RESOLUTION NO. 47-2019

Authorizing an Amendment to the Final Development Plan for 6699 North High Street and Authorizing Variances (Samantha Elliott/Goddard School).

WHEREAS, Samantha Elliot on behalf of the Goddard School has submitted a request for an amendment to the Final Development Plan for 6699 North High Street; and,

WHEREAS, Sections 1175.02 (f) and 1107.01 of the Codified Ordinances of the City of Worthington provide that when an applicant wishes to change, adjust or rearrange buildings, parking areas, entrances, heights or yards, following approval of a Final Development Plan, and variances are included, the modification must be approved by the City Council; and,

WHEREAS, the proposal has received a complete and thorough review by the Municipal Planning Commission on April 25, 2019 and approval has been recommended by the Commission with the following conditions: Raise height of roof screen, stormwater management per staff memo, demonstrate fire access and water flow, light poles and bases to be painted black, Rose full range brick and windows 6 over 9.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the amendment to the approved Final Development Plan at 6699 North High Street as per Case No. ADP 02-19, Drawings No. ADP 02-19 dated April 10, 2019 attached hereto as Exhibit “A” be approved.

SECTION 2. That there be and hereby is granted a variance from Code Section 1175.02(c)(2) to permit the side yard to be reduced to less than thirty (30) feet.

SECTION 3. That the Access & Parking Easement Agreement is hereby approved as part of the Amendment to Development Plan and Subdivision attached hereto as Exhibit “B”.

SECTION 4. That the Clerk of Council be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted July 15, 2019

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council
**GODDARD SCHOOL**

**zoning v3.0**

**zoning12 | 21 | 2018**

**zoning01 | 11 | 2019**

**ADDRESS:** 6699 N High St., Worthington, OH 43085

**PID:** 100-005055-00 1.71 +/- acres

**HEIGHT DISTRICT:** H-45, 3-stories

**ZONING:**
- Existing: C-3
- Proposed: C-3, CONDITIONAL USE

**USE:**
- Existing: Parking lot for funeral home.
- Proposed: Preschool and educational daycare facility with exterior playground spaces.

**NOT TO SCALE**

**SITE MAP**

**CITY OF WORTHINGTON**

**ADP 02-19**

**DRAWING NO.:** ADP 02-19

**DATE:** 04/10/19

**Approved**

Architectural Review Board
City of Worthington
Date: 04/29/2019

**Jynda Biter**

Clerk

Approved

Municipal Planning Commission
City of Worthington
Date: 04/29/19

**Jynda Biter**

Clerk

**Proposed Site Plan**

**EXHIBIT "A"**
Storm water management per staff memo
Demonstrate fire access and water flow
Lights poles and bases to be painted black

Approved
Architectural Review Board
City of Worthington
Date 04/25/2019

Zoning Notes:

1. One 2" tree per 6,000 S.F. of parking area required. Four (4) trees provided.

2. Existing Evergreen Buffer between Commercial, Zoning and Residential, to the west to remain.

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ACCESS AND PARKING EASEMENT AGREEMENT

THIS ACCESS AND PARKING EASEMENT AGREEMENT ("Agreement") is made to be effective on the last date of signature by a party hereto (the "Effective Date"), by and between JAVID PROPERTIES CO., an Ohio general partnership ("JAVID"), and [INSERT BUYER’S ENTITY NAME], an Ohio ____________ ("Elliott"). JAVID and Elliott are sometimes individually referred to herein as a “party” and together as the “parties”.

Prior Instrument References: Office of the Recorder of Franklin County, Ohio Instrument Numbers ___________________ (as to the JAVID Parcels, as such term is defined below) and ___________________ (as to the Elliott Parcel, as such term is defined below)

Concerning Parcel Nos.: 100-005055, 100-005056, 100-005057, and [INSERT PARCEL NUMBER FOR TO-BE-SPLIT PARCEL]

RECITALS

WHEREAS, JAVID is the owner of certain real property located in the City of Worthington, Franklin County, Ohio, known as Franklin County Auditor Parcel Numbers 100-005055, 100-005056, and 100-005057 (collectively, the “JAVID Parcels”);

WHEREAS, Elliott is the owner of certain real property located in the City of Worthington, Franklin County, Ohio, known as Franklin County Auditor Parcel Number [INSERT PARCEL NUMBER FOR TO-BE-SPLIT PARCEL] (the “Elliott Parcel”) (the JAVID Parcels and the Elliott Parcel are sometimes individually referred to as a “Parcel” or together as the “Parcels”); and

WHEREAS, the parties desire to create and establish an easement over, on, upon, through, and across a portion of the JAVID Parcel for the purpose of providing a means of
vehicular and pedestrian ingress and egress between the Elliott Parcel and the public street known as North High Street; and

WHEREAS, the parties also desire to create and establish an easement over, on, upon, through, and across a portion of the Elliott Parcel to provide vehicular parking for users of the JAVID Parcels and a means of vehicular and pedestrian access between the JAVID Parcels and the Elliott Parcels.

WHEREAS, the parties also desire to create and establish an easement over, on, upon, through, and across a portion of the Elliott Parcel to provide for storm sewer utilities, including but not limited to the construction and maintenance of a perpetual watercourse, ditch, channel or other drainage facility upon the Parcel. Grantor/Owner herein retains the right to use said Parcel for any and all other purposes provided that such use does not interfere with nor impair the exercise of the easement herein granted.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Parking Easement.

A. Grant of Easement. Elliott hereby grants and conveys to JAVID and its successors and assigns, for the benefit of the JAVID Parcels, a perpetual non-exclusive easement (a “Parking Easement”) over, on, upon, through, and across parking spaces and adjacent drive aisles and pavement that now exist or which may in the future exist on the Elliott Parcel for purposes of providing parking spaces for the owners, tenants, users, visitors, customers, and invitees of the JAVID Parcels and vehicular and pedestrian access to and from those parking spaces. The portions of the Elliott Property which are burdened by the Parking Easement initially shall be those portions of said real property which on the Effective Date are improved with paved parking spaces and paved drive aisles. It is anticipated that in the future the Elliott Parcel will be redeveloped with the construction of a new building and associated paved parking areas and paved drive aisles and other improvements. The rights under the Parking Easement shall be temporarily suspended without further action of the parties beginning at such time as the owner of the Elliott Parcel commences construction on or redevelopment of the Elliott Parcel and ending at such time as a temporary or permanent certificate of occupancy has been issued for a new structure that is constructed on the Elliott Parcel (“CO”). Upon the issuance of a CO, the portion of the Elliott Parcel which is burdened by the Parking Easement automatically shall be deemed to include only those portions of the Elliott Parcel which are paved and marked for parking or intended for use as drive aisles, with the beneficiaries of the Parking Easement. Prior to such time that construction on or redevelopment of the Elliott Parcel commences, there shall be no restrictions on the times when users, visitors, and invitees of the JAVID Parcels may...
exercise their rights under the Parking Easement. After such time as a CO is issued, the exercise of rights under the Parking Easement shall be subject to the following:

i. Between the hours of 6:00 AM and 6:00 PM on weekdays, users, visitors, and invitees of the JAVID Parcel may use a maximum of 20% of the parking spaces on the Elliott Parcel on a non-exclusive first-come, first-serve basis, it being acknowledged by JAVID that any use of 80% or more of the parking spaces on the Elliott Parcel during these times by the owners, tenants, users, visitors, customers, and invitees of the Elliott Parcel shall not be a default under or breach of this Agreement.

ii. During all times other than contemplated in the immediately preceding paragraph, users, visitors, and invitees of the JAVID Parcel may use any or all of the spaces on the Elliott Parcel on a non-exclusive first-come, first-serve basis, it being acknowledged by JAVID that any use of the parking spaces on the Elliott Parcel by the owners, tenants, users, visitors, customers, and invitees of the Elliott Parcel shall not be a default under or breach of this Agreement.

B. Maintenance of Parking Areas; No Unreasonable Interference. Elliott shall keep and maintain in good condition and repair, at its sole cost and expense, the portions of the Elliott Parcel which are burdened by the Parking Easement, including (but not limited to) snow and ice removal and repair and replacement of pavement and striping. The owner of the JAVID Parcel or its tenant(s) shall have the right to enter upon such portions of the Elliott Parcel as necessary or desirable to remove ice and snow in order to permit the use thereof during all hours when no business is open on the Elliott Parcel. Elliott shall not take any action which services to unreasonably interfere with the permitted uses of the portions of the Elliott Parcel which are subject to the Parking Easement by the beneficiaries of the Parking Easement.


A. Grant of Easement. JAVID hereby grants and conveys to Elliott and its successors and assigns, for the benefit of the Elliott Parcel, a perpetual non-exclusive easement (an “Access Easement”) over, on, upon, through, and across the portions of the JAVID Parcels which now or in the future are paved for use as driveways or drive aisles on the JAVID Parcels (the “Access Easement Area”), for purposes of providing the Elliott Property and its owners, tenants, users, visitors, customers, and invitees with vehicular and pedestrian access to and from North High Street. The owner(s) of the JAVID Parcels shall be required to allow for at least one paved vehicular connection from a driveway/drive aisle on the JAVID Parcels to the shared boundary line between the JAVID Parcel and the Elliott Parcel in order to ensure that the Elliott Parcel has access to the public street system. At least thirty (30) days prior to redeveloping the Elliott Parcel, Elliott shall deliver written notice to JAVID indicating its intent to begin such redevelopment along with a site plan demonstrating the manner in which Elliott proposes to locate private driveways on the Elliott Parcel to connect to existing paved driveway?
improvements on the JAVID Parcel, and requesting JAVID to respond to Elliott with any written objections within twenty (20) days thereafter. Within twenty (20) days following its receipt of such written notice, JAVID shall deliver to Elliott any written objections that JAVID may have to the proposed paved driveway locations on the Elliott Parcel and, if JAVID has any such objections, the parties shall work in good faith to agree upon modifications to the site plan for the redevelopment of the Elliott Parcel to resolve the objections. The failure of JAVID to timely deliver any written objections to Elliott shall be deemed to be conclusive evidence that JAVID has no objections.

B. Maintenance of Drive Aisles; No Unreasonable Interference. The owner of the portion of the JAVID Parcels that is adjacent to the Elliott Parcel shall be solely responsible, at its sole cost and expense, for maintaining, repairing, and replacing pavement within the Access Easement Area, including (but not limited to) snow and ice removal and repair and replacement of pavement. Any and all maintenance, repair, or replacement activities by such owner shall be required to be undertaken in a manner that does not eliminate the ability of the beneficiaries of the Access Easement to have some means of access to North High Street or to access the Elliott Parcel from North High Street. Reasonable good faith efforts shall be taken to undertake maintenance, repairs, or replacements of improvements within the Access Easement Area at such times and in such a manner so as not to unreasonably interfere with the operations of any business located on the Elliott Parcel. JAVID shall not take any action which services to unreasonably interfere with the permitted use of the portions of the JAVID Parcel which are subject to the Access Easement by the beneficiaries of the Access Easement.


C. Grant of Easement. JAVID hereby grants and conveys to Elliott and its successors and assigns, for the benefit of the Elliott Parcel, a perpetual non-exclusive easement (a “Storm Sewer Utility Easement”) over, on, upon, through, and across the portions of the JAVID Parcels for use as a watercourse, ditch, channel or other drainage facility on the JAVID Parcels (the “Storm Sewer Utility Easement Area”), for purposes of storm sewer utility construction and maintenance.

D. Maintenance of Storm Sewers, Watercourse, Ditches, Channel or other Drainage Facilities; No Unreasonable Interference. The owner of the portion of the JAVID Parcels that is adjacent to the Elliott Parcel shall be solely responsible, at its sole cost and expense, for maintaining, repairing, and replacing pavement within the Storm Sewer Utility Easement Area, including (but not limited to) snow and ice removal and repair and replacement of pavement. Reasonable good faith efforts shall be taken to undertake maintenance, repairs, or replacements of improvements within the Storm Sewer Utilities Easement Area at such times and in such a manner so as to not unreasonably interfere with the operations of any business located on the Elliott Parcel. JAVID shall not take any action which services to unreasonably interfere with the permitted use of the portions of the JAVID Parcel which are subject to the Storm Sewer Utility Easement by the beneficiaries of the Storm Sewer Utility Easement.

4. Performance and Remedies. In the event of any breach or threatened breach of any easement or right granted under this Agreement, the non-breaching party shall have all rights
available at law or in equity, including, without limitation, the right to enjoin such breach or threatened breach in a court of competent jurisdiction, and the right to specific performance. In addition, if any party has not performed its necessary maintenance obligations within ten (10) days after having received written notice from the other party of the need for such work (or, if by its nature the necessary maintenance cannot be completed within such time, the responsible party has not commenced such work within the 10-day period and thereafter diligently pursued such to completion) then the other party shall be entitled to enter upon the relevant easement area and perform such maintenance and upon completion thereof shall be entitled to reimbursement for the cost thereof from the other party plus an administrative fee of ten percent (10%) of such cost.

5. **Not a Public Dedication.** Nothing contained herein shall be deemed to constitute a dedication of any part of the JAVID Parcels or the Elliott Parcel which are burdened by an easement created hereunder to the general public or for any public purpose whatsoever, it being the intent of the parties hereto that this Agreement is strictly limited to and for the uses and purposes expressed herein.

6. **Covenants Run with Land.** The rights and obligations created in this Agreement shall run with the land and shall be binding upon and inure to the benefit of the respective successors, assigns and transferees of JAVID with respect to the JAVID Parcels and of Elliott with respect to the Elliott Parcel. “JAVID” and “Elliott” as used herein shall refer to any person or entity owning the JAVID Parcels or the Elliott Parcel, respectively. An owner of the JAVID Parcels or the Elliott Parcel shall have no liability under this Agreement except with respect to matters occurring during its period of ownership.

7. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter hereof. There are no statements, promises, representations or understandings, either oral or written, not herein expressed.

8. **Counterparts; Recording.** This Agreement may be executed in two or more counterparts, which together shall be deemed to constitute but one and the same instrument. This Agreement shall be recorded with the Office of the Recorder of Franklin County, Ohio (the “Recorder”), and may not be amended unless a written amendment is executed by all of the owners of the JAVID Parcels and the Elliott Parcel and then recorded with the Recorder.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

[Signature pages to follow; No further text on this page.]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

JAVID:

JAVID PROPERTIES CO.,
an Ohio general partnership

By:________________________________
Print Name:_________________________
Title:______________________________
Date:_______________________________

STATE OF OHIO )
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this ____ day of ____________, 201_, by ____________________________, the __________ of JAVID PROPERTIES CO., an Ohio general partnership, on behalf of the partnership.

________________________________
Notary Public
EXHIBIT "B"

STATE OF OHIO )
COUNTY OF FRANKLIN ) SS

The foregoing instrument was acknowledged before me this ___ day of ____________, 201___, by _________________________, the ___________________ of ____________________________, an Ohio ________________, on behalf of the ________________.

____________________________
Notary Public

STATE OF OHIO )
COUNTY OF ______ ) SS

ADP 02-19
The foregoing instrument was acknowledged before me this _____ day of March, 2017, by ______________________, the ______________ of JAB Estate Operator LLC, an Ohio limited liability company, the Manager of The Elliott, Real Estate LLC, an Ohio limited liability company, on behalf of the limited liability company.

____________________________
Notary Public

This instrument prepared by:
Aaron L. Underhill, Esq.
Underhill & Hodge LLC
8000 Walton Parkway, Suite 260
New Albany, Ohio 43054
(614) 335-9320