Park Housing Committee.

**Motion to approve the request for variances for the project located at 99 E. 11<sup>th</sup> Ave.: Grado; seconded: Williams. Grado withdrew motion. No vote was taken.**

**VOTING RESULTS FOR ZONING COMMITTEE MEETING: February 5, 2018**

MEMBER	Craig Bouska	Seth Golding	Brian Williams	Susan Keeny	Rory Krupp	Pasquale Grado	Aaron Marshall		
<b>Attendance</b>	Present	Present	Present	Present	Present	Present	Absent		
<b>CASE/ VOTE</b>	Y-N-A-R*	Y-N-A-R*	Y-N-A-R*	Y-N-A-R*	Y-N-A-R*	Y-N-A-R	Y-N-A-R*		
352 W. Lane	Y	Y	Y	Y	Y	Y	Y		
1334 Neil Ave.	Y	Y	Y	Y	Y	Y	Y		
1337-1345 Hunter	Y	Left meeting early	Y	Y	Y	Y	A		
1444 W. High St.	recused		Y	Y	Y	Y	Y		

\*Y – yes; N – no; A – abstain; R – recused

**\*Revisions are noted in red.**



The following link is to the on-line zoning code, for your use and information:

[https://www.municode.com/library/oh/columbus/codes/code\\_of\\_ordinances?nodeId=TIT33ZOCO](https://www.municode.com/library/oh/columbus/codes/code_of_ordinances?nodeId=TIT33ZOCO)

**For Commission Presentations:**

Commissioners may speak twice, up to 3 minutes each time per Bylaws Article IV, Section 1(b).

**PLEASE NOTE:**

**For All Zoning Presentations:**

Applicants will present at the next University Area Commission (UAC) meeting which will take place (*unless otherwise notified*) on **Wednesday, Feb. 21, 2018** at the Northwood & High Building, 2231 North High Street, one block north of Lane Avenue, Room 100. Zoning cases will be heard beginning approximately at 7:15 PM. Applicants are to bring **at least 10 hard copies** of their presentation that best presents their specific case – the specific variances requested, any plans, photos of existing properties, and a statement of hardship as to why the particular request should be granted. There is also an available overhead screen and projector for applicant power point presentations. The vote taken by the UAC that evening will be communicated to either the Columbus Board of Zoning Appeals, or City Council, or Graphics Commission, which will make the final determination of all requested variances

The following parameters for all participants in Commission meetings with regard to zoning cases, per our REVISED bylaws, Article IV – MEETINGS, Section 7:

**The following time limits will be adhered to for all zoning cases heard before the Commission:**

1. Zoning Committee presents the facts of the case - **5 min. max**
2. Applicant Presentation - **7 min. max**
3. Zoning Committee report – **5 min. max**
4. Public comment (max 3 people each pro/con) - **2 min each (max)**. Only those who complete speaker slips prior to the case being heard will be considered for speaking based on the order the slips were received
5. Commissioner discussion: Commissioner who wishes may speak once per round for **1 min (max) for 2 rounds**. A Commissioner cannot save time for their second round or transfer their remaining time to someone else
6. Applicant response - **3 min (max)**
7. Commission vote
8. A motion to extend the max time limits can be made at the beginning of the case stating which portion(s) should be extended and by how long. The motion must pass by two-thirds (2/3) majority with no debate on this motion.