

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
July 16, 2020**

AGENDA:

Old Business:

Approval of Minutes of Regular Board of Zoning Appeals Meeting held on June 18, 2020.

New Business:

- 1. 7007 East Pleasant Valley Road, Redwood Living -** Requesting a variance to 1151.09(c)(1) of 15' to permit a ground sign to be 85' from a residential lot line (85' requested, 100' permitted).
- 2. 7568 Scenicview Drive, Joseph & Elizabeth Paterniti –** Requesting a variance to 1143.02(b)(2)B of 48 sq. ft. to permit an accessory building to be 192 sq. ft. in size (144 sq. ft. permitted, 192 sq. ft. requested).
- 3. 6803 East Sprague Road, Matt Brzoska –** Requesting a variance to 1143.02(a)(2) to permit a second accessory building on the property (not permitted); a variance to 1143.02(b)(1)(2) of 2' to permit a height in excess of 15' (17' requested, 15' permitted); and a variance to 1143.02(b)(1)(B) to permit a four car garage to be 40' x 28' (36' x 24' permitted).
- 4. 7058 Hawthorn Trace, Dale Kainski –** Requesting a Hearing Pursuant to Codified Ordinance § 1365.17.

The virtual meeting was called to order by Chairman Mark Moreal at 5:34 p.m. and the following responded to Roll Call:

PRESENT: **Mark Moreal, Chairman**
 Chris Walchanowicz, Councilperson
 Charles Bredt
 Carol Fortlage
 Pasquale Monteleone, Jr.

ALSO
PRESENT: **Gregory J. O'Brien, Law Director**
 Michael Gero, Building Official
 Don Ramm, City Engineer

Chairman Moreal stated that at this time he would like to ask the Board if there were any corrections, changes or additions to the June 18, 2020 Meeting Minutes.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mrs. Fortlage stated that she would like to suggest that the Board not vote on the Minutes tonight. She had a couple of questions like there was a place where Mr. Monteleone was inaudible on Page 10. She stated that he would think he would know what he said and could put that in there. She stated that they were complicated Minutes of a complicated meeting. She felt like she would not like to feel that she was the only person who thoroughly went over them and maybe she was not.

Chairman Moreal stated that the Board could hold off until next month.

Mrs. Fortlage replied, okay, thank you.

Chairman Moreal asked the Secretary if they had most of the applicants on line.

The Secretary stated that she didn't know if the first applicant was on line or not. She did not see his name unless he was calling in on a phone. She stated she had two people with just phone numbers.

Chairman Moreal stated that before they got started, he would like to read the Board of Zoning Appeals Opening Statement.

The BZA is a quasi-judicial body and, as such, its role is similar to a judge in a court case. The Board will hear evidence and testimony that is factual and will make decisions based upon the facts, which are presented, and the rules as set forth in the Zoning Code principles of law.

The City of Independence has adopted a Zoning Code and, per the City's Charter, has appointed a five-member Board of Zoning Appeals. This Board is empowered to hear and decide appeals and to authorize variances from the strict terms of the Zoning Code where the variance

will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the Zoning Code will result in practical difficulty or unnecessary hardship, depending on the type of variance requested.

With this being stated, the Board's proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest, mainly contiguous property owners (or their legal representatives), the opportunity to present the evidence, certain procedures need to be followed:

All interested parties must be sworn in. The applicant will be asked to present evidence to support the requested appeal, the Board will ask questions, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence. Any party may ask questions to another party.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

It is the applicant's burden to produce evidence to support the application. The Board will not make the applicant's case for them. In order to prepare appropriate meeting minutes, each person who speaks will need to state, for the record, his or her full name and address. The meeting may be continued by either the applicant or the Board. The Board must base their decision upon facts and not on expressions of concerns or non-factual matters. The action of the BZA does not become final until 30 days after the date of the meeting that the minutes were approved. Any appeal may be made to the Cuyahoga County Court of Common Pleas by an interested party within 30 days of the date the minutes are approved.

7007 East Pleasant Valley Road, Redwood Living – John Lateulere was in attendance and sworn in.

Mr. Lateulere apologized for being tardy.

Chairman Moreal asked Mr. Lateulere to explain the need for the requested variance.

Mr. Lateulere stated that the existing sign that was out there was square in size. It was located approximately 65 feet from the residential property line. It was built when the building was built. He stated that they were using that sign for their construction sign right now. The sign that they were proposing would be 40 square feet. It was located north from the residential property line. He stated that if he would go to the full 100 feet, there would be a situation where the guardrail along the frontage on East Pleasant Valley would come into play from a visibility standpoint, and then there was a grade that drops off the back. He stated that the 85 feet would be as far east as he could move that sign without the sign going down the hill or getting complicated with that guardrail. He stated that they were trying to keep it so that you could see it coming westbound, and the 85 feet would allow them to get it in that right spot.

Mr. Bredt asked City Engineer Ramm to bring up the aerial view on the screen. He asked what Number 4 signified in the picture.

Mr. Lateulere stated that Number 4, there was nothing over there. He stated that he didn't know what it would have signified. There was nothing there.

Mr. Bredt replied thank you.

Mr. Lateulere stated that there were the two directional signs, those would eventually get consolidated to one sign.

Chairman Moreal asked if the existing sign was actually closer to the residential property. He asked if he was correct by saying that.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mr. Lateulere stated that was correct. He stated that they would be moving it approximately 20 feet further to the east. He stated that the dimensions on the sign, he knows that they were down to hundredths of a foot. It was because of the PDF software that he has. He stated that his intention was to put it 5 feet setback from the right-of-way, which would be compliant, and then 85 feet from the property line. He stated that it said 84.87", but it was really a function of the software.

Mr. Monteleone asked if he knew the height of the sign off the ground.

Mr. Lateulere stated that it was overall 60 inches high, 5 feet. It would be on top of a stone base.

Mr. Monteleone stated that when he was pulling out of there, the old sign was kind of blocking the traffic. He stated that he wanted to see that one go away.

Mr. Lateulere agreed. He stated that the existing sign might have been 2 feet from the right-of-way, it was pretty close.

Chairman Moreal stated that Mr. Lateulere improved on the vision for drivers. He moved it further from the residential property. He stated that he didn't see any issues there.

Mr. Monteleone stated that there was another sign indicated that said building sign. He asked if they would be putting 2 signs up, or just one.

Mr. Lateulere stated that there will be a sign on the building. He stated that there was a concrete wall that would come out from the building. You won't be able to see it from Pleasant Valley Road. He stated that it was for the walk up of the building. His understanding was the building sign and site sign were both in compliance. He stated that he included the building sign for reference only because it was not subject to any variances.

Mr. Bredt stated that Mr. Lateulere stated that the sign was double sided. He asked if both sides would have the same graphics.

Mr. Lateulere stated that was correct. He stated it would be an exact flip around of the other side.

Mr. Bredt asked if the sign would be lit 24/7.

Mr. Lateulere stated that they would light it. He stated that it was internally lit. He stated that the actual cabinet itself was not at night. All you would see would be the tree and the Redwood Apartment Neighborhoods. He stated that it would be internally lit in channel letters. He stated that they like it lit around the clock, even during the day so that if a storm comes, you would still be able to see the sign.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mr. Bredt asked if the 7007 and the word “Home Office”, he asked if it was lit.

Mr. Lateulere stated that they will be highly reflective coating on them so when the Police and Fire would be trying to find the building, they will light up when they would shine the light on them, but they would not be internally illuminated.

Mr. Bredt asked if they would need the words “Home Office” on there?

Mr. Lateulere stated that a lot of people have Corporate Office. He stated that for them, they build residential units. He stated that it was important to their identity. He stated that it was a similar sign that they use on each one of their projects, in each one of their neighborhoods. He stated that for them it would important to their identity to have the home office identified on there. He stated that if for some reason that would be objectionable, he could be convinced that it would not have to be there. He stated that he would then replace the 7007 and underneath it would say East Pleasant Valley if he was to do that. Mr. Lateulere stated that he would prefer to keep it as “Home Office.”

Mr. Bredt stated that was fine.

Mrs. Fortlage stated that she wanted to stated that she appreciated the fact that the sign was being moved closer to code, and that the quality of the application was admirable. She appreciated that also. She does not have any problem with it as discussed.

Mr. Lateulere replied thank you.

A motion was made by Councilperson Walchanowicz, seconded by Carol Fortlage, to approve the variance.

ROLL CALL: Yeas: Walchanowicz, Fortlage, Monteleone, Bredt, Moreal

Nays: None

MOTION CARRIED

Mr. Lateulere thanked the Chairman and the Members of the Board for understanding.

7568 Scenicview Drive, Joseph & Elizabeth Paterniti – Homeowner Joseph Paterniti was in attendance and sworn in.

The Chairman asked if the neighbors were notified, and if there were any neighbors present.

The Secretary stated that the neighbors were notified, and there were no neighbors in attendance.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Chairman Moreal asked Mr. Paterniti to explain what he was doing and why he needed the variance.

Mr. Paterniti stated that he would just like to build a 12' x 16' shed. He apologized for not being an artist, and his drawing was not very good.

Chairman Moreal stated that the lot was 332' x 106', and he was putting it in the right corner. He would be staying 10 feet off the rear, and 15 feet off the side yard.

Mr. Paterniti agreed. He stated that they could see the neighbor's shed over there in that same area.

Mr. Bredt asked Mr. Paterniti if he was putting the shed on a gravel or concrete pad.

Mr. Paterniti stated that it would be on gravel.

The Chairman stated that he took a look at it, and he didn't have any issue with it.

Councilperson Walchanowicz stated he didn't have any issue. The way it was set back, you would not be able to see it from the road.

Mrs. Fortlage stated that it would affect no one else. She had seen it also.

A motion was made by Charles Bredt, seconded by Carol Fortlage, to approve the variance as presented.

**ROLL CALL: Yeas: Bredt, Fortlage, Walchanowicz, Moreal, Monteleone
 Nays: None
 MOTION CARRIED**

6803 East Sprague Road, Matt Brzoska – Homeowner Matt Brzoska and Mike Vetalice were both in attendance and sworn in along with neighbors, Heather MacRaild, Karen and Ed Haslow and Attorney Sam O'Leary.

Law Director O'Brien stated that for the neighbors in attendance who do not have their names on the screen, when it would be their turn to speak, he asked them introduce themselves for the Board members so they can write the name down if there are any questions.

Chairman Moreal stated that Mr. Brzoska was before the Board approximately 3 years ago, and at that time the matter was tabled. He asked Mr. Brzoska to shed some light on what he was asking for and what has changed from 3 years ago.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mr. Brzoska stated that he wanted to build a 40' x 28' garage. He stated that he had a couple of antique vehicles and a boat that he would want to keep in there. He stated that he would need the ceiling height for a lift so he could stack a couple of cars in there. He stated that the size of the garage, he believes that would be the room he would need to take care of that.

The Chairman stated that Mr. Brzoska was asking for a height difference and the size.

Mr. Brzoska stated that the size wasn't that far off from what the Chairman stated in the request.

Building Official Gero stated that Mr. Brzoska was also asking for a second accessory structure.

The Chairman stated that the Board has that. He asked Mr. Brzoska if he had plans to take down the existing shed.

Mr. Brzoska stated that he didn't have plans at this time.

The Chairman asked why.

Mr. Brzoska stated that he would keep all of his gardening stuff in there. He has a lot of garden equipment.

The Chairman asked Mr. Brzoska if he didn't believe he would have enough room in the new proposed building.

Mr. Brzoska stated that it would be iffy.

Chairman Moreal stated to the Building Official that Mr. Brzoska was asking for a four-car garage, and he had a two-car garage. He asked if that was correct.

Building Official Gero stated that he did have a two-car attached garage.

The Chairman asked if Mr. Brzoska would be allowed 5 parking spaces. It would make it a three-car garage. He asked if he was wrong.

Building Official Gero stated that the Chairman was correct in that.

The Chairman stated that Mr. Brzoska would be allowed to put a three-car garage up. He was asking for a variance to have a four-car garage; so it would be the size. He thought 24' x 36' was a three-car garage. The request would be for a size variance from the four-car requested to a three-car garage.

Mr. Brzoska stated that the total square footage he was asking for extra was 256 sq. ft. extra.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

The Chairman stated that it was not on the request, and that was why he was clarifying it.

Building Official Gero stated that the City code for garages does not go by square feet, it goes strictly by linear feet. Mr. Brzoska was asking for a 24' x 36' car garage, that would be a three-car garage. He stated that would be allowable. The next size up would be a 48' x 24' which would be a four-car garage. He stated that he Mr. Brzoska was right in the center of that, but it would be larger than a three-car garage.

The Chairman stated that the length was 40 feet as opposed to 36 feet. He was looking for a 4 foot variance for length.

Building Official Gero agreed.

Mr. Monteleone stated that he wanted to clarify something. He stated that the garage that would be going up would be way in the back corner. It would not be attached to the house.

Mr. Brzoska agreed.

Mr. Monteleone stated that there was a shed up front, it was an existing shed. He asked if Mr. Brzoska was going to run power all the way back to the new garage.

Mr. Brzoska stated that he was going to run power.

Chairman Moreal asked Mr. Brzoska what was his plan with getting over the creek.

Mr. Brzoska stated that there was actually a pipe in there, and he drives over it all the time.

The Chairman stated that he was aware there were big water issues back there. He has seen many pictures, videos. He doesn't think that has changed since 3 years ago.

Mr. Brzoska asked what kind of videos were there. He asked the Chairman if he had those handy.

The Chairman stated that he didn't have them on him. He asked the Secretary if that was correct.

The Secretary stated that there was a video sent by one of the neighbors.

Mr. Brzoska stated that the last time he applied a permit, he was told he had to get a topo map; and that was what he has provided for the Board. He stated that the survey company told him that water will never build up back there.

City Engineer Ramm stated that he had the video if the Board wanted to see it.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Law Director O'Brien asked if one of the videos was sent in by one of the neighbors on the line.

The Chairman stated that he believed so. The Secretary would know.

Law Director O'Brien stated that they should be the ones introducing the video so that Mr. Brzoska would have an opportunity to ask them questions if he so desired.

The Chairman stated that the Board would get to that then. He stated to Mr. Brzoska that Mr. Monteleone asked him where he was putting it. The Chairman stated that he walked back there today. He asked if Mr. Brzoska would be taking those trees down in that far right corner.

Mr. Brzoska agreed.

Mr. Bredt stated that so he was clear, they were talking about a 2 foot height variance, a 4 foot width variance and also the existing shed would stay which would make it a variance regarding that. He asked if that was correct?

The Chairman replied yes.

Mrs. Fortlage stated that she would appreciate a little more clarity on that as well. She stated that there was a question about three versus four cars; so what would be the size standard that they were truly measuring it against. She asked if it was the one that was typed here or something else?

Mr. Brzoska stated that what he thinks it would be, he was asking for a 48' x 28', it would just be an oversized three-car garage is what it would be.

Law Director O'Brien stated to Mrs. Fortlage that what the Building Official had mentioned. In 1143.02(B) it sets forth the size of the garages. The garages were set forth by linear feet, and because this would be more than a three-car garage, they would have to consider it as a four-car garage. Despite it being 40 feet, it would not matter. As long as it would be over the minimum three-car garage, it would be a four-car garage. That is what the Board would be approving. Candidly, if the board would approve it, and it was acceptable to the Board and passed, the applicant could build up to a 48' x 24'. He will not be limited to 40 feet. He asked the Building Official if he disagreed.

Building Official Gero stated that he would say if the Board approved a variance to allow a 40 foot garage, then it would be what it was if they were specific he would think.

Law Director O'Brien stated that he guesses he was remiss. He stated that if the Board would make a specific motion instead of granting a four-car garage and says that they grant the four-car

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

garage not exceeding 40' x 28' and that would be correct. He stated that if the Board would entertain the correct one, if that would be what they were so inclined to do.

Mrs. Fortlage stated that it seemed like there were 2 issues there. It was a four-car garage, which would not be allowed, three-car would be allowed; and then there was the size question. She asked if really belonged in one single statement or two.

Law Director O'Brien stated that it did; it would depend on what the Board, when it gets through debate and decides, the majority of the Board. If the Board would want to grant the applicant a four-car garage, then the applicant could build what was set forth in 1143.02(B) with the dimensions. If the Board would want to grant a four-car garage but limit the applicant to the requested dimension in his application, then it should be very specific when they would make the motion.

Mr. Bredt stated that the application was actually labeled as a three-car reverse gable garage which he would, and he was not making a motion, he would suggest that it was a three-car garage limited to 40 feet in width, specific to the width. He stated they should stay away from the four-car garage.

Mrs. Fortlage asked if that meant that when they make the motion, the Board would adjust the language?

Mr. Bredt stated that in theory approve a three-car garage not to exceed 40 feet in width.

Mrs. Fortlage stated that the last time they talked about this matter, they had a lot of questions which was why it was not voted on; and she has not seen answers to those. She asked if there was an easement or not? She stated that there was piping in the back, so there were a lot of questions that were shown in the Minutes of 3 years ago related to that. She asked if there was an easement. She stated that they had too many issues that they didn't have answers to, and as far as she could tell, they still don't.

Mr. Brzoska asked what easement was Mrs. Fortlage talking about. He asked if it was the drainage ditch. There was no easement back there.

Several people stated that there was no easement.

Mr. Brzoska stated that the City of Independence verified that the last time.

Mr. Bredt stated that the last time they had a porch on the side or an overhang, etc. which he thought created some discussion as far as what would be seen by the neighbors. He stated that it did not appear to be part of the application now.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mr. Brzoska agreed.

Mr. Bredt stated that the water issue, regardless of what was causing it, he does believe that the Board needs to hear from any interested neighbors attest to that.

Building Official Gero stated that he would just like to voice that he disagrees with Mr. Bredt's statement as far as what the application stated versus what was actually being proposed, three-car or four-car. He stated that the applicants do not always necessarily state things correctly, and they were dealing with the code which was a precise and exact body of ordinances.

Chairman Moreal stated that he would be going by the statement that it was still a four-car garage with the certain dimensions. Was that correct?

Building Official Gero stated that would be his opinion, and the Law Director could agree or disagree with him.

Law Director O'Brien stated that he agreed.

Mr. Bredt stated that was how it was typed up.

Chairman Moreal stated that the Board could discuss all the dimensions as they move forward. He asked Mr. Brzoska if he had anything else to say right now. There were some neighbors on line that he would like to hear from.

Neighbor Heather MacRaild stated that she lived at 6758 Brettin Drive, and her husband sent an e-mail with some videos of the water that goes back there after a rain or snow. She stated that he sent it to the Secretary.

Chairman Moreal asked Mrs. MacRaild her concerns with the proposed structure.

Mrs. MacRaild stated that the amount of water that backs up in that area. She stated that it affects the neighbors, both the neighbors. She stated that she was directly back behind Mr. Brzoska. She stated that the water just flows through the back of his yard and then the neighbors' yards.

The Chairman stated that the neighbors were somewhat elevated. He stated that it was a low lying area.

Mrs. MacRaild agreed. She stated that her neighbor was currently putting in a fence, and she had to wait because of all the water that builds up. She stated that she knows that Councilperson Trakas also sent in an e-mail because he was also on Brettin Drive.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Law Director O'Brien stated that unless someone would be in attendance to present evidence like she was, if the City Engineer could roll the video so the applicant could see or perhaps she could describe the video and if the applicant would have any questions. People sending in e-mails to the Board outside of the hearing, the Board would not consider it during the discussion or debate for various procedural reasons.

Attorney Sam O'Leary stated that he was the counsel for the MacRailds. He stated that he was also around for the meeting back in 2017, and he appreciated the point that Law Director O'Brien just made. He stated that he thinks one of the challenges was that technologically speaking due to the controls of the meeting that were in place; they were not able to screen share as others would be, he can pull up the videos that were being referenced. He has them; however, he was not able to screen share them that he knows of through the settings that were in place. He stated that they would certainly like to present that evidence.

The Secretary stated that she could elevate Mr. O'Leary to a panelist, and he should be able to share his screen then.

Law Director O'Brien stated that the Board could finish with Mrs. MacRaild, and then the Board could go to Mr. O'Leary and he can provide information.

Mrs. Fortlage stated that the Board has a picture on the screen, she asked what was the point of it. She asked if someone was showing the Board water.

City Engineer Ramm stated that it was just a topographic drawing, and the swale was where the water flows. He stated it was the low lying area where the water path; when they were able to roll the video, she would see a concentrated flow of water. It would be consistent with where they would expect it to be based on the topography of the area.

Chairman Moreal asked the City Engineer if putting a garage where it was proposed, how would he see the effect of the water? He looked at it like if the applicant would want to put it there, the water will run if it would get that high, would run into his building. How would it affect everyone else? Does he see it blocking the flow?

City Engineer Ramm stated that they looked at the riparian setback map, and because it wasn't a wet stream all the time; it didn't show up on the riparian setback map. It was a stream with 25 foot setbacks to it. Utilizing the applicant's survey, they did draw in the water flows which would be right where the pipes were and then offset it 25 feet in the area to represent if indeed the map was adjusted or because it was in a stream, meaning that when it rains and is saturated, it was a flowing watercourse and to interpret and rise to a level where they would require a setback. The garage was still set back from the 25 foot setback limit. He stated that it would be 26 feet; that was what he scaled on the drawing.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Law Director O'Brien stated to the City Engineer, just for the record, the Board and the applicant and the attendees were viewing a map. Just so the record would be clear, please state what the diagram was for reference purposes for the Minutes.

City Engineer Ramm stated that it was the applicant's topographic site plan with some additional lines put in highlighting that he placed on it.

Mr. Monteleone stated that he had a couple of questions about the water. He asked that the water that went through there would be in the early spring most likely, and he asked if the water was there longer than 24 hours, or would it go away in 24 hours?

Mr. Brzoska stated that people could see water back there when it would rain. He stated that there was actually an open ditch that comes from the west, drains through his yard. He stated that there was a pipe on the east side of his property line that (inaudible) so it can't go in the pipe so it goes over the ground. It keeps on going. He stated that it was not feet of water, it was a couple of inches of water. It was just when the heavy rain comes. He stated that if it was just raining like a gentle summertime rain, it could rain for 24 hours, a gentle rain; and you will not see any water back there.

Mr. Monteleone stated that he understood. He stated that people have to understand that in the spring when the grass is not growing and it is dormant still, it doesn't absorb a lot of moisture or water. You get a lot of water that runs very quickly, and it looks worse than it really is. His question was to make sure that it was running and not sitting there; then it really wasn't a water issue. Water has to find a level which is usually the lowest point and then has to travel somewhere. As long as it would be traveling and not sitting, it was just traveling water. It usually occurs in the springtime when you have the heavy snow that melts, and it becomes a little saturated.

Mr. Brzoska stated that what he remembered from the video he saw, the ground was still frozen, and they had rain. The water will run over frozen ground.

Mr. Monteleone stated that he just wanted to make that clear that water has to find its way through; and unfortunately it has to go where it has to go, and it seems like it goes through those backyards. As long as it would keep traveling where it has to go, it's an okay situation.

Mrs. Fortlage stated that there was also the matter of permeable and impermeable surfaces; and she would like some sort of an opinion or help from the Engineer, who she presumes has looked into this. She asked if that would be right.

City Engineer Ramm stated that when they were discussing the project with the applicant, he did talk it over with his surveyor; and it was difficult to represent, but he does believe on the drawing, the thought was that the water ultimately has to be discharged to the same swale that

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

they were talking about, what they have done in the past, they have required an excavation installation of some limestone, some rock, a dry well where gutters and downspouts would discharge and allow the water to seep into the ground with the attempt to infiltrate it so that it would not be a direct, immediate runoff condition to the surface which would then impact people visibly right adjacent to the garage. He stated that it hasn't been sized yet, no calculations have been made or performed at this stage; but that was what it was meant to represent, the area there.

Mr. Monteleone stated that was a great idea. He stated that is (inaudible) of water that will sit so it will have time to drain using the river stone. That would help.

Mr. Bredt asked the City Engineer if that would be considered a French drain then.

City Engineer Ramm stated that basically it was a dry well, it has nowhere to go but through the ground; and of course when things are fully saturated, when it would be completely full, it would then leach out on the surface of the ground.

Mr. Bredt asked if the City Engineer would provide that calculation to the applicant or would it be required by them?

City Engineer Ramm stated that he was not quite sure what the requirement would be. Typically, the City's code does not require stormwater detention for potential residential houses or garages. He doesn't know what the standard of what they would be trying to achieve. He thinks it would be make more common sense and be more practical and reasonable since it's subjective to the concerns of the area, the sensitivity of the area.

Mr. Bredt stated that when the City Engineer, and he was going to use the word, out of context, so he apologizes; but if there was an existing water issue at times, and a large building would be added into that general area, that roof will become impermeable which means it will shed additional water at a fast rate into that area. Mr. Bredt stated that he liked the idea of having an area that will absorb at least the amount of water that the new roof would contribute to the existing environment. He was just wondering how that calculation can be made.

City Engineer Ramm stated that they would have to think about it because it would depend to what storm. Typically in hydraulics, they would be dealing with 5 year storms, 10 storms; there were thresholds.

Chairman Moreal asked the Secretary if there were other neighbors that the Board would need to hear from.

The Secretary stated that Karen and Ed Haslow have joined the meeting.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

The Chairman wanted to hear from them, and then everybody could speak, and then the Board could discuss further on.

Law Director O'Brien asked if they just joined the meeting.

The Secretary stated that it was a couple of minutes ago.

Law Director O'Brien stated that they need to be sworn in.

Chairman Moreal swore in Karen and Ed Haslow of 6815 East Sprague Road.

The Chairman asked which neighbor were they.

Mr. Haslow stated that it was to the east.

The Chairman asked the Haslows what would they like to say.

Mr. Haslow stated that as far as seeing water in the backyard, they have seen standing water in their backyard, but not in Mr. Brzoska's. He stated that when the water builds up primarily in the spring after the snow melts, it was probably gone within 24 to 48 hours at the most.

Mrs. Haslow stated that the water dissipates very quickly.

Mr. Monteleone stated that was what has to happen. As long as it would be gone in 24 to 48 hours, that was good.

Chairman Moreal stated that he had a question for the City Engineer. The steel pipe that Mr. Brzoska has on his property; does the City Engineer feel that it hinders the water flow through the creek.

City Engineer Ramm replied no, he believes it was a little bit bigger than the one that daylighted at the upstream end of the property. He believed that it was a 10 or 12, or maybe they were identical. He stated that he hadn't been there during a heavy rain.

The Chairman stated that he just wondered if it gets blocked. Obviously, if it would get blocked and no one was taking care of it as a homeowner, that could be an issue. He asked if a bigger pipe there be better off. He stated that it sounded like he was keeping what he has there if it would continue on. He would keep with the pipe that he has.

City Engineer Ramm stated ultimately if for some reason the pipe was overwhelmed, the water because of the lay of the land, would just spread out and keep on rolling. He does not believe it would have a choice but to do that.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mike Vetalice stated that he actually lives on Brookside Road.

The Chairman swore in Mr. Vetalice.

The Chairman asked Mr. Vetalice to state his address.

Mr. Vetalice stated that he lives at 8007 Brookside Road, across from the old Marycrest. He stated that he has a similar situation to Mr. Brzoska. He stated that he has a driveway that goes in the back. He has a garage in the back. He stated that it dips down. He has concrete over it. He only has a 12 inch culvert pipe, and the problem that Mr. Brzoska has, there is not enough height with the pipe there. There is a 16 inch steel pipe there now. He stated that you would almost need an elliptical pipe to be more not having it way up high. You would have to go way up and back down. Mr. Vetalice stated that what he has is the concrete down, and it was kind of like a ford in the Metroparks, any water that comes up there will flow across. Maybe in the spring and with heavy rain in the summer, it dissipates quickly and then it's dry. He stated that was the same thing Mr. Brzoska has. He was the one who talked him into going bigger on the garage. He has a 24' x 36' garage. He has a dually truck. Mr. Brzoska has a dually truck. If you pull it in, you can't even walk around it with a 24 foot garage. He told Mr. Brzoska to go 4 foot bigger. He stated that when you pull a truck in, he has no room to walk around the truck. He has to open the door to get around it. Mr. Vetalice stated that he was the troublemaker who made Mr. Brzoska go to a bigger garage.

Chairman Moreal replied thanks.

The Chairman asked if any of the neighbors wanted to speak. He believed he cut off one of the neighbors.

Attorney Sam O'Leary stated that he didn't know if the Board was still interested in seeing any of the videos that were referenced before.

The Chairman stated that everyone has spoken, they can see the videos now.

Attorney O'Leary proceeded to show a short video to the Board.

Law Director O'Brien stated that for the record, he asked Attorney O'Leary to describe the video and what it reflected.

Attorney O'Leary stated that the video was panning around through the area, the MacRaid's backyard adjacent where the proposed structure would go. It was showing, as was referenced by the Building Official before, a watercourse, flowing water and some standing and congregating water as well. He stated that would segway into the position, which if he could sum up briefly was that there were some pretty extreme water conditions and issues that form on that property,

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

fairly pervasively with the extent that they were recurring throughout the year and obviously have continued to occur since the last time the application was presented in 2017.

He stated that he appreciated some of the comments that have been with respect to some potential mitigating measures that could be taken in terms of installing something like a French drain or something similar for retention adjacent to the new proposed structure; but he thinks, and this was referenced, he would respectfully ask what would actually be required when rubber meets the road as far as that goes and what assurance do the neighbors have that it would be completed and completed in a proper fashion.

He stated that the other thing that he would point out would be generally he thinks they would all be hard pressed to imagine how the new proposed structure could possibly make any of the existing water issues better. He stated that the absolute best case scenario would be kind of a breakeven; and he thinks the arguments have been raised with respect to increasing the impervious surfaces go to that point, as well as the fact that if there would be significant excavation or just for the construction of the garage period, he thinks it would be worth exploring or worth considering what kind of grading would be required and what kind of impact that would have in terms of the water flow as well given that as it has been pointed out, it really was the neighboring property that was lower relative to the garage. He stated that if there were grading to be required to get to a flat surface for the construction of the garage, that would likely mostly negatively impact the neighbors.

Attorney O'Leary stated that the final point that he would make that beyond the water issues, which again are the primary focus here, there was also the point as was referenced before, there's a plan to take out several of the trees. He stated that there was material submitted to Ms. Beal previously back in the 2017 application, and he re-forwarded it today. He stated that it was apparent also on some of the other drawings they have seen that have been presented this evening, and the garage was in practicality closer to the MacRaild house than it would be to the applicant's home. He stated that with respect to the Zoning Code and its strict application, the applicant seeks 3 variances essentially because the building would be too tall, it would be too big and there were too many buildings on the property. He stated that what that would come down for the MacRaids he thinks it would be too close because when you have a structure that would be larger than what was intended by the code in terms of height, larger than what would be intended by the code in terms of footprint and more numerous than what was intended by the code in terms of the fact that there was already an additional two-car garage on the property plus another accessory structure in the form of a shed. It really would amount to kind of shoe-horning something into a property that was not intended by or contemplated by the code. Attorney O'Leary stated that would be all he would say.

Chairman Moreal asked Mr. Brzoska why that location. Why would it be so far back? Did he have any other options.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mr. Brzoska stated that it was the perfect spot for it.

The Chairman stated that Mr. Bredt mentioned before about the runoff water on the roof, it was a large roof. He asked what was Mr. Brzoska's plan? He asked if he planned on putting gutters on it.

Mr. Brzoska stated that he would put gutters on the garage.

The Chairman asked where would Mr. Brzoska tie the gutters into.

Mr. Brzoska stated that he would run them out on the ground.

Law Director O'Brien stated to Mr. Brzoska when he stated that it was the perfect spot for the garage, he asked why it couldn't be closer to his house. He stated that it seemed like there was a great deal of distance to move it up closer to the house and away from the neighbors so that he wouldn't alter the current aesthetic nature of the neighborhood.

Mr. Brzoska stated that it was nice and flat back there. He stated that it would be easier. He stated that he wanted to be back there in the trees. He has his fire pit back there. He stated that he thought it was the perfect spot to go back there and hang out. If he wanted to go and make a fire and sit back there, it was his hangout spot.

Law Director O'Brien wanted to ask another question. He stated that Mr. Brzoska was basically going to take the entire large surface of the roof and bundle it into gutters and downspouts that would be essentially shooting out and following eventually the natural water.

Mr. Brzoska stated that he would run the pipe to the ditch back there that the City provided.

The Chairman stated that was what he was waiting to hear. He asked if Mr. Brzoska would tie it into the creek?

Mr. Brzoska stated that he could run it into the waterway that they say he has back there. He will just run it right into that ditch. He stated that was probably an easier solution.

Chairman Moreal stated that the Board is here 3 years later, and he still has some concerns. He doesn't know about the rest of the Board with all the water issues. They keep talking about it and the placement. He stated that what he was hoping to see this time was the potential building staked out; and it wasn't. That was why he was asking Mr. Brzoska if he was tearing those trees down. He stated that it was nice to see a visual on where the building would be placed. He stated that he looks on the drawing and sees that; but it would be nice if Mr. Brzoska would put up 4 stakes up around some caution tape for the size that he was requesting. It would give the Board a better visual on what they were looking at.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Chairman Moreal stated that personally he would like to table the matter and maybe get some more questions answered, that being one of them. He doesn't know how the rest of the Board feels.

Councilperson Walchanowicz stated that the City Engineer knows that his biggest concern was the water. He stated that in the last how many months they have been dealing with flooding on the south end of Independence. He stated that he was concerned with it. They don't get light rains much anymore. Everything that they have been getting this year has been heavy rains, and he was worried that, granted the building might be higher, but it still may divert the water different ways. He stated that he would not want to see more water running into neighbors' yards, overflow water. He stated that unless there was a way that the Engineering Department could come up with a way of regrading it a more permanent solution of how to eliminate the water coming off his roof; he can't see that going onto the ground, it would have to go into some type of drainage. He stated that until he can hear or see what that will be in terms of the water and getting rid of it, and like the Chairman stated, putting those stakes in, he can't vote on it this evening.

Mr. Bredt stated that he appreciated what Councilperson Walchanowicz was saying, but to add to that, the fact that they were going to build a building which was not that much larger than what would be allowed in an area that would be legally placed from a setback standpoint. What concerns him with the water issues was that they would be removing trees also. He stated that there has to be a plan that they could see clearly defined on how they would deal with the water flow issues, especially with a large roof and the absence of the natural trees that were growing back there right now.

He stated that part of that could be the actual excavation plan which Don and Mike could review on the Board's behalf. He stated that just to get it out there, having that second accessory building would be a no-go as far as he was concerned.

Chairman Moreal stated that he would run with Mr. Bredt on that one because if you look at the application, Mr. Brzoska would be allowed to put a 48' x 24'. He was actually looking for a smaller building, but the Chairman's concern would be water also. He stated that if they could work something with the drainage draining, where the water would run off; and again, the second building, that doesn't run with the Chairman. He stated that if Mr. Brzoska would want the building, they would have to work with the Engineering Department. The Chairman stated that he would like to see it staked out. He stated that when he could see something physical like that, it is what he looks for. He stated that he would be in favor of tabling the matter.

The Chairman asked if there were any more neighbors who wanted to chime in right now.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Building Official Gero stated that he wanted to make one point. He stated that the agenda stated that a 48' x 24' building would be permitted. He stated that it should be a 36' x24'. He would be permitted to have a three-car garage.

Mr. Bredt replied thank you.

The Chairman stated that his first question earlier was that. He stated that Mr. Brzoska was asking for a 4 foot longer and 4 foot wider. It was not drastic, but still he believes the concern was the grading, the water; and he would like to see the layout of it.

Law Director O'Brien stated that the Chairman was asking if there were any other neighbors.

The Chairman asked if any more neighbors wanted to speak. There were no neighbors who wished to speak.

Chairman Moreal asked if there were any Zoning Board members who wanted to speak.

Mrs. Fortlage stated that she wanted to add that she too has significant qualms about the water. She stated that one of the questions they always are supposed to run over could this be resolved in another way, which it could being brought up to the higher flat spot; and she understands the desire to put it back there, but she believes it would complicate a situation that was a major, major headache for the City. She stated that she has not heard that it would be mitigated. She would not be able to cast a vote in favor of the request this evening.

Chairman Moreal stated that Mr. Brzoska was asking for a 40' x 28'. The dimensions on his plan were inside dimensions, so it would really be bigger than 40 feet.

Mr. Brzoska agreed.

The Chairman stated that would have to be corrected or whatever he was going to ask for would have to be amended.

Mr. Monteleone stated that he was not concerned about the water. He stated that he thinks it will flow. There were a lot of questions about the rooftop. The rooftop will gather the water, but if it wasn't there, it would still fall on the natural ground anyways. He stated that a lot of that water will fall regardless. He stated that he was not too concerned about the water flow; he was more concerned about why does Mr. Brzoska have to put it so far back there in the water. He stated that he would like to see it come up closer to his own personal house, and he would like to see that other existing shed be removed and maybe just make the new garage a little bit bigger. He stated that he would rather have one structure a little bit bigger than having two structures.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Law Director O'Brien stated to Mr. Brzoska that he had a choice. He stated that if someone would make a formal motion to table the matter, they generally ask for the applicant to consent to table the matter. If Mr. Brzoska didn't want to give his consent, then the Board would vote tonight on the application.

Mr. Brzoska stated that if he would choose just to put up a 24' x 36', he could put it back in that corner with no issues.

Mrs. Fortlage stated that would be two buildings.

Law Director O'Brien stated that Board Member Carol Fortlage was correct.

The Chairman stated that Mr. Brzoska could do it if he would remove the other structure.

Mr. Brzoska stated that he didn't even have to go to the variance meeting then; he will just take it down and not worry about it.

Mrs. Fortlage stated that she didn't actually understand what Mr. Brzoska meant.

Mr. Brzoska stated that he wouldn't need a variance, he would just go with 24' x 36' garage, and he will take down the shed.

Mr. Bredt stated that Mr. Brzoska was correct.

The Chairman asked the City Engineer if he would have to get involved on the placement of the garage. He stated that he knows it would be out of the Zoning Board's hands; but how would it work on the Engineering end?

City Engineer Ramm stated the first step was already performed in terms of the site plan, so then it would be a matter of modifying the site plan and still figuring out where to position it. He stated that knowing that the minimums could not be exceeded and making sure that the provisions are allowed for the natural flow of water to move through there. There might need to be swales installed around both sides of the garage to allow the water to work its way around it and ultimately end up where it would end up at the low spot. He stated that there definitely would be some involvement in the Engineering Department to continue to review the plan prior to the issuance of the permit.

Building Official Gero stated that the applicant would need to come before ABR with the revised plans, the revised site plan and revised garage drawings to reflect what he would be actually building. He stated that therefore the ABR would also make it contingent upon Engineering's approval for drainage.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mrs. Fortlage stated that they would need exterior dimensions, not interior.

Chairman Moreal stated that if the Board would decide not to table the matter, and the applicant would want to move forward on his own, the Board could vote on it as is, or they could talk about tabling the matter.

Mr. Bredt stated that actually if Mr. Brzoska was talking about doing it according to code, he could just withdraw his application for a variance right now.

Law Director O'Brien stated that was correct.

Councilperson Walchanowicz stated that he could not get the ceiling height he requested for his lift.

Mr. Bredt stated that Councilperson Walchanowicz had a good point.

The Chairman stated that on his own, he would have to remove the accessory building.

Mr. Bredt stated that would be part of the building permit application.

Councilperson Walchanowicz stated that his concern was Mr. Brzoska just adding that extra couple of feet with a 24' x 36' so that he could make a lift in there. He would have to come back for a variance so he could put his lift in. Wouldn't he?

Mr. Bredt stated that if he truly needed that, then he would have to come back.

Chairman Moreal stated to Mr. Brzoska that the Board has two options. The Board could vote on the matter or he could withdraw, or the Board could table the matter.

Mr. Brzoska stated that he wanted the matter tabled for now.

Chairman Moreal stated that if Mr. Brzoska would come back to the Board, the Chairman asked for one favor, to stake out the building with some caution tape. The Board members could all revisit it and maybe get together with the Engineering Department and talk about some of the water issues. The Chairman stated that the majority of the Board has water issues, so he thinks it is something that would need to be looked into.

Mrs. Fortlage stated that as requested by the applicant, she will move to table the matter.

A motion was made by Carol Fortlage, seconded by Councilperson Walchanowicz, to table the matter.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

**ROLL CALL: Yeas: Fortlage, Walchanowicz, Monteleone, Breddt, Moreal
Nays: None
MOTION CARRIED**

Law Director O'Brien stated that if the matter would come back before the Zoning Board, the Minutes and all the testimony and all the exhibits because it was tabled, would continue on. He just wanted the neighbors to know that, and that will be part of the record; and the Board if they would eventually vote on the matter, could utilize all the information presented today at a subsequent hearing to make their decision.

Chairman Moreal stated that the final item on the agenda this evening was a request for a hearing pursuant to Chapter 1365.17 of the Codified Ordinances.

7058 Hawthorn Trace, Dale Kainski – Homeowner Dale Kainski was in attendance.

Chairman Moreal asked if there were any neighbors present. The Chairman wanted to put into the record what the Board was here for this evening.

The Chairman stated that the request was timely submitted by Dale Kainski relative to a Notice of Violation he received from the City of Independence. During the hearing, Mr. Kainski will present testimony and other evidence on why the Notice of Violation issued against him should not proceed as set forth in Chapter 1365.17. Following Mr. Kainski's presentation, the Board will hear from Building Official Michael Gero and Law Director Greg O'Brien on justification for the Notice of Violation. He stated that the Board will have both sides speak amongst each other.

Following the presenting of all testimony and evidence, the Board will discuss and then vote whether to issue an order incorporating the Notice of Violation, issue an order modifying the Notice of Violation in any way the majority of the Board determines to be just or equitable or issue an order withdrawing the Notice of Violation in its entirety.

Law Director O'Brien stated that he knows that the Chairman and he talked about the procedure. He stated that if there were residents who were attending, residents from the adjoining properties or vicinity, they should have an opportunity to speak.

Chairman Moreal stated that he would swear them all in right now. He stated that he would swear in Mr. Kainski first. The Chairman then proceed to swear Mr. Kainski in.

Chairman Moreal asked which neighbors were on the line. Jim Shurilla of 7046 Hawthorn Trace was sworn in. He stated that he lived to the east of Mr. Kainski.

The Chairman asked Mr. Kainski what he had to say.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mr. Kainski stated that he requested the hearing to petition the Board for the City's Notice of alleged property maintenance violations. He stated that this afternoon he delivered to Debi Beal a number of exhibits in the form of documents and photographs which he invites the Board to examine. He stated that he believed the exhibits will demonstrate that he has satisfied all of the requirements of the City's ordinances, and the requirements that would satisfy Mr. Ramm and Mr. Gero for each of the alleged violations. Mr. Kainski stated that he wanted to have some feedback.

Mr. Shurilla stated that they also had Doug Grassian on the line. He was currently muted and cannot speak. The Chairman asked for Mr. Grassian to be unmuted.

Mr. Kainski stated that addressing first the issue of landscaping, Mr. Gero's telephone conversation with him on May 28th and in his letter to Mr. Kainski dated June 17th which was Exhibit 6 that he provided to the Board. Mr. Gero advised him that if he could not install landscaping by the deadline that he established, he stated that if he produced a signed contract from a landscaper showing that he was prepared to go forward with landscaping. Mr. Kainski stated that yesterday he reached an agreement with a landscaping company, and he now has a signed landscaping agreement which was Exhibit 1, thereby satisfying Mr. Gero's requirement.

Mr. Kainski stated that secondly, as acknowledged in Mr. Gero's letter of June 17th, Exhibit 7, Mr. Gero agreed that the issue of a single missing panel of vinyl siding had been resolved as of June 5th.

Thirdly, as to general landscape maintenance, pending installation of a lawn and planting beds, Mr. Kainski had attempted to maintain the property in a manner consistent with his discussions last fall with City Engineer Don Ramm, Exhibit 3. To prevent soil erosion and silt runoff, Pulte Homes has installed silt socks to trap water and silt. He stated that they also spread commercial seed and straw to provide surface water and sediment control. He stated that in the fall of 2019 he also applied residential seed and straw to anchor the soil and reduce runoff.

Mr. Kainski stated last year and this year he has cleared the yard of debris to enable him to actually mow the vegetation, including grass and weeds. He stated that he also used a weed whacker and weed killer to limit or stop the growth of weeds as in his letter of June 8th. He stated that he will continue to maintain control of the weeds and grass until a landscaper can clear the land of all vegetation in preparation for the installation of the lawn. He stated that in his photo exhibits 10 and 13 it showed the browned out areas where he killed the grass and vegetation. He stated that this and the landscaping agreement which he signed should provide sufficient assurances to the City that his yard has been and will continue to be well maintained pending installation of landscaping.

Mr. Kainski stated that photos 14 and 15 are of neighboring yards across the street from his home, and he compared that to his landscaping.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Chairman Moreal stated that right now Mr. Kainski was in front of the Board so they were hearing him right now, and they were not worried about his neighbors or the other houses. He understands that, but if he may just add this; and Mr. Kainski can tell the Chairman if he was wrong. The Chairman stated that Mr. Kainski was issued a building permit on June 6, 2017, a temporary occupancy permit on October 16, 2017. The Chairman stated that the City's ordinance requires him to be complete with landscape by 18 months after pulling a permit. So, that would have taken him to December of 2018. He stated that Mr. Kainski missed all last year. He wanted to ask Mr. Kainski why the Board was here in 2020, and he thought the City was pretty good as far as not issuing a violation a lot earlier. He stated that the violation was issued on June 17, 2020 from the City, and Mr. Kainski's final grade was November 21, 2018. The Chairman asked if Mr. Kainski could tell the Board why they were still here, and he didn't have his landscaping.

Mr. Kainski stated that as he explained in his June 8th and June 18th letters to Mr. Gero, Exhibits 5 and 8, the primary focus of his intentions during that period was on construction of his home and the correction of enumerable errors and defects in that construction. He stated that in addition to the relatively mundane construction issues that everyone encounters he believes, painting errors, nicks, gouges, cracks, nail pop outs, holes in the wall. In his case there were also broken windows, broken tiles on the floors, leaking water faucets, frozen water lines, shutters and siding that blew off the walls outside, improper electrical wiring, icicles suspended from indoor ceiling light fixtures, falling concrete in front of the garage, leaking gutters, gutters which were angled at the wrong direction away from the downspout, and on and on. He stated that as a result of these and other defects, Mr. Kainski did not move into his home until November of 2018. He stated that the focus of his attention getting the house constructed properly, meeting a great deal of resistance from Pulte, he was not able to attend to the landscaping. He stated that there were items outstanding at the time of the closing. There was a long list. He stated that he once had a 35 page punch list of items with Pulte. He stated that they were not fully resolved at the time of closing, but he couldn't postpone the closing anymore; and he had to just close and follow Pulte's promise that it would complete the corrections shortly after. They did in some respects, they did not in other respects. One most noticeable was the spalling of concrete and the ponding of water on the garage pad. He stated that many other people on the street had problems with spalling of their driveways, which were removed by Pulte; but Pulte did not remove his. They have promised to do so many times, they intend to do so; he just doesn't know when they intend to do that.

Mr. Kainski stated that Mr. Gero suggested that he proceed with the landscaping, and he worked out an agreement with Pulte as to when they will do the actual concrete repair. He was amenable to that because he doesn't want to postpone this any longer himself. He would prefer to get the concrete in first, but he has to deal with the circumstances that he has.

Chairman Moreal stated that he was sorry about all of Mr. Kainski's problems in the house, but the Board was here for the landscape; and he understands that Mr. Kainski moved in 2018, but

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

he is sitting here and finds it hard to believe that all last year, spring, summer and in the fall, he didn't address the landscape issue.

Mr. Kainski stated that in his interactions with Mr. Gero and Mr. Ramm, he has spent a great amount of time and effort trying to locate a landscaper who was willing and able to perform the work at a reasonable charge. He stated that it was very difficult as they explained to him that they could not go forward. They were busy, their lines were backed up. He stated that the biggest thing that they all complained of was the weather in spring. He stated that they pointed out to him that this was the third wettest spring in this area since 1881 with the snow coming as late as May; they were not able to do the work that they needed to do to set up lawns, and that pushed all their clients back further. He stated that some of them were now waiting to have their lawns installed in August.

One of the neighbors asked if they could chime in.

The Chairman stated that they could.

Doug Grassian of 7070 Hawthorn Trace stated that he lived next door to Mr. Kainski. The Chairman then proceeded to swear in Mr. Grassian.

Mr. Grassian stated that he listened to the litany of excuses that the lawn has not been put in. He will stated that they have all had some issues with Pulte. He stated that certainly some of the things that Mr. Kainski that he had mentioned happened to each of them; yet they have still been able to focus to be able to get landscaping in. Mr. Grassian stated that he doesn't buy any of that, and he feels like if they were going to delay this anymore; they have had 2 full years at least to get landscaping at this point. He stated that it just does not hold water with him. He stated that there was the aesthetic piece of it when you drive by, and you have an empty canvas and have been looking at it for quite some time. He stated that he will also state that what is happening in that yard would be starting to impact what was in Mr. Grassian's yard. He stated that there were a number of crabgrass that was growing from Mr. Kainski's yard on to his side of the yard. He stated that he has to deal with that; and then secondly he doesn't like the idea of someone spraying weed killer throughout their entire yard and then having it drain into his potentially. Mr. Grassian stated that he did not see that; although Mr. Kainski would see it as a maintenance thing, he actually would see it as a danger to his yard.

Mr. Grassian stated that he feels for Mr. Kainski for his problems with Pulte because he certainly has them himself; but he just doesn't see how it would take 100% of your time and you would not be able to get some landscaping in. He stated that he feels like it has been 2 reasonable years to be able to do this; and if they would delay it any longer, he feels that the Board would get more excuses. Mr. Grassian stated that he was hoping that they could come to some sort of resolution that Mr. Kainski could move this along and move it along quickly.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Chairman Moreal thanked Mr. Grassian. He asked if there were any other neighbors.

Mr. Shurilla stated that he was sworn in earlier. He stated that he seconded the comments that Mr. Grassian had mentioned regarding the aesthetics, the spread and the weed killer. He stated that he did want to take a little step further as it would relate to the weed killer. He stated that he did have children and animals that were on his property. He stated that he feels that it is a safety hazard to spray the entire property.

Mr. Shurilla stated that the other issue that he has was the safety as it relates to mowing the property as it stands today with the number of stones, rocks, debris that could easily shoot from a standard lawnmower causing significant damage to an individual if they were outside at that time.

Councilperson Walchanowicz had a question. He asked Building Official Gero how Mr. Kainski was given his permanent occupancy permit if he had all the issues with the house that he was saying that was why he couldn't get his stuff done.

Mr. Kainski stated that he did not receive the final occupancy permit yet.

Building Official Gero stated that Mr. Kainski had not received the final occupancy permit. He has received the temporary occupancy permit allowing him to occupy the house pending finishing of the final grade and landscape which was customary. He stated that punch list things, he doesn't know how those occurred. He stated that final inspections were done, and they were all good at that time. The house was code compliant.

Mrs. Fortlage asked what was the duration of a temporary occupancy permit.

Law Director O'Brien stated that as the Building Official just stated, the duration in this case has been perpetual because the final occupancy permit would be issued once Mr. Kainski would put his lawn in and his landscaping.

Mrs. Fortlage asked if they would expire.

Law Director O'Brien replied no, it doesn't; but the point is, it was not about occupancy permit, it was not about final permit. He stated to Mr. Kainski's point about other neighbors, they will be getting to them in due course. He stated that one of the tenets of the new Administration was property maintenance code, and he thinks he could speak for the Building Official that Mayor Kurtz is very, very energetic about them making sure that property maintenance codes will be followed.

He stated that Mr. Kainski moved into the house in November of 2018. He has had 3 months shy of being there for 2 years. The Law Director stated that he happened to know because he

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

was going through Mr. Kainski's exhibits that both the City Engineer's office and the Building Official have been more than patient; and he would ask the Board after they take in all the evidence to affirm the Notice of Violation. Mr. Kainski now has a landscaper. Perhaps he could move them along before they get to court, and they will certainly take that into consideration and talk to the Administration about it; but they need to move this along. If Mr. Kainski is not going to put in his lawn, which the Law Director appreciates, if Mr. Kainski was not going to put the lawn in, then they were duty bound to get a court order to get that lawn put in or assess a fine.

Mr. Shurilla asked if he could ask a question as it relates to the agreement that was reached. He asked what was the proposed timeline from the agreed upon landscaper agreement for installation.

Law Director O'Brien stated that it was a very generic. He stated that Mr. Kainski submitted it as part of the exhibits. He stated that it was a very, very generic agreement. He stated that it could potentially be subject to change; but it said that the landscaper would start within 60 days. He was assuming that there was some down payment which the agreement did not reflect, not that the Law Director cares about what it costs. He stated that as long as Mr. Kainski was happy, and the landscaper was happy, it didn't concern the City. He stated that it would finalize within 30 days. The Law Director stated that they would like to see that starting immediately in the event the Board confirms the Notice of Violation; and it has just been too long, and it needs to get going.

Chairman Moreal stated that he totally agreed with the Law Director. He stated to Mr. Kainski that he wasn't a landscaper, but he knows the perfect time to plant a lawn this time of year was mid- August; so that would give Mr. Kainski a month to get the lawn in. The Chairman asked Mr. Monteleone if he was safe to say that? Was that a good time to plant a lawn?

Mr. Monteleone stated that he definitely has to say a few things here. When he pulled up to the lawn, to him it was starting to look like a lawn; and what he was noticing as to what Mr. Kainski had said was, they put in construction grade seed, and then that came up. That construction grade seed is supposed to maintain at 3 or 4 inches, and it was only temporary. He stated that it was to hold the ground together.

Mr. Monteleone stated what struck him a little bit differently was Mr. Kainski stated that he then put in residential grade seed. He stated that he was trying to make the area look like a lawn, and it was really not prepped to be a lawn. He stated that then Mr. Kainski continued to state that he was going to spray weed killer to keep the weeds down and try to make it look like a lawn. To him it started looking like a lawn, but it was really never prepped to be a lawn.

Mr. Monteleone stated to the herbicide control that everyone was worried about, that was a topical so it would be sprayed on top. Once it would hit dirt, it would be deactivated. He stated

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

that it was not a big concern, but spraying with kids and dogs, you should put up a sign stating that.

Mr. Monteleone stated that the next step would be that you could always establish beds at any time. He stated that unfortunately he heard that he had 35 pages of the house being up in arms, but that was not the Board's problem. He could have put some beds in, and the Board probably would have been happy. He could always put a lawn in after. He also stated that the other landscapers are not putting in lawns now. They were putting in beds, but they were not putting in lawns. They were skipping along until August. August 15th is a great time to plant.

Mr. Monteleone stated as to the contract he saw, it doesn't fly with him. It is a piece of paper that is handwritten. He stated that he didn't think it would fly. He doesn't feel that he was comfortable even saying that it would work. He stated that 60 days from now they will be getting into rain, and it will be pushed a little longer. Unfortunately, this has to be taken care, and it has to be taken care of ASAP. There are a lot of houses back there. There's a lot of value back there, and they just can't have it. All that being said, Mr. Monteleone stated that he summed up what he wanted to say.

Chairman Moreal stated that it was very well said.

Mr. Kainski asked if he could speak now.

Chairman Moreal stated that Mr. Kainski could speak.

Mr. Kainski stated that he would like to go back to Mr. Grassian's discussion how his lawn, or lack of a lawn, was impacting his yard and that he has crabgrass. He stated that he just walked the entire area of his front, back and side yard; and he didn't see any crabgrass. What he did see was chickweed, and he sprayed to kill the chickweed because that certainly grows rapidly and could infect other people's lawns. He stated that just like the chickweed from across the street that was blowing seeds into his lawn and everyone else's lawn around him.

Mr. Grassian stated that was a far point, and it was because he goes out there and picks it every day; that is why it was not there.

Mr. Kainski stated that it was not in his yard. He just walked through the yard, and he didn't see any crabgrass. He stated that he knows what crabgrass looked like.

Chairman Moreal stated to Mr. Kainski that was beside the point right now as far as the crabgrass. The Board was here to talk about him getting his landscape done. He stated that it has been way too long as everyone has mentioned. The Chairman stated that he lost a year, and he was losing the summer right now.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mr. Kainski stated that he fully intends to install landscaping.

The Chairman asked Mr. Kainski if he had a contract with somebody. He stated that it didn't look like a professional contract written by anybody. He asked who was Mr. Kainski's landscaper?

Mr. Kainski stated that it was a contract. He stated that the contract was signed by Valley View Landscaping.

The Chairman asked when do they want to start?

Mr. Kainski stated that on Saturday they were going out to look at rock. The first thing the landscaper is going to do would be to install a sprinkling system. They talked about that again yesterday. He stated that would be the first thing the landscaper would do. Then the next thing after that would be to install the rock walls that need to be installed. They will pick rocks on Saturday, which ones he will want. He could get started on that, and the landscaper told him he could get started on that very soon. That was not something that would be waiting until August. He stated that before the landscaper could actually plant seed, he intends to put in the irrigation system, put in the rock walls and then put in the beds. Then all of this is planned to start immediately, just as he believed they have all wished. He stated that it was his plan too. He stated that was a legitimate contract he had. He stated that he didn't know what reason they had to indicate that it was not a contract. It was dated, it was signed, it had terms. It was a contract.

Mrs. Fortlage asked if she could ask a question. She asked procedurally since this was a hearing rather than a variance request, she wondered how the Board move forward. She asked if it was a motion to affirm whatever the Law Director said before? She asked if that was how they proceed, and then they vote?

Chairman Moreal stated that the Board will discuss it and talk about the 3 options that he mentioned earlier. They could either incorporate a motion that the Notice of Violation or they modify it or they withdraw it. He stated that those were the 3 options.

Mrs. Fortlage stated that she was asking how the Board would do that? Do they do that by making a motion?

Law Director O'Brien stated that he thinks that the Chairperson could recommend, based upon the comments of the Board, to see if anyone would be inclined on option 1, 2 or 3 based upon the Codified Ordinances, those limited options available to the Board of Zoning Appeals. The Law Director stated that he would suggest and request that the Board would start with option 1 which would be the affirmance, and a motion to authorize the Chairman to issue an order affirming the Notice of Violation. If that passes, then the Board would not need to go to option 2 or 3; and then within the time period set forth in the Code, which would be 10 days, the Chairman would

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

issue the order. The applicant will know leaving this meeting what order was coming; and then after that order would be issued, they would move forward from a legal standpoint unless there is a material advancement of that landscaping, that lawn being put in. If that would be the case, the Law Director would consult with the Building Official, and more importantly the Mayor to determine if he would like one of the lawyers in the office to hold off on any filing and see how if the lawn would actually be put in, the landscaping would be put in. If not, based upon the 2 years, with all due respect to everybody on the phone; they have a job to do, and they will go and do it well.

Chairman Moreal asked the Law Director if the process, once they would move forward, would take 3 or 4 weeks?

Law Director O'Brien stated that he was not trying to be funny, but given the lateness, they have over 650 lawyers; and he is sure he will be able to find one tomorrow to start the process. Putting that aside, it would probably take 4 or 5 days for them to put together a pleading just to get it in the queue and get it filed.

Mr. Bredt stated that he had a question for the Building Department. He wanted to know if the landscaper that was being entertained to do the work, would that landscaper be registered with the City of Independence?

Building Official Gero stated that he didn't know at this time; he did not check to confirm registration.

Mr. Kainski asked if he could comment.

Chairman Moreal asked if there were any comments from the Board on the 3 options. The Chairman stated that he was inclined to stay with option 1. He stated that he thought it had been long enough. He stated that it was great that Mr. Kainski had a contractor and was going to move forward; but the Board has to keep it moving forward.

Councilperson Walchanowicz stated that he would second that motion.

The Chairman stated that he was not making a motion, he was just giving his opinion. He wanted to hear everybody else out so the Board knows which way to go with this.

Mr. Monteleone stated that he felt the same way. The Board needs to lock something here, get something done pretty quick.

Mrs. Fortlage stated that she agreed, and if Mr. Kainski would get the job done in time, it will all go nowhere; but she thinks they need to take the step of affirming.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Mr. Kainski stated that he wanted to remind the Board that Mr. Gero indicated that he would be satisfied when he produced for him a signed contract binding a landscaper to come in and do the landscaping work. Mr. Kainski stated that he has done that.

Law Director O'Brien stated that he read the letter, he stated that he would not refer it to the Prosecutor. He stated that as the City Law Director, they were operating under the Codified Ordinance framework that the City provides. He stated that he will not get into a debate whether the 2 page document constitutes a contract or not. He stated that it was really irrelevant. He stated that the issue was they were following the Code, and there will be a vote. He stated that he thought that Mr. Kainski had clear direction; and Mr. Kainski will determine that it is in his best interest; and they will proceed in the best interest of the City.

Mr. Monteleone wanted the contract put up on the screen one more time because he only saw one of the pages.

Law Director O'Brien stated that it was a 2 page document with an attached handwritten exhibit.

Mr. Monteleone stated that it didn't fly.

Councilperson Walchanowicz agreed.

Building Official Gero stated that for the record, Mr. Kainski was referring to him saying that he needed to produce a contract. He stated that the sentence was "if the landscape is not completed or you are not able to produce a contract with a landscaper by June 22, 2020, I have no option but to refer this situation to the City Prosecutor for further action."

Mr. Kainski stated that everyone feels that it is not a contract. He stated that he did consider it a contract.

Chairman Moreal stated to Mr. Kainski that he wanted to hope it was a contract; Mr. Kainski believed it was a contract. The Chairman stated that he thought the Board should get moving on it. The City has been fair enough.

Mr. Kainski stated that he understood, and he does plan to move on the contract. He stated it was why he had the contract. He stated that as he explained to the Board, his landscaper intends to start with the irrigation system, and they were going to start with rocks on Saturday. So, he told him specifically that he plans to get started even before he can put in the lawn because that would be the last thing he would put in. He stated that may not be completed until mid-August because everyone of the 19 landscapers that he interviewed, told him that they cannot plant grass in the summer.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

Law Director O'Brien stated to Mr. Kainski that he wasn't a landscaper, but if he has a sprinkler system installed in his lawn; his guess would be that he could plant lawn anytime except for the winter. It really is not before this Board. He doesn't want to get bogged down on whether or not the document a contract. He stated that from a legal standpoint, he really didn't care. The Law Director would like the Board, he respectfully requests the Board to pass a motion authorizing the Chairman to issue an order affirming the Notice of Violation so that the Law Department could do what they need to do with an eye towards if Mr. Kainski would get moving, gets the lawn started materially, they will touch base with the Administration to see if they want them to hold off and see how that progresses.

Mr. Kainski asked the Law Director what his timeline was on that.

Law Director O'Brien stated that he didn't envision given the amount of workflow that the Law Department was doing, that they will be able to file the Complaint with Garfield Municipal Court until this time, by the earliest, this time next week. Perhaps it could be the end of next week.

Mr. Kainski stated that he didn't know if he could have an irrigation system installed by the end of next week; but he believes they could get started on that.

Law Director O'Brien stated that he will say this, he will personally touch base with the Administration, if Mr. Kainski would have a robust crew out there digging and pulling up and preparing to and installing a sprinkler system followed by the covering of the sprinkler system and a proper topsoil grade to start getting in the seeding, he will personally go to the Mayor and ask him if he wants to hold off. It will be his decision.

Mr. Kainski stated that he understood the spreading of the topsoil, apart from what goes under the planting beds, would be one of the last things that would take place just before the seed would be put down.

Law Director O'Brien stated that if it would look likes there was material work going on there sir, he will go to the Administration and see if that would be satisfactory, with the understanding that they will continually monitor day-to-day the activity out there; and if they feel that the activity has stopped in any material duration, then they will be ready to file. He stated that was an assurance that he could share with Mr. Kainski.

Chairman Moreal stated to Mr. Kainski that he had mentioned that they would start doing something Saturday with the rocks, so that would be a start.

Mr. Kainski stated that on Saturday, the landscaper and himself would be driving out to the supplier nursery to examine the rocks, choose the rocks he will have.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

The Chairman stated that he thought the Board discussed the matter long enough, they have all the dates and times and all the discussion.

Mr. Monteleone stated that once they would put that irrigation system in, they would have to strip that grass that was there before they would put the sprinkler system in. That is what usually happens.

Mr. Kainski wanted to ask the Law Director if he would consider that, his landscaper will have to remove the vegetation. He has been trying to remove it by killing it himself; but he has to come in with a machine. It was called a Harley rake or rock hound which cultivates the soil, mixes in some topsoil; and all of that should take place before they put in the sprinkler system. He stated that if they would get started on that next week, will that show to the Board sufficient material work?

Law Director O'Brien stated that from a legal standpoint, he cannot speak what the Administration would believe would be material work. For him personally, not as the Law Director, sure he thinks that material. He stated that right immediately on the heels of that, would be the next step, and then immediately on the heels of that, the next step. He stated that what he wanted to make sure that was perfectly clear to him, is if the activity that Mr. Kainski described about bringing in this equipment, and then the site would go dormant for a week with no activity; you would probably get a Summons from the court. He stated that will be a decision for Mayor Kurtz, and what he decides. The Law Director stated that the Mayor was a very reasonable Mayor, and he believes that if he feels that there is a good faith effort, continual effort, to put in the landscaping, the lawn and the landscaping, his guess would be that having worked for him in previous Administrations, that will be satisfactory, provided that he makes sure someone would be monitoring the situation to make sure that the work does not cease.

Mrs. Fortlage stated that it was clear to her that Mr. Kainski knows what he needs to do, starting right this minute; and it was clear to her that the Board knows what they need to do, which would be to pass a motion to affirm what has happened to date with the City Administration. If somebody will word that for her, she will make that motion.

Law Director O'Brien stated that he would word that. The motion would be a motion to affirm the Notice of Violation issued by the Building Official on June 17, 2020, and authorizing the Chairman to issue the order consistent with that motion.

A motion was made by Carol Fortlage, seconded by Councilperson Walchanowicz, to affirm the Notice of Violation issued by the Building Official on June 17, 2020 and authorizing the Chairman to issue an order consistent with the motion.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
July 16, 2020**

**ROLL CALL: Yeas: Fortlage, Walchanowicz, Monteleone, Bredd, Moreal
Nays: None
MOTION CARRIED**

Mrs. Fortlage stated that they look forward to the neighborhood beautification.

Chairman Moreal asked the Law Director if they were good, and that was it.

Law Director O'Brien replied yes.

Chairman Moreal thanked Mr. Kainski, and they look forward to progress.

A motion was made by Chairman Moreal, seconded by Councilperson Walchanowicz, to adjourn the Board of Zoning Appeals meeting of July 16, 2020.

**ROLL CALL: Yeas: Moreal, Walchanowicz, Fortlage, Bredd, Monteleone
Nays: None
MOTION CARRIED**

There being no further business, the Board of Zoning Appeals meeting of July 16, 2020 was adjourned at 7:22 p.m.

Chairman Mark Moreal

Debi Beal, Secretary
Minutes Unapproved at Time of Release 07/27/20

