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Julie A. Gibbons, Esq.
Assistant Clerk Toledo City Council
One Government Center, Suite 2104
Toledo, Ohio 43604

**Re: Broadway Corridor Coalition
Appeal of Site Plan Approval
845-885 South Avenue ("Appeal")**

Lynn H. Gressley 1913-2001
Julian M. Kaplin 1927-1995
Jerome R. Parker
Bruce S. Schoenberger
Todd J. Kuhn
David A. Cole*
Thomas E. Puffenberger, II
Garrett A. Keeton*
Ali A. Nour

Dear Ms. Gibbons and Members of Toledo City Council:

Thank you to Toledo City Council Zoning Committee for scheduling the virtual hearing yesterday regarding the above-captioned matter.

This letter is being forwarded to clarify the position of our client, Zaremba Group, LLC, in support of the minor site plan approval and the denial of the Appeal, and to address all the issues and questions raised at the virtual hearing which, due to the nature of the hearing, I felt were difficult to fully address. Consequently, I request that this letter amplify my client's position and be made part of the record in this case:

1. This is an Appeal of the unanimous approval by your plan commission of the subject site plan by an entity that alleged standing (an Aggrieved Party) at the hearing to file the Appeal pursuant to Section 1111.0811 of your Zoning Code ("Code"). First of all, we contest for the record the allegation that such standing exists, but more importantly, we wish to point out to Council that Council in this process sits merely as a review body to determine if the plan commission "checked all the boxes" when it approved the site plan. This matter comes to Council not as a "recommendation" as you would have in a zoning change situation, for example, where Council's discretion is much wider (as I pointed out at the hearing), but as a final DECISION of the plan commission. As such, Council's role is in effect limited to essentially making sure the plan commission made the applicant comply with the *administrative* (emphasis added) criteria to be entitled to obtain final site plan approval – i.e., the site plan complies with all setbacks, landscaping criteria or off-street parking ratios, on and on. As was stated at the hearing by your legal counsel, all such "boxes were checked", all such relevant criteria were met and our client agreed to accept and comply with all the conditions to approval, including compliance with the design standards mandated by the Code and the Comprehensive Plan ("Plan").

Of Counsel:
Howard B. Hershman*

*Also admitted in Michigan

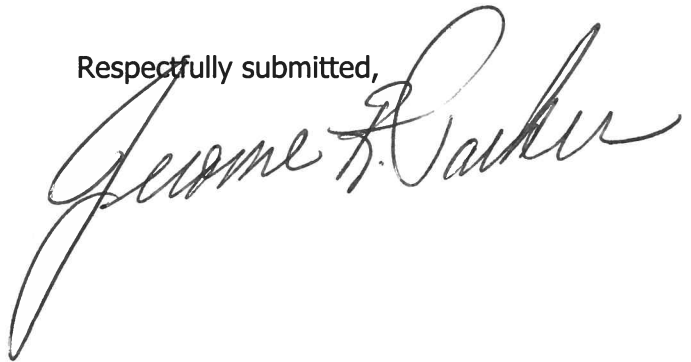
2. The real basis for this Appeal is (and as was amazingly stated by counsel for the Coalition at the hearing), that in effect "they don't want a Dollar General store at this location"; that is not only in my opinion an unconstitutional basis for appeal, but something this Council cannot lawfully endorse or even consider in connection with this action. Furthermore in my opinion Council as a body should not be receptive to because it defeats the entire structure of your zoning laws - the Dollar General at this location, or for that matter any other use which is permitted under your CR Zoning classification, is a permitted use at this location, and such use cannot be lawfully taken away simply because someone doesn't "like" what that use is, or by arguing that somehow a master plan is inconsistent with that permitted use. When an applicant files for site plan approval in this City and the property involved already permits the use requested, master plans as far as what uses are permitted are irrelevant. You cannot take away what is already there. Furthermore, even if such a plan was relevant here, Director Gibbons indicated in his written staff recommendations for approval of the site plan, and at the hearing, that this property is recommended for **COMMERCIAL** (emphasis added) use under the Coalition's own Master Plan. Use is not an issue in this case and your plan commission not only dealt with this issue at its hearing (because the Coalition raised these same issues there and at the commission hearing), but as I stated at the hearing, rightfully told counsel for the Coalition that their arguments about use are not relevant to the site plan approval before them. They are once again not relevant here and must not be the basis for your decision.

3. Counsel for the Coalition, in her letter of Appeal, which is a mandatory requirement under Section 1111.0811 of the Code, makes references to the C-6 overlay zoning district as support for her arguments. First, as I stated in the hearing, this property is NOT in the C-6 zone. Further, as I also stated in the hearing, counsel for the Coalition also makes numerous references in her letter to "the Broadway Mile" - this property is NOT on Broadway, but is located in a CR zone which stretches all down South Avenue and is over a half mile away from Broadway. In short, as I stated at the hearing, the Appeal does not state, nor did counsel for the Coalition at the hearing state, for the record, one reason specified under Section 1111.0811 why the approval of this minor site plan application by your commission should be overturned or delayed - once again use is not an issue here - the existing zoning permits the use requested - and that is one of the four criteria as stipulated in Section 1111.0809 of the Code upon which site plan approval is to be based and all of those four criteria were, as the City's legal counsel also indicated at the hearing, and as the staff recommendation in this case indicates, fully met by my client.

4. In short, there is no lawful basis for this Appeal and the Appeal should be denied, not only for the reasons stated in this letter, but if this Appeal is granted, then I submit to you that the existing zoning on any parcel of property in this City means nothing - the whole system of our zoning laws as we know it means nothing. No developer, no owner will be able to rely on its or their existing zoning when seeking to develop property within the City. This would substantially curtail and hinder development. If we abandon these core zoning principles and instead make zoning decisions based not upon what the fundamental laws are in this City, but solely by how many e-mails or letters are sent in opposing or favoring a proposed lawful use, then we don't need a professional planning staff, or commissions, or hearings for that matter - we just count the e-mails and see which side has the most. In reality, as is apparent to an attorney who has specialized in land use law for over 50 years, this type of ill-advised action will only lead to excessive and protracted litigation which the City will lose and will put a stain on a City which should be welcoming commercial investment in our community, now more than ever.

What's disheartening here is that this new development will not only help eliminate the blight and vacant buildings along South Avenue, a supposed goal of the South End Coalition, it will create good jobs for people in the immediate area and provide an affordable and popular neighborhood store for groceries and other family necessities that the residents here can easily walk to, another worthwhile Urban Village goal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerome H. Parker". The signature is written in a cursive style with a large, looping initial "J".

JRP/tmk
cc: Thomas Gibbons
Karlene Henderson
Matthew Lascheid