

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
August 19, 2021**

New Business:

Approval of Minutes of Regular Board of Zoning Appeals Meeting held on July 15, 2021.

- 1. 6606 Bexley Court, Charles Soeder** - Requesting a variance to 1143.02(b)(A) of 2 ft. to permit a pool house to be 14 ft. in height (12 ft. permitted, 14 ft. requested), and a variance to 1143.02(b)(4)(B) of 24 sq. ft. to permit a pool house to be 168 sq. ft. (144 sq. ft. permitted, 168 sq. ft. requested).
- 2. 6696 Renwood Road, Alex Mummert** - Requesting a variance to 1113.09(c) to permit a driveway to be 1 ft. from the property line (3 ft. permitted, 1 ft. requested) and a variance of 3.5 ft. to permit a driveway to be 23.5 ft. in width (20 ft. permitted, 23.5 ft. requested).
- 3. 6800 Brecksville Road, City of Independence** - Requesting a variance to Chapter 1377 for Use and Development standards for Flood Damage Reduction and alteration of a watercourse.

The virtual meeting was called to order by Chairman Mark Moreal at 5:37 p.m. and the following responded to Roll Call:

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

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

ABSENT: **Chris Walchanowicz, Councilperson**

Chairman Moreal stated that at this time he would like to ask the Board if there were any corrections, changes or additions to the July 15, 2021 Minutes.

Mrs. Fortlage replied not even to the Minutes, no.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

A motion was made by Pasquale Monteleone, seconded by Charles Bredt, to approve the Board of Zoning Appeals Minutes of July 15, 2021.

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

Chairman Moreal stated that he was going to read the opening statement for the Board of Zoning Appeals.

The Board of Zoning Appeals 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 Ohio 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 undue 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.

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 are approved by the BZA. 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.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

6606 Bexley Court, Charles Soeder – Homeowner Charles Soeder was in attendance and sworn in. There were no neighbors present.

Chairman Moreal asked Mr. Soeder to explain to the Board why he needed the variances.

Mr. Soeder stated that they were in the process of installing a 20' x 40' in ground swimming pool. He stated that in conjunction with the swimming pool, they would like to put a pool house in. He stated that the pool house would be 12' by 14'. He stated that he was aware that he was permitted a 12' x 12', and they want the roof to be 14' in height. He stated that the main reason for the roof height was because architecturally it would fit very nicely with the house. He stated that if he went with any less, it would look a little different from what the house looks like.

Mr. Soeder stated that the pool house would represent exactly the way his house was built with hardy board siding on it, and there will be just electric in the pool house. They didn't want to put any plumbing in the pool house because the way their backyard is, they have to pump all their sewage out; so therefore they decided not to bother with any plumbing and just would have electric in the pool house. He stated it would be an open concept in the front, and there would be a TV.

Mr. Soeder stated that they met all the requirements as far as away from the property lines and things like that.

Chairman Moreal asked if everybody on the Board had a chance to view the property?

All the Board members replied yes.

The Chairman stated that he was out there the other night, and Mr. Soeder's property was very secluded back there. He stated that he didn't even know there was a pool back there. He stated that you can't see anything from the street, it was a beautiful setting back there. He stated that he didn't see any issues with the variances whatsoever. He stated that it fits very nicely back there.

Mrs. Fortlage stated that the orientation was such that the house and the pool were down low, so being taller would make no difference to the neighbors.

Chairman Moreal replied that it was correct.

Mr. Bredt stated that he agreed with both of the comments. He was just curious if Mr. Soeder drew the renderings himself.

Mr. Soeder stated that he didn't do it 100%. He stated that he does have CAD stuff available to him, so he worked with a friend of his who put it together.

Mr. Bredt stated that it was well done. He wanted to thank Mr. Soeder for that.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

Mr. Soeder thanked the Board.

A motion was made by Charles Bredt, seconded by Pasquale Monteleone, to approve the requested variances.

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

6696 Renwood Road, Alex Mummert - Homeowner Alex Mummert was in attendance and sworn in. There were no neighbors present.

Chairman Moreal stated that he drove by the other day and took a look at what Mr. Mummert was looking to do. He was sure that everybody else on the Board also did. He asked Mr. Mummert to tell the Board why he would need the variances.

Mr. Mummert stated that he was looking to widen his driveway wider than the 20' allowance and go one foot from the property line due to the narrowness of the lot. He stated that there was a chimney on the west side of his property preventing him from putting a walkway leading into his backyard right up against the house. He stated that he was trying to make it as accessible as possible for not only himself but any guests that he would have. He stated that he does have family members that have some disabilities, so he wants to make sure it would be accessible to them as well.

Chairman Moreal asked Mr. Mummert if the width of his driveway was more like a parking area to get three cars across he was assuming.

Mr. Mummert stated that was correct. He stated that they have a neighbor across the street actually who regularly plays musical cars. He stated that they have four cars over there; so as they have lived there for the past year, they noticed that was a thing that they did on a regular basis that they were trying to future proof their driveway. He stated that they were doing it once, and they want to make sure they were doing it right.

Chairman Moreal asked Mr. Mummert if he was looking to line up that drive extension with the sidewalk. He stated that he saw the sidewalk, and he asked if he was staying in line with that.

Mr. Mummert stated that they were trying to line it up since they were already going for the one foot variance on the west side; they were looking to continue that line down one foot away from the property line to extend the driveway into that parking spot.

The Chairman asked Mr. Mummert if the neighbors knew what he was doing.

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

August 19, 2021

Mr. Mummert stated that he just had a conversation with the neighbor to the west two or three days ago. The neighbor saw that Mr. Mummert staked it out for the Board. They had a very quick conversation about what he was looking to do, if he had any issues with it. The neighbor told him it would look nice. He didn't have any problems with it.

Chairman Moreal stated that it was nice of Mr. Mummert to stake it out. He stated that the Board could then see what Mr. Mummert was looking to do.

Mr. Monteleone thanked Mr. Mummert for staking it out. He asked if the fence was his.

Mr. Mummert stated that it was his.

Mr. Monteleone asked if Mr. Mummert was going to put it up to the fence.

Mr. Mummert stated that they were going to move that fence gate where it was currently was back to the end of the house. He stated that eventually he would be putting in a deck as well as replacing that fence. The fence had some damage from trees falling on it at some point before they purchased the property. He stated that they were hoping to replace the fence, but unfortunately there were a lot more projects taking precedence over that.

Mr. Monteleone thanked Mr. Mummert.

Mrs. Fortlage stated that based on the grass cutting which was a little tough to be sure about, it looked like the fence was on the property line. She asked if it was.

Mr. Mummert stated that the fence was about six inches away from the property line. He stated that it was just enough for him to get the weed whacker in there and take care of it.

Mr. Bredt stated that he thought one of the important things on the application is the new concrete will line up with the existing sidewalk that was already active behind the house. He stated that for that reason, and again it was a well presented packet, he would move approval.

Mr. Monteleone seconded the motion.

Mrs. Fortlage asked if they were having further discussion.

Chairman Moreal stated that he was okay.

Mrs. Fortlage stated that she had her same qualms as usual about a driveway within one foot of the property line in that the snow would be moved onto the neighbor's property; and so she was not hearing enough reason to do that in the request.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

Mr. Mummert asked if he was able to address that concern.

The Chairman replied yes.

Mr. Mummert stated that his first response to that would be that in the winter typically he would not be shoveling the sidewalk on the west side of the property. He stated that he would not be moving any snow onto his neighbor's property. He stated that for the parking spot, he does have some grass towards the north near the sidewalk that he could intentionally make sure that he would be limiting any snow that would be pushed onto his neighbor's property, especially since it would be only one foot from the property line. He stated that he didn't want to upset any neighbor with anything that he would do regardless of whether it would be construction or ongoing maintenance. He stated that he heard Mrs. Fortlage's concerns, and he would be cognizant of that.

Chairman Moreal stated that he sees the piece of concrete that Mr. Mummert was extending was only about a four foot width, 3 foot 2 inches if he looks at the drawing. He stated that he sees what Mr. Mummert was saying. He could bring it down to the north, the little bit of snow that could be on there; but he understands Mrs. Fortlage's point.

Mr. Mummert stated that the parking spot he could split, especially since he would have that two foot base between the house and the sidewalk; so he could put some of the snow there or he could push it all the way down towards the sidewalk on the driveway and really try to minimize how much snow he was pushing onto his neighbor's property.

Chairman Moreal stated that if Mr. Mummert was a foot all the way down to the street, that would be a little different. Then there would be no place to put the snow. The Chairman gets that. He stated that he was still comfortable with Mr. Mummert wanted to do and the way he has it laid out.

Mr. Bredt stated that he was too.

Chairman Moreal asked if anybody else had anything.

A motion was made by Charles Bredt, seconded by Pasquale Monteleone, to approve the variances.

**ROLL CALL: Yeas: Bredt, Monteleone, Moreal
 Nays: Fortlage
 MOTION CARRIED**

6800 Brecksville Road, City of Independence - City Engineer Don Ramm and Jeff Henfling of Hull & Associates were in attendance. Mr. Henfling was sworn in by the Chairman.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

City Engineer Ramm wanted to summarize and then turn it over to the consulting engineer that was working on the project.

City Engineer Ramm stated that ODOT had hired Hull & Associates to do a feasibility study for replacement of a large box culvert under Brecksville Road, and through that study a report was prepared and a conversation was had between Hull & Associates and his office. He stated that the culvert was immediately north of Selig Road. He stated that it sits 480 feet long, and it was very large. It was 14 feet by 7 feet. He stated that it was old. It was built in 1928; so it would be getting near the end of its useful life, and so ODOT was programming its replacement. He stated that through the feasibility study knowing the disruption it would cause to do a more traditional excavation technique of removal and replacement with all the traffic and utilities, the feasibility study determined that the most feasible and cost effective way to treat the culvert would be to line it with a structural liner on the inside of the box culvert. He stated that what it would do would be to end up putting two individual cells in what was currently one large open area; and that was because the limitations of the liner he believes.

Law Director O'Brien asked like an innerduct.

City Engineer Ramm stated that was correct. You would kind of sleeve through the old culvert, and it would become a host pipe in essence; and the structural integrity would now be provided by the liner.

He stated that the creek triggered the flood damage ordinance. He stated that the creek was Hemlock Creek. It has a flood zone adjacent to it, and it runs through the culvert. He stated in Chapter 1377 when anybody would be developing along the flood plain or flood way would have to do hydraulic calculations; and ideally they would want to see zero rise in the flood elevation so that you could say as a result of a project, of a development impact, there would be no adjacent induced flooding.

He stated that through the hydraulic modeling the consultant would document footprints of the 100 year flood limits before the project, and then after the culvert was lined because of the reduction of square footage and capacity of the culvert, you would lose a little bit of capacity. Therefore, the limits of the flooding would get minimally increased, and their study was showing .43 feet rise, a little over five inches of rise. When they super-impose the two, it would be hard to even see any widening of the flood plains because it was in a significant ravine area

He stated that they felt from an engineering standpoint they could internally, the Engineering Department, could recommend a variance to 1377 because they felt it was a negligible impact. The variance does require them to go through this process, actually a public hearing would be required per the ordinance.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

City Engineer Ramm stated that they did briefly discuss the matter at the Utilities Committee meeting last month just to brief the committee about the project and the application coming before the Board of Zoning Appeals today.

City Engineer Ramm asked Mr. Henfling if he wanted to speak to anything specific or answer any questions.

Mr. Henfling thanked City Engineer Ramm for making his job a little easier in giving that opening.

Mr. Henfling stated that he works for Hull & Associates as an engineer. He stated that they were working for ODOT as City Engineer Ramm had mentioned. He stated that he had a lot of details, but he believes that the City Engineer covered a lot of things.

He stated that one thing to point out that he wanted to say was that the rise was localized right at the inlet of the culvert, and if you would go back another 200 feet upstream, the rise would even out and there would be no rise 200 feet and beyond of the stream.

He was at the site. He was part of the team that did the surveying and the eco study; and it was a very large ravine. He stated that it was very impressive. He stated that if the Board hadn't peeked over it or seen how deep it was, there were no structures, there were no properties that the localized flooding would impact; so that would definitely be a bonus. He stated that the City Engineer eluded to the fact that a more traditional culvert replacement would be an excavation and removal and replacement. He stated that the ravine was deep, so therefore the culvert was deep. He stated it would be a very large excavation. He stated that the daily traffic on Brecksville Road was about 15,000 cars a day. He stated they should imagine the impacts to traffic if they had to open it up.

Mr. Henfling stated that obviously the structural steel liner, they have done the study; and this is what they would recommend as the best option. He stated that it would limit the opening size, but because it would be steel, water would actually go through it faster than the existing concrete. He stated that there would be a little bit of a tradeoff there, but it would have that localized 5 inch rise.

He stated that he gave the Board the report. The City Engineer has been showing some photos on the board. He stated that he was sure the Board has had a chance to thoroughly review that report, but if there would be any questions, he was available.

Mr. Bredt stated that his question was more to do with the staging and the addressing of the issue. He asked if they would do it from the east side and the west side. Would the staging be on City property? How would they stage for the work?

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

Mr. Henfling stated that was a good question. He stated that ODOT, if they weren't aware, they were very strictly by the book; they only can work in the right-of-way. He stated that the City of Independence was public, but ODOT can only work in the right-of-way. He stated that if they would look at the culvert there, it would go outside of the right-of-way. He stated that there was local access to it in the right-of-way. He stated that there would need to be some type of coordination and collaboration with the City which they have been working with the City Engineer on and also the eastern property owner. He stated that if the variance would be approved, and they will reach out to them and try to access from that side. He stated that the plan as of right now would be to access from that northwest quadrant there from Brecksville Road. He stated that he thought they may have a lane closure and do a haul road to get down into the creek from up there. He stated that was what they had talked about.

Mr. Henfling stated that it was still a preliminary part of the design. He stated that they need to get the approval before they can move forward.

Mr. Bredt stated that as a follow up, if the variance would not be approved, and would ODOT have the right to close down the road to do the work if they would not get the variance or would it just be passed over?

Mr. Henfling stated that it was a state route. They want to see some collaboration with the City of Independence because obviously as a consultant they know that they would have to access it somewhere. He stated that even if they didn't get the variance, he thinks they would still require some type of collaboration with the City. He stated that it was the only way to do the project right. He stated that ODOT does have the right to open cut and only perform improvements in the right-of-way. It would not be a great idea, but they certainly do.

Mr. Bredt stated that would lead to his final comment, and that was it would seem like a classic case of a practical difficulty from the standpoint of allowing the work to be done; and they would be trading off one lane closure at a time versus closing down the road for an inordinate amount of time. He stated that he would be of the opinion, and he would make the motion to approve the application as presented.

Law Director O'Brien stated that this was a unique situation because one could argue the City would be exempt from its own zoning code, and there was case law on that. He stated that ODOT as Mr. Henfling may know because it was a state agency, merely they need to use reasonable methods to comply with local zoning codes.

He stated that having said that because in his 26 years, 23 representing the City, this was the first for him he believes; so it was a rather robust code section where they would have to put into the record Findings of Fact. He stated that he has no problem setting forth what they would need to put in as Findings of Fact; and just to do it right, it would be if he could spout off, it would be an

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

undue hardship analysis, spout off, and if Mr. Henfling could just put into the record some commentary. Then they would not have to come back and do a more formal thing.

Mr. Henfling agreed.

Law Director O'Brien asked Mr. Henfling to explain and assure the Board of Zoning Appeals that after this improvement there won't be any material swept onto other lands to the injury of others.

Mr. Henfling stated that the project will be completed. He stated that it will be designed so that there shouldn't be any scour issues. He stated that the design would account for erosion controls for sure.

Law Director O'Brien stated that the purpose of this project would be to actually to assist and prevent any damage or danger to life or property due to flooding. He asked Mr. Henfling if that was correct.

Mr. Henfling agreed. He stated that if the culvert were to fail, there would be actual flooding.

Law Director O'Brien stated that it was obviously an important service because it would be the only conduit that effectively would drain that area.

Mr. Henfling stated that he couldn't say for sure.

City Engineer Ramm replied yes. It would be the only one.

Law Director O'Brien stated that there would be no available alternative location for this project.

Mr. Henfling agreed.

Law Director O'Brien stated that it would be compatible with the current use, the current drainage section that was built pretty close to 100 years ago.

Mr. Henfling stated that he couldn't say what the previous drainage used to be, but he would imagine that the stream ran through there and eventually they built the road; and it was culverted. He stated that over time the culvert got extended further outside of the right-of-way, and this is what they have today.

Law Director O'Brien stated that this project would be in alignment with the comprehensive plan and flood management plan that the City has.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

City Engineer Ramm agreed. He stated that it was an integral culvert in need of repair. He stated it would be required. It was part of their system.

Law Director O'Brien stated that the motion would be based upon a finding of good and sufficient cause and a determination that the failure to grant the variance would result undue hardship due to the physical characteristics of the property, a determination that the granting of the variance will not result in increased flood heights beyond that which would be allowed in this chapter, additional threats to public safety, extraordinary public expense, nuisance, fraud or conflict with existing local laws; and a determination that the structure would be protected by methods to minimize flood damage, and a determination that the variance would be the minimum necessary considering the flood hazard to afford relief. He stated that based upon those considerations, he would amend Mr. Bredt's motion.

Law Director O'Brien stated that he would also amend the motion that the above testimony be considered the Findings of Fact of the Board of Zoning Appeals.

Mr. Monteleone stated that he would second the motion.

Mrs. Fortlage asked when is the public hearing?

Law Director O'Brien stated that this was the public hearing.

Mrs. Fortlage asked if it had been announced as such?

Law Director O'Brien stated that it has been noticed as a meeting to the public, and the public could have attended. He stated that he didn't read it as a traditional public hearing; he would read it as a form in the public setting.

Mrs. Fortlage replied thank you. She asked who was the property owner at the eastern end? She stated that there could be three as her guessing. She asked who was it?

Mr. Henfling stated that it was kind of gray over there, but they think that if you look at it, it was the United States of America if he recalls.

Mrs. Fortlage asked if it was the National Park?

The Chairman stated it was the National Park.

Mr. Henfling stated that the owner over there was the Cuyahoga County Port Authority.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

Mrs. Fortlage stated that still on behalf of the park, not on behalf of the lowest state, whatever you would call it these days. She stated it was not the Independence Technology Center, it would be the public lands. She asked if that is what they were saying.

Mr. Henfling stated that he believed so. He stated that he knows that the Board was kind of a quasi public agency.

Mrs Fortlage stated that they were quasi too. She replied thank you.

City Engineer Ramm asked Law Director O'Brien if he could ask a question.

Law Director O'Brien replied yes.

City Engineer Ramm stated that he believed the variances, if approved, would be good for a certain set period of days. He wanted Mr. Henfling to tell the Board the timeframe of when the culvert will be, he thought the culvert construction would be out several years; and he was just questioning how that could impact this approval duration, the life of the approval today.

The Secretary stated that a variance was for 270 days.

Law Director O'Brien stated that the variance request was in Chapter 13, and he wanted to know if that section was 270 days in Chapter 11.

The Secretary stated that she believed so.

Law Director O'Brien stated that this would affect Chapter 13, so he didn't believe that there would be a limitation for variances in Chapter 13 like the limitation in Chapter 11.

City Engineer Ramm replied perfect.

Law Director O'Brien stated that to be on the safe side, he was sure that Mr. Bredt would ask in this variance shall commence within the next 7 years.

Mr. Henfling stated that if they get the variance, then they have to do a Stage 1 plan set which would take another few months. They have to do some right-of-way evaluations in coordination with the City and property owner. He stated that he thought currently right now the construction would be planned for towards the end of next year; but he didn't see that happening. He stated that he believes it will be pushed out at least to 2023 because they were already delayed based on some of the things that they found out, one of them being needing the variance.

Chairman Moreal stated that as long as they would be moving forward, wouldn't that kind of constitute that they would be acting on this variance.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

Law Director O'Brien stated that he was not overly worried about it. He stated that candidly for the reasons he started out by saying.

City Engineer Ramm stated that during the discussion with the Utilities Committee, the comment was made relative to maintenance of the creek and stream and particularly at the inlet of the structure. He stated that presently there was a one single large opening, and the concern was that for cutting it in half, it could essentially induce some debris to get hung up more so than it currently does just because of (inaudible), and with ODOT being involved in any sort of debris removal or maintenance obligation as a result of the lining process. So, it was a question that came up, and he didn't have an answer at the time of the meeting; but he was throwing it out there so Mr. Henfling was aware and/or if you have an answer.

Mr. Henfling stated that he believes that, like he stated, collaboration with the City would be necessary; and ODOT would need to negotiate with the City on access and how they would line, how would be paying for what. He stated that he thinks that maintenance could be something that could be negotiated.

Mrs. Fortlage asked at this time who would be paying for the significant improvement?

Mr. Henfling stated that ODOT would be paying for the work within the right-of-way. They have public funds, and that was all they could do. So, negotiations with the City would be they already have the project opened up, they got it designed; he would imagine they would ask the City to pay for the improvement on the City's property. He stated that he couldn't say that for sure, but that is what he would imagine. He stated that it would be cheaper to do it that way than to have to pay for mobilization twice. He stated that there would be savings based on it already being designed and constructed.

Mrs. Fortlage stated that she normally thinks of right-of-way as being from the center of a street to a distance of 15 or 30 feet off; she asked if most of the length of this would actually be in the right-of-way?

City Engineer Ramm stated that their drawing indicated about 100 feet of right-of-way; so that would only really be this segment.

Mrs. Fortlage asked if it was 400 or 500 feet?

Mr. Monteleone stated it was probably 300 feet.

City Engineer Ramm asked Mr. Henfling about the entire culvert length.

Mr. Henfling stated it was 480 feet.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

City Engineer Ramm stated that it was on a diagonal; so it would be about 200 feet. He stated that he did recall, and he thought maybe Mr. Henfling was not part of the conversation. He didn't know if it was when Bob Parker was involved; he believed the comment was that if they had to open cut the culvert, they would likely only be working in the right-of-way and only be willing to replace the very piece in the right-of-way versus if they went with a liner, it would be much more cost effective to the extent that they would line the whole structure at the project cost. He stated that he couldn't say it was a fact; he recalled hearing it or having the conversation about the very questions that are being asked right now.

Mr. Henfling stated that he was not aware of those conversations; but he could attest that ODOT has said let's only do it in the right-of-way, and they have said that would not really make sense.

City Engineer Ramm stated that it would not be practical.

Mr. Henfling stated that for them it would make sure the road wouldn't collapse; but if the inlet portion collapsed, and it would be on the City's property, and all the flooding was upstream, they would be the ones that would have the issues. He stated that it was in everybody's best interest to collaborate on it.

City Engineer Ramm asked if there was a preliminary cost for the liner.

Mr. Henfling stated that it might have been in the report. He stated that he didn't have it readily available.

Mr. Monteleone asked if the information about the cost even the Board's business?

City Engineer Ramm stated that he was just curious because it came up.

Mr. Monteleone stated that he would have to say it probably doesn't have anything to do with approving the variance.

City Engineer Ramm stated that he didn't disagree.

Mr. Henfling stated it was \$2,300,000 for lining the full length with infra steel.

City Engineer Ramm replied thank you.

A motion was made by Charles Bredt, seconded by Pasquale Monteleone, to approve the variance based upon a finding of good and sufficient cause and a determination that the failure to grant the variance would result in undue hardship due to the physical characteristics of the property, a determination that the granting of the variance would not result in increased flood heights beyond that which would be allowed in Chapter 1377,

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
August 19, 2021**

additional threats to public safety extraordinary public expense, nuisance, fraud or conflict with exiting local laws; and a determination that the variance would be the minimum necessary considering the flood hazard to afford relief.

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

Mrs. Fortlage stated that she must say they have another unusual one under their belts now because she doesn't think that they have had one anything like this one.

Mr. Monteleone stated that this was a different one for sure.

Mr. Henfling stated that he appreciated everyone's time, and thank you Don for helping explain some of those things.

City Engineer Ramm replied you are welcome.

A motion was made by Carol Fortlage, seconded by Pasquale Monteleone, to adjourn the Board of Zoning Appeals meeting of August 19, 2021.

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

There being no further business, the Board of Zoning Appeals meeting of August 19, 2021 was adjourned at 6:19 p.m.

Acting Chairperson Carol Fortlage

Debi Beal, Secretary
Minutes Unapproved at Time of Release 08/20/21