

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
August 20, 2020**

AGENDA:

Old Business:

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

Approval of Minutes of Regular Board of Zoning Appeals Meeting held on July 16, 2020.

- 1. 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).

New Business:

- 2. Daisy Avenue, PPN 562-26-022, Lauren & Daniel Molls** - Requesting a variance to 1163.03 of 23 ft. to permit an existing lot to have a depth of 177’ (200’ required, 177’ requested) and a variance to permit an existing lot to have a width of 50’ (100’ required, 50’ requested), a variance to 1163.04 of 46.5’ to permit a front setback of 28.5’ (75 ft. required, 28.5 requested) and a variance to 1163.01 of 12,637 sq. ft. to permit an existing lot to be 7,363 sq. ft. (20,000 sq. ft. permitted, 7,363 sq. ft. requested).
- 3. 4811 Chestnut Road, Jessica Dell’Aquila & John Hackman** – Requesting a variance to 1363.01(a) to permit a fence to extend beyond the front setback (not permitted).
- 4. 8930 Brookside, Paul Russ** – Requesting a variance to 1143.02(b)(1)(A) of 4’ 10” to permit the height of a garage to be 19’ 10” (15’ required, 19’ 10” requested).
- 5. 5904 Laurel Road, Robert & Janine Boehm** – Requesting a variance to 1143.02(b)(2)(B) of 176 sq. ft. to permit an accessory building to be 320 sq. ft. (144 sq. ft. required, 320 sq. ft. requested) and a variance to 1143.02(b)(2)(A) of 3’ to permit an accessory building to be 15’ in height (12’ required, 15’ requested).

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6. **6609 Beechwood Drive, Timothy Schmitt** – Requesting a variance to 1165.01 of 12’ to permit an accessory building to be 3’ from the side property line (15’ required, 3’ requested) and a variance to 1143.02(a)(3) to permit an accessory building to be 5’ from the rear property line (10’ required, 5’ requested).
7. **7704 Treelawn Drive, Marianne Corrao** – Requesting a variance to 1143.02(b)(2)(B) of 48 sq. ft. to permit an accessory building to be 192 sq. ft. (144 sq. ft. required, 192 sq. ft. requested) and a variance to 1165.01 of 10’ to permit an accessory building to be 5’ from the side property line (15’ required, 5’ requested).
8. **6420 Elmerge Drive, Robin Maier** – Requesting a variance to 1143.02(b)(2)(B) of 96 sq. ft. to permit an accessory building to be 240 sq. ft. (144 sq. ft. permitted, 240 sq. ft. requested), a variance to 1143.02(b)(2)(A) of 2’ to permit an accessory building to be 14’ in height (12’ required, 14’ requested), a variance to 1143.02(a)(3) of 4’ to permit an accessory building to be 6’ from the rear property line (10’ required, 6’ requested) and a variance to 1165.01 of 1’ to permit an accessory building to be 5’ from the side property line (6’ required, 5’ requested).
9. **7472 Oval Drive, Benjamin & Bridget Plummer** – Requesting a variance to 1143.03(b) to allow a pop up camper to be parked in the driveway (not permitted).

The virtual meeting was called to order by Chairman Mark Moreal at 5:32 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 the Board has two sets of Minutes to approve.

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.

Mrs. Fortlage stated that she asked the Secretary to forward something to the rest of the Board which had markups. She asked if the rest of the Board got it.

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Chairman Moreal stated that they did get it, and they all looked at it.

Mrs. Fortlage stated that one of them was a question about whether Mr. Monteleone could fill in something that read inaudible.

Mr. Monteleone stated that he did do that.

Mrs. Fortlage replied okay, good. She stated that in that case if the markings were not objectionable to anybody, she could move approval with the adjustments.

A motion was made by Carol Fortlage, seconded by Pasquale Monteleone, to approve the Minutes of June 18, 2020 as amended.

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

Chairman Moreal stated that next he would like to ask the Board if there were any corrections, changes or additions to the July 16, 2020 Meeting Minutes.

Mrs. Fortlage stated that on Page 30 it should have the word affirm in the third from the last paragraph. On Page 8 the word for should be included, and on Page 6 the third last paragraph there needs to be included an “a” at the end of the name. She stated that while that was not the extent of everything she marked with a pen, those were the only ones she was going to highlight right now. The rest were similar. She asked if anybody else had anything.

Chairman Moreal replied nope.

A motion was made by Chairman Moreal, seconded by Pasquale Monteleone, to approve the Minutes of July 16, 2020 as amended.

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

Chairman Moreal stated that before he continues, he would like to read an opening statement for all the interested parties who were listening.

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 Ohio law.

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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. 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.

Chairman Moreal stated that he was going to go out order today a little bit. The Chairman asked the Secretary if the second item on the agenda, the applicant was in attendance.

The Secretary stated that she didn't see the applicant on the line and was going to contact him.

Chairman Moreal stated that he would go on to the next item.

4811 Chestnut Road, Jessica Dell'Aquila & John Hackman – Jessica Dell'Aquila and John Hackman were in attendance and sworn in.

Chairman Moreal asked the Secretary if the neighbors were notified. The Secretary stated that the neighbors were notified.

Ms. Dell'Aquila stated that she knew the neighbors were notified because they spoke to the neighbors.

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The Chairman stated that he stopped out there. He didn't know if the rest of the Board had stopped out. He stated that he spoke to Mr. Hackman the other night. The Chairman asked Mr. Hackman to explain the request and why they need the variance.

Mr. Hackman stated that they had a guy come out from Home Depot and give them what he thought they could do and his recommendations as far as dealing with a corner lot. They were told they would have to apply for a variance because without it, going to the front of the property on Poplar, they would lose a considerable amount of their yard in the back. He stated that being it was a corner house, it was a little difficult to go in the backyard without having any privacy at all.

Mr. Hackman stated that he and his wife were looking to have a little bit of a privacy in their yard so they could have family over and have the dog in the backyard to roam around and be free without having to deal with other people driving by, cars on Chestnut.

Chairman Moreal asked Mr. Hackman to tell the Board what kind of fence they would be putting up.

Mr. Hackman stated that they would be putting up a 6 foot vinyl privacy fence. He stated that it would be Sand colored to match the house. He stated that they have a vinyl deck on the back of their house that was small; and they would match the color of that. He stated that it was a little darker than the siding on the house, but it would match well.

Chairman Moreal stated that he did stop out there the other night, and they walked off the 10 foot distance. He stated that by looking at the drawing he didn't know how close to the street it was. He stated that he believed that Mr. Hackman was probably doing the minimum that he would need to. He stated that there would be a lot of room between there and street. He stated that no matter where Mr. Hackman would put the fence, he would be in front of the neighbor on Poplar Drive. Mr. Hackman told the Chairman that he wanted to put a double gate there and not cut his backyard in half.

The Chairman stated that the neighbor on Poplar Drive has a few different fences. He asked if any neighbors were on the line.

The Secretary stated that she didn't see anybody on the line.

The Chairman stated that the neighbor had privacy fencing. He stated that from what he saw and the way they walked it out, he believes that to him it looked reasonable. Mr. Hackman was not overdoing it. He asked if anybody else had anything.

Mr. Bredt stated that he drove by it, and he didn't see any problem with it.

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The Chairman stated that it was a unique situation when you have a corner lot like that, and when you drive down you would still pick up the neighbor's front yard. The Chairman stated that the fence could not go to the sidewalk. He stated that it would be well off the street.

Mr. Monteleone stated that he drove by also. He asked what the second apron was for. He asked if there was an existing apron or turnaround apron.

Ms. Dell'Aquila stated that the people before them built the home, and they added it at some point before they purchased the home.

Councilperson Walchanowicz stated that it had been there for a while.

Mr. Monteleone stated that he just noticed it.

Building Official Gero stated that the apron pre-existed the home. He thinks it was the apron for the home that was there that was torn down about 20 years ago.

Mr. Monteleone stated that he had no problem with the variance request.

Mrs. Fortlage stated that she thought that the reason for the code having been written was significantly this situation because it would be rather an obvious structure. She stated that it was not like you could see through it. She stated that it was a vinyl closed fence and pretty significantly would be visible to the neighbors toward the front yard. She stated that she had some concerns about it.

Mr. Hackman stated that if it would be to the neighbor on Poplar Drive, they did speak to that neighbor yesterday; and they didn't seem to have any issues with it. He stated that they had full disclosure with the neighbor since they did see the neighbor was doing some work too and wanted to make sure that they were both on the same page.

Chairman Moreal stated to Mrs. Fortlage as he stated earlier, and he knows what she is saying, they were not asking to come out 20 or 30 feet, they kept it at 10 feet; and the Chairman thinks that it still gives them a visible view of the neighbor's yard. He stated that Mr. Hackman was not overtaking the whole yard. He could have asked for that, but he was being reasonable.

Chairman Moreal asked if there was anybody else who wanted to speak. No one else wished to speak.

A motion was made by Chairman Moreal, seconded by Councilperson Walchanowicz, to approve the variance as requested.

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

Daisy Avenue, PPN 562-26-022, Lauren & Daniel Molls – Bob Marek of Marek Builders was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. Bob and Therese Passe were in attendance and also sworn in.

Chairman Moreal asked Mr. Marek to go over his request.

Mr. Marek stated that the lot has been existing and vacant for quite a long time. He stated that the lot was never built on. He stated that he thought the owner of the house next door owned the lot originally. He stated that all the lots were small on that street.

Mr. Marek stated that as far as the setback, they were trying to move behind the house to the east a little bit, but in front of the house to the west to stagger the house in between the two to give it a little bit better look and not be so close to the street, but not too far back as the lots were not that deep; and there would be no backyard then. He stated that was the reasoning.

Mr. Marek stated that as far as the side yard lines, they would be meeting the minimum of 6 feet on each side of the house. It would be a front load garage so there would be nothing going around behind the house or no garage behind the house.

The Chairman asked the neighbor which house were they. Mrs. Passe stated that they were at 6902 Daisy. She stated that they just moved in about a month ago.

Chairman Moreal asked Mrs. Passe if they were in attendance to voice concerns about the proposed house.

Mrs. Passe stated that they wanted to see where the proposed dwelling was going to be on the property. She stated that it was not really a concern, they were just more curious of how the house would be situated on the lot.

Mr. Marek stated that on the drawing, the house would sit 10 feet back further, but it was not as deep as Mrs. Passe's house so it won't be going past the back of their house.

Mrs. Passe asked what side would the garage be on as you were looking at the house. She asked if the garage would be to the right.

Mr. Marek stated that it would be on the right hand side.

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Mrs. Passe stated it would be to the right of the existing telephone pole.

The Chairman stated that Mr. Marek kind of staggered it between the house to the left and the house to the right.

Mr. Marek stated that they didn't want to pull all the way forward. He stated that aesthetically they set it in between the two houses.

The Chairman stated that those were tough lots. They were small.

Mr. Marek agreed. He stated that they came up with a design for the house that would have it sit nice on the lot; and it would have the 6 foot side yards which would be the minimum required. He stated that they had been through the Architectural Board of Review, and the Board liked the house and thought it would fit in the neighborhood well.

Mrs. Fortlage stated that she had a question. She stated on the picture that the Board is seeing which was the colored one with the fuchsia outline of the lot; she stated that it appeared to be that the steps from 6802 Daisy were still there. She asked if they were still there.

Mr. Marek stated that they were not there. He stated that when the house was remodeled, those steps were taken out. He stated that the door was taken out. He stated that there was no door or steps that come out of that side of the house.

Mrs. Fortlage asked if the steps were gone.

Mr. Marek stated that they were gone.

Mrs. Fortlage stated that it appeared to go over the lot line, and she wondered if it really did. She asked if there was anything from 6902 Daisy that would go over the lot line.

Mr. Marek stated that he thought the A/C unit may go a little over, but that would be it.

Building Official Gero stated that the house was remodeled and completed a couple of months ago.

Mrs. Fortlage stated that she remembered it. She stated it was interesting the way it went on there, and they talked about that. She stated that on the drawing it raised a question for her the way that it showed it.

Chairman Moreal asked if anyone else on the Board had anything to say.

Mr. Monteleone stated that the A/C unit seemed to be right on the line. He stated that it looked good.

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Chairman Moreal stated that Mr. Marek was doing about the best he could with the size of the lot, and he believes that it fits.

Mr. Monteleone stated that he liked that Mr. Marek staged the house back a little bit. He stated that it looked nice.

A motion was made by Carol Fortlage, seconded by Charles Bredt, to approve the requested variances.

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

8930 Brookside, Paul Russ – Homeowner Paul Russ was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. There were no neighbors present.

The Chairman stated that he visited Mr. Russ, and they talked for a while. He stated that he knows Mr. Russ's plan. He asked Mr. Russ to present it to everyone else on the Board and tell them why he would need the variance.

Mr. Russ stated that he has been in the property just about a year, and he would like to add a garage. He stated that in the picture the Board will see a shed in the backyard now. The shed will come down. He stated that the garage he would be adding would have two garage doors. He stated that it would be 24' x 30' wide; and it would have a loft in it. He stated that he wanted to put a loft in it to be used for his woodworking shop. The house that he has right now has no shop space in it. He stated that he does woodworking and restores model trains as a hobby. He stated that is what he would use it for.

Mr. Russ stated that since he had the riparian setback in the back, he would be limited by the overall footprint. He stated that was why he would like to put the loft in the place. He stated that he planned to do the garage in a way that would complement the house. He stated that the house was an existing prairie design, and the prairie design would be carried over and utilized in the garage. He stated that he would have a brick apron put on the front and two sides that would match the brick of the house. He stated that he has recently repainted the house, and he would be using the same paint scheme on the garage so that it would all match.

Mr. Russ stated that he believed the house was about 24 or 25 feet; so the garage that he was proposing to put in would be actually shorter than the house. He stated that he was in a pretty secluded area. He stated that the lot to the south of him, there used to be a house there; but it was torn down last winter. He stated that he believed that the Water Department owned the lot now.

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The Chairman asked Mr. Russ to tell the Board about the second floor door proposed for the garage.

Mr. Russ stated that one of the things he was doing was that he has a permit and would be rebuilding the existing deck. He stated that there was a balcony type deck on the house. He stated that it would run about 5 foot, and he would intend to put an extension to the deck about 5 foot to marry up with the door so he could access the garage through the top door off the deck of the house as well.

The Chairman stated that it would be like a little bridge.

Mr. Russ agreed.

The Chairman stated that it was not shown on Mr. Russ's footprint, but he showed the Chairman and explained it. He stated that Mr. Russ was building it; he would be losing one of his garage spaces.

Mr. Russ stated that the garage would be half on the pad now and half not. He stated that the garage that was behind it would be where he would store his lawnmower and garden tools and things like that.

Mr. Bredt stated that given the topography of that site, Mr. Russ worked an awful lot of things in there. He stated that Mr. Russ has done it very well.

Mrs. Fortlage stated that she visited the site and thought it fit, and the height issue would not be a problem for any neighbor because he would be down at a lower level compared to the street. She stated that she had no problem with it, and she believes it will be a nice addition to the house.

Mrs. Fortlage stated that she had a question for the Law Director or the Building Official. She asked if the Board would need to make the motion conditional on the removal of the existing shed.

Chairman Moreal stated that the other shed would be in the way of the new structure.

Mr. Russ stated that it would not be in the footprint, but it will be in the way of the construction. He stated that the shed will be gone.

The Chairman stated that the Board could make that motion.

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Mrs. Fortlage stated that they often do when there would be a second building, so she would think that it would be for clarity a good idea to put it in the motion.

The Chairman stated that he thought the new garage would fit the property. He thought Mr. Russ was doing a nice job. He stated that the fact that the lot to the left was owned by the Sewer District; he really has no neighbor to the east. He stated that Mr. Russ was so secluded down there. It was well thought out and would look very nice.

Mr. Russ stated that he would like to express his thanks to Don Ramm and the Engineering Department. He stated that when he bought the house he was made aware of the conditions so that he was able to work with it. Mr. Russ again thanked Don Ramm.

Mrs. Fortlage stated that she was going to say that with the condition of removal of the other building, she could move approval.

A motion was made by Carol Fortlage, seconded by Pasquale Monteleone, to approve the variance, subject to the removal of the existing shed.

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

5904 Laurel Road, Robert & Janine Boehm – Homeowners Robert and Janine Boehm were in attendance and sworn in.

Chairman Moreal asked if the neighbors were notified, and if any neighbors were present. The Secretary stated that the neighbors were notified, and she did not see any neighbors on the line.

Chairman Moreal wanted Mr. and Mrs. Boehm to explain their request and the reason why it was needed.

Mr. Boehm stated that he does woodworking, and he has a lot of equipment. He stated that his shed was removed because of the drainage update on their backyard. He stated that they gave up 6 foot of their property. He stated that his wife can't pull in the garage with all of his woodworking stuff in there; and he would like to free that up for her.

The Chairman stated that he stopped there the other night, and the dog was barking. He didn't believe anybody was home. He stated that he went in the backyard and looked around and saw what they had staked out. He stated that he appreciated them staking it out. He stated that on the side of the house there were a lot of little tents with stuff.

Mr. Boehm stated that was his shed.

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The Chairman asked Mr. Boehm if that would go away once the new shed was constructed.

Mr. Boehm stated that it would all go away. He stated that was why he was doing this. Chairman Moreal stated that they had a pretty flat backyard. He stated that there was a lot of room back there. He knows that. The Chairman stated that Mr. and Mrs. Boehm have a big enough backyard for him to put something bigger than what would be allowed. He asked about the height. He asked what was the reason for the extra height.

Mr. Boehm stated that he needed storage.

The Chairman asked if there would be a loft or second floor.

Mr. Boehm stated that it would be a second floor. It would not be a loft. He stated that they would vinyl side the shed. He stated that they changed it up.

Mr. Boehm stated that he does crafts and woodwork. He stated that he has table saws, drill presses. He stated that he had 43 years of stuff that he needed to put in the shed.

A motion was made by Pasquale Monteleone, seconded by Carol Fortlage, to approve the variances as requested.

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

6609 Beechwood Drive, Timothy Schmitt – Homeowner Timothy Schmitt was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. The Secretary stated that there were no neighbors present.

The Chairman asked Mr. Schmitt to share with the Board why he wanted to put the shed there, and the need for the variances.

Mr. Schmitt stated that he would just like to add a shed to the property. He stated that they have been in the house a year. He stated that he really only had two options as to where he could put the shed; one would be in the northeast corner, which was the proposed location. He stated the other option would be the southeast corner on the other side. He stated that the northeast corner would work a lot better. He stated that he has two neighbors on his rear line who have sheds tucked up into that corner as it is. He stated that there were also rock beds in the neighbors' lawns and a lot of trees back there; so it would be protected from use. He stated that if he were to go to the other corner of the yard, which would be right by the neighbor's house there, right by

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where their garage was. He stated that would certainly be an eyesore for them as they would be using their driveway and yard, they would be looking straight into the shed.

Mr. Schmitt stated that he did want to go into the northeast corner. The reason he would need the variance was that he has a natural drainage swale going down to a drain that was on his rear property line; and if he was to come out to the 10 foot and 15 foot boundaries, the shed would be in the middle of that drainage swale which would be a problem. He stated that he would need to go to the side property line to avoid the swale. He stated that he had two mature trees, and he would need to put the shed in between in order to avoid removing those trees which was why he needed to be the 5 foot from the rear property line.

Mr. Bredt asked if Mr. Schmitt could center that shed a little bit more between the two trees.

Mr. Schmitt stated that he did intend to center it. He stated that his art skills were not that good, but he would center it between the two trees.

Mr. Bredt stated that then the 5 foot might become 6 or 7 foot.

Mr. Schmitt agreed. He stated that he would be honest, that corner of his yard was not staked for where the property line would be. He stated that he thought it was in the middle of that tree. He stated that he thought it was the corner of that back tree. He stated that he has spoken with his neighbors about it, and they all agree that is where it was. He stated that if it was 5 or 6, it was hard to tell because he didn't have it staked. He stated that he would center it, and he has spoken with two of the three neighbors.

Chairman Moreal stated that he was out there the other night, and his first thought was 3 foot off the side yard. He stated that he didn't know if it was showing the drawing, he couldn't see it on Don's topography there; but at the corner there were two sheds. He believes that they were both 3 foot off the property line. He stated that they were next to each other; they were 6 foot apart. The Chairman stated that Mr. Schmitt was actually looking to do what they have already. He stated that his first thought was he asked Mr. Schmitt about the other side, and he told him that out of respect for his neighbor, he didn't want to give them the view of the shed. The Chairman stated that Mr. Schmitt was trying to make it fit right there, and it would be probably the only place to put it to stay away from the catch basin.

Mr. Monteleone stated that his only concern was going on the other side, and he appreciated Mr. Schmitt respecting the neighbors. He stated that his only concern to be careful with regard to disturbing the swale there.

Mr. Schmitt stated that he planned to stay about 4 foot away from where the swale runs. He stated that he believes he will be safe.

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Chairman Moreal asked Mr. Schmitt if he would be pouring a pad or would he be setting the shed on 4' x 4''s.

Mr. Schmitt stated that he would put the shed on 4' x4'. He stated that if he would pour a pad, he would have to excavate into the roots of the trees; and he believes he would kill the trees.

Mr. Monteleone stated that was a good idea.

The Chairman stated that he didn't have any issues.

Mr. Schmitt stated that he had one question for the Board if they didn't mind. He stated that the photograph that the Board was looking at there had a tan with white trim on the shed. He stated that he considered whether he could match the house with it which would be more of a gray shed with a navy blue trim. He asked if there would be any objections to that.

Councilperson Walchanowicz stated that he didn't have an objection to that.

The Chairman stated that it wasn't really for the Board, but that would be fine.

Law Director O'Brien stated that would be an Architectural Board of Review question.

A motion was made by Charles Brecht, seconded by Councilperson Walchanowicz, to approve the variances as presented.

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

7704 Treelawn Drive, Marianne Corrao – Homeowner Marianne Corrao was in attendance and sworn in.

Chairman Moreal stated that he was going to add a third variance which was needed but not written down for a second accessory building which would not be permitted per 1143.02(A)(2).

A motion was made by Chairman Moreal, seconded by Councilperson Walchanowicz, to amend the variances to include a variance for a second accessory building.

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

Chairman Moreal asked if there were any neighbors present. There were no neighbors present.

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The Chairman stated that Ms. Corrao had been before the Board previously. He stated that he has been to her property, and it was very nice. He stated that Ms. Corrao does a lot there. He wanted her to explain to the Board why she would need the additional accessory building and why she would want to locate it where she is requesting.

Ms. Corrao stated that the reason for the shed was essentially for equipment that would be related to maintaining the property and her garden. She stated that she has quite a few large pieces of equipment like a zero turn lawnmower. She stated that she also has a push mower, a snow blower, log splitter, rototiller. She stated that there was an aerator attachment to her equipment. She stated that all of that equipment needs to be stored, and unfortunately when she was designing her property and home; she should have accounted for more of this equipment in her existing workshop. She would ask the Board if she could put in the additional shed to take care of some of that equipment for storage. She stated that currently she had a log splitter that was under a tarp, and she does not want to do that. She stated that it was something that was not very attractive.

Chairman Moreal stated that he understood all of that, and one of his comments was that she did have a big enough piece of property. He stated that the 5 foot requested for a side yard; he asked the reason for that.

Ms. Corrao stated that she has a bio-swale and was installed approximately three years ago that was not shown on the site plan. She stated that the site plan was one of the original site plans, and it didn't show the bio-swale. She stated that the bio-swale would limit her dimension there. She stated that between the two properties there was a low spot previously, and she used a landscaping design firm to put in a bio-swale and a rain garden that would basically collect that water; and she has plantings all around that rain garden. She stated that it was currently protected by an unattractive deer fence; but she needs those plants to get established before she could remove that deer fence. She stated that because of the bio-swale, that is what is limiting her to putting the shed a little bit closer to the boundary line with her neighbor.

Ms. Corrao stated that her neighbor does support the project. She stated that her neighbor does know exactly where the shed will be. She stated that an approval letter from the neighbor was attached to her application. That would be Rocco and Joanne Fano.

The Chairman stated that he saw the letter there.

Mr. Monteleone stated that one of his concerns was why she was putting it in that corner like that, but now that Ms. Corrao stated that she had the bio-swale and a rain garden, he appreciates her doing those things. He stated that those were very key words in moving forward in this world we live in. He told Ms. Corrao kudos to doing the bio-swale and the rain garden.

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Ms. Corrao thanked Mr. Monteleone. She stated that it would look more attractive in the future. She stated that she felt bad about the deer fence, but as everyone knows they have some challenging deer issues. She stated that once those plants would be established, she could remove that deer fence. She stated that she was really looking forward to that day.

Mr. Monteleone stated to Ms. Corrao with the zero turn riding mower, she should make sure the door would be big enough to get the machine in there.

Ms. Corrao agreed.

Building Official Gero stated that for the record, he believed it would be an additional accessory structure since Ms. Corrao has a detached garage. He stated that the Chairman had brought up originally a second structure.

The Chairman stated that the Board added that. He amended that into the variance request.

The Building Official stated that the Chairman stated that it was a second structure. He stated that he thought it was a third accessory structure on the property.

Mrs. Fortlage asked someone to help her with that count.

The Chairman asked the Building Official where was he seeing a third structure at.

Building Official Gero stated that the garage would be one. He stated that Ms. Corrao's application stated it was a third structure. He asked Ms. Corrao if she was counting the house in that third structure.

Ms. Corrao stated that the house was the first structure.

The Building Official stated that he was corrected then. He apologized.

Ms. Corrao stated that the shed would be Number 3.

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

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

6420 Elmarge Drive, Robin Maier – Homeowner Robin Maier was in attendance and sworn in.

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Chairman Moreal asked if there were any neighbors present. The Secretary stated that there were no neighbors present. The neighbors were notified.

Chairman Moreal asked Mrs. Maier to explain to the Board why she would need the variances.

Mrs. Maier stated that they were looking to construct an accessory building, 12' x 20' x 14' on an 18' x 20' pad. She stated that she wanted to be sure that the Board knew that the 6 feet of square footage would be a little porch. She stated that the actual structure would only be 12' x 20'.

She stated that they have lived in Independence over 30 years, and they have an attached one-car garage. She stated that they have accumulated so much stuff over the years. She stated that her husband has been in the military 30 years now and getting ready to retire. She stated that they have spent the past 6 years in Colorado. She stated that they were bringing back bikes, camping gear, fishing gear and 30 years' worth of military stuff. She stated that they just need it for storage purposes. She stated that the additional 2 feet in height will accommodate some small lofts in the top of the shed so they could store more equipment. She stated that also looking down the road, she knows they will eventually have to have a riding mower so they wanted to look ahead and try to accommodate for that at this point.

Mrs. Maier stated that the reason for the side yard and the rear yard variances was because they were trying to preserve a very old Maple tree. They do not want to disturb the root system or anything. They were trying to keep that within a reasonable distance away from it. They want to try to keep that tree alive.

Chairman Moreal stated that the picture the Board saw of the shed, he asked if that was the design that Mrs. Maier was looking at.

Mrs. Maier agreed.

The Chairman asked if it was a kit.

Mrs. Maier stated that it was a kit, and they would construct it on site.

Mr. Bredt asked if the kit would be permanently affixed to the foundation.

Mrs. Maier stated that it will be because they would like a cement pad. She stated that in that part of the yard there has been drainage issues. She stated that her existing structure, which would be demolished and removed completely, does not sit on a pad. She stated that they have experienced it being rotted. So, that was why they wanted to install it on a pad.

The Chairman asked Mrs. Maier if she parked her car in the garage. He stated that he knows they have a single car garage.

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Mrs. Maier stated that they have a single car garage. She stated that she does park her car in the garage when she was home. She stated that now that her husband was coming home, they would be having a second car in the driveway so there would be very little room to store anything in the one-car garage. She stated that they do have cabinetry in there and existing stuff which they are hoping they can move back to the shed.

Chairman Moreal stated that first he wanted to thank Mrs. Maier's husband for his 30 years of service.

Mr. Bredt asked what branch of the service was he in.

Mrs. Maier stated that he was an Army National Guard.

The Chairman stated that he could see that the shed would fit the property as far as the house and the way they keep the house. He stated that he was surprised to hear that Mrs. Maier was away for all these years and maintain a house like that with nobody living in it. He stated that was pretty good. He doesn't know how she did it, but she did. He stated that as long as the other shed would come down. The proposed shed looked like a playhouse. He stated that it was cute looking.

Mrs. Maier stated that if she could not live with her husband full time again, maybe he will have a place to go.

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

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

7472 Oval Drive, Benjamin & Bridget Plummer – Homeowner Benjamin Plummer was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. There were no neighbors present. The neighbors had been notified.

Chairman Moreal asked Mr. Plummer to explain to the Board why he would need to park his camper in the driveway.

Mr. Plummer stated that he knows that it is not ideal, but the way the house sits, they do not have the room on either side to pour a pad or do anything along those lines. He stated that the

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backyard goes immediately downhill 6 or so feet with a drop into a small landing which was not really level. He stated that it drops again into a wooded area. He stated that it was pretty wooded all around their house. He stated that the only option they have would be to put the camper in the driveway if they were to keep it at their residence. He stated that it was a small pop up camper. He stated that the Board could see that it was lower than the height of a car. He stated that because of the size being so small, maybe they would be able to keep it there because it was not such a big investment that he feels like it would be worth storing it somewhere. He stated that he didn't know how they would do all that. He was looking for keeping it there just because they had nowhere else to store it. He stated that their garage was pretty small. He stated that he was actually able to fit it in there, but they would not be able to get their cars in, even one of their cars.

Chairman Moreal stated that he drove by and saw the camper in the garage, and he saw it with the garage doors down. He stated that the camper would fit in the garage.

Mr. Plummer agreed it would fit if no cars were in there.

The Chairman asked Mr. Plummer if his plan was or was he looking to keep the camper in the driveway year round or would it go somewhere in the winter.

Mr. Plummer stated that he would be willing to put it away and take it out in the summer; that way they wouldn't be transporting back and forth every time they use it in the summer.

The Chairman asked Mr. Plummer if they use it a lot.

Mr. Plummer stated that they just got the camper. He stated that his plan was to restore it because it was a little older and needed to be restored; but his wife has summers off, and he does also. He stated that they would probably use it a lot over the summer.

Mr. Bredt stated that he drove by a couple of times and never saw the camper. He stated that his question was relative to the winter months, what is to say that anything other than Memorial through Labor Day or the end of September; his past experience with people who get campers, especially pop up campers, is that it was a lot of fun to begin with and then it gets less used over time. He asked Mr. Plummer if the Board was in favor of granting the variance, he would think it would have to be conditional on a one-year basis. He asked if that would be acceptable to Mr. Plummer.

Mr. Plummer stated that it would be acceptable. He asked if he would have to re-apply after the year to say that they were still using it.

Mr. Bredt stated that he would have to show that it was being restored and being used.

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Mr. Plummer stated that would be completely acceptable to him, and he understood that.

The Chairman asked Mr. Bredt if he was thinking along the lines of one year all year, or it would go away in the winter.

Mr. Bredt stated that it would go away in the winter. There was no question about that.

The Chairman stated that was what he thought.

Councilperson Walchanowicz stated that typical camping months would be May 1st through October 31st. He stated it would be a deadline as of those months; and then as of October 31st, it would have to disappear.

Mr. Bredt asked Mr. Plummer if his neighbors have raised any objections to the pop up camper at this point.

Mr. Plummer stated that they talked to their neighbor at length about it. He knows they are working on it. He stated that the neighbors on the corner, they have talked to them. The neighbors to the right of them, they have talked to them a little bit too. He stated that they haven't raise concerns to them, but he didn't know if anyone had raised concerns to the Board.

Mr. Bredt asked if they were all long term residents.

Mr. Plummer stated that the neighbors to the right, they just built that house this year. He stated that it was a vacant lot that they had to get a variance on too. He stated that the lots were pretty tight. He stated that they have been there for four years now.

Chairman Moreal asked Mr. Plummer when he was not using the camper, will it be in the down position.

Mr. Plummer stated that it would be.

The Chairman stated that unless he was cleaning it out or something like that, but for the most part when it was outside, it will be in the down position.

Mr. Plummer agreed. He stated that the only way it would be up was if they had to dry it out for some reason or clean it.

Councilperson Walchanowicz stated that Mr. Plummer mentioned restoring it. Would he be restoring it inside his garage so no one has to see it in the driveway being restored.

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Mr. Plummer stated that was the plan. He stated that he didn't want to work outside on it anyway.

Mr. Monteleone stated that his only concerns were pretty much all answered. He stated that he definitely doesn't want to see it there over the winter.

Chairman Moreal stated that it sounded like if Mr. Plummer and his wife had summers off, they should be using it a lot or make use of it. You would probably see it less, it will be out and about. He stated that if they could come to some kind of agreement on a time, whatever Mr. Bredt mentioned earlier. He asked if Mr. Bredt gave dates.

Mr. Bredt stated that he did. He stated that he thinks May 1st through Halloween period would be acceptable.

Councilperson Walchanowicz stated that was the typical camping time.

Mrs. Fortlage stated that it makes sense to her with the limitations that were mentioned. She would suggest that the Board also add the VIN if they even have it; so that it would be limited to this particular piece of equipment.

Mr. Bredt stated that would make sense.

Councilperson Walchanowicz stated good call Carol.

Law Director O'Brien asked if a pop up camper would have a VIN number?

Mr. Plummer stated that he was not sure. He would have to check.

The Law Director stated that he didn't know if it would. He stated that it may have a serial number.

Councilperson Walchanowicz stated that it should have some type of model, make number on it.

The Law Director stated that just for the Board's consideration, they were halfway through the season now; and he hears through the applicant's consent that any voting would probably be a conditional limited variance for a period of time. He asked if that would be through October 31, 2020, and then it would come back?

Councilperson Walchanowicz replied yes.

Chairman Moreal stated that would sound fine.

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Mr. Bredt stated that it would give everybody a chance to object if they really have a problem with that.

Chairman Moreal stated that was a good idea.

Law Director O'Brien stated that the motion would be a motion to approve a limited variance to allow the pop up camper trailer submitted by the applicant to be parked in the driveway through October 31, 2020. After that date, it would need to be removed from property or stored in the rear yard in accordance with the City Codes.

Mrs. Fortlage stated or in the garage.

A motion was made by Charles Bredt, seconded by Councilperson Walchanowicz, to approve a limited variance to permit the pop up camper trailer submitted by the applicant to be parked in the driveway through October 31, 2020. After that time, the camper would need to be removed from the property or stored either in the rear yard in accordance with City Codes or in the garage.

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

Mr. Bredt stated that before the applicant would leave, he would suggest that, assuming that there were no objections through the rest of this year, that Mr. Plummer re-apply in April of next year. He stated that it should be pretty straightforward.

Mr. Plummer stated that it sounded good.

6803 East Sprague Road, Matt Brzoska – Chairman Moreal stated that he amended the four-car garage to be 36' x 24' permitted. He stated that there was another amendment. They would be adding another variance to 1143.02(B)(1)(c) to permit additional parking, 6 spaces requested, 5 spaces permitted.

A motion was made by Chairman Moreal, seconded by Pasquale Monteleone, to amend the variances as stated above.

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

Chairman Moreal asked if Matt Brzoska was in attendance. Mr. Brzoska was in attendance and sworn in by the Chairman.

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Chairman Moreal asked if there were any neighbors present. The Secretary stated that there were neighbors present.

The Chairman asked for the names of neighbors and their addresses. Ryan MacRaild stated his address was 6758 Brettin Drive.

Attorney Mark Marong who was representing the MacRailds was also in attendance.

Karen and Ed Haslow of 6815 East Sprague Road were in attendance.

The Chairman swore in all the neighbors.

Chairman Moreal stated that Mr. Brzoska was before the Board last month. The Board asked him a couple of things, one for sure was to stake out where he wanted to put his structure; and he did do that. He stated that it gave everybody a chance to go out there and look at it. He believes that everyone did. The Chairman stated that he was there once or twice, and he ran into a couple of neighbors also.

The Chairman stated that the Board talked about the matter last month. He asked if anything changed. He asked if Mr. Brzoska talked with his neighbors? He asked if they have tried to work anything out on what he was asking for?

Mr. Brzoska stated that his main thing was it seemed like the last time around people were concerned about the area that wasn't marked. He stated that he marked it off, and he did. He stated that he did change the measurement from an inside measurement to an outside measurement. It would be the same change.

Neighbor Sandy Munley of 6726 Brettin Drive was in attendance, and she was sworn in by the Chairman.

The Chairman stated back to Mr. Brzoska.

Mrs. Fortlage stated that she would appreciate a clarification. She stated that Mr. Brzoska was speaking to the size and changing from inside to outside dimensions; and she would appreciate if he would go over that again.

Mr. Brzoska stated that the original on the print that he submitted last time, he had the 28' x 40' which was on the inside measurement. He stated that now it was on the outside measurement, the total square footage for the building itself.

Mrs. Fortlage stated so it was the same numbers apply, but now they were the outside measurements.

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Mr. Brzoska agreed.

Chairman Moreal stated that a big concern was water. He stated that they weren't going to lie; they have talked about it. The neighbors have talked about it. They have issues on Sprague Road with heavy rainwater running through backyards, and people seem to think that this might hinder it. So, they want to try to figure out how to make this work. The Chairman stated that Mr. Brzoska does have a right to build a shed a certain size. He was asking for a little bit bigger.

The Chairman stated that he looked at the topo again, and his existing shed; he doesn't know if the Board talked about it last month. He stated that the existing shed was right by the creek, and he noticed on the topo it was at 904, the elevation. He asked if he was right by saying it was lower than where his proposed one was by 5 foot. The Chairman asked Mr. Brzoska if he ever gets water in that shed.

Mr. Brzoska replied no.

Mr. Bredt stated that when he went out there relative to the water which was this afternoon, he noticed in the adjacent property which he believed was the Haslows; if you look at the site plan, if you would go and look by the "I" in Independence, under the Pokorny label, right about there was an exposed drain which appeared to be at a low point.

Chairman Moreal asked Mr. Bredt if it was the white piece of PVC.

Mr. Bredt replied that it was. He stated that as he walked around the area, he was not a surveyor and certainly not looking at a topo from the standpoint of inches or even feet; but it appeared to him that the water that was drained over time from all around the area goes to that spot. He stated that would be the low spotted area. He stated that the roof line of the proposed building would shed water on his property into a higher elevation than that adjacent property's low point. He stated that it was not dramatic, but it was lower. He stated that the existing shed appears to be small enough that the water that comes off the roof goes into the swale or gully or whatever you would want to call that. He stated that notwithstanding the fact that they have a second accessory building, the existing shed would not be a concern from his perspective relative to the water.

Mr. Bredt stated that the proposed shed with the amount of roof line, depending on the calculations of how much water could come off of that, would be driven by Mother Nature into the adjacent property, if it would be a significant downpour.

Mr. Bredt stated that having said all that, they would be far enough away from the homes, and they do have that little creek there also that it would appear; and he would fall back on Don Ramm's overview, knowledge, professionalism, to hear more about the amount of water that

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would be shed by the new structure onto the green space that it would sit on. There were no side variance issues, and obviously Mr. Brzoska would be allowed to build that shed. He stated that the size of the additional square footage, and the amount of water that would push off onto the property would be a concern he has.

Chairman Moreal stated to Mr. Bredt that last month the Board talked about guttering the water.

Mr. Bredt agreed, but he stated that he didn't see that in the application.

The Chairman stated that Mr. Bredt was right, but when they talked, that would be a condition.

The Chairman stated that Mr. Bredt talked about that 4 inch drain, the 4 inch PVC; that was a pretty small pipe. He asked if the City Engineer was in the meeting.

City Engineer Ramm replied that he was in the meeting.

Chairman Moreal stated that the creek in Mr. Brzoska's backyard was the only exposed creek. He stated that it was closed on the one end, closed on the other. Then it would go into a 10 inch or 14 inch pipe; and it disappears somewhere east if he was correct. The Chairman stated that another thing too was, and he asked the applicant, whose responsibility would it be to keep that creek addressed and dredged or whatever you would call it because there was a lot of runoff dirt that comes from down the way. He stated that you could see it in the pipe there. He asked whose responsibility would that be?

City Engineer Ramm stated that because it was not in a dedicated easement, each property owner who has a section of the stream running through their property would be typically responsible. They would have the first responsibility. He stated that now if there was a construction issue from work upstream where they were not doing a good enough job with erosion sediment control, that would be a separate issue that would need to be addressed if that would be the cause or primary reason why there would be some dirt or sediment.

Mr. Bredt stated that it appeared to be what was there now was working. He asked if that was a fair statement with everyone else.

Mr. Monteleone stated that he would have to say it was working, it just seems like there could be a lot of water coming through there in the spring time that could cause a lot of fear.

The Chairman stated that he didn't think the water, where the structure would be put, he didn't see that being a hindrance to the water. He stated that the water would find its way to the creek. He stated that his concern was if the creek could take it or the swale, and take it through the yards. He stated that if there was no creek there, the water would go through the swale. He stated that it would have to go somewhere. He stated that the creek would take some of the

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water; if there was no creek there it would swale through the backyards and downstream somewhere to a lower piece of land, which it does. He stated that he was no engineer, but he knows there were a lot of concerns out there; and there will be more people talking. The Chairman stated that from what he saw, he can't judge on the rain. He stated that was why the City Engineer has stepped in, or the Board has him address it and look at it before the Board would act on anything.

Chairman Moreal stated that to be honest with everyone, he will not be comfortable acting on it this evening. He apologized to Mr. Brzoska, but he still thinks there are more questions before the Board would move on it. He stated that being said, would the Board want to hear from one of the neighbors. He asked the Secretary to pick somebody.

The Secretary asked whoever would like to speak.

The Chairman stated that the Board will take one at a time.

Attorney Mark Marong stated that he would start first. He stated that he represents the MacRailds. He stated that he understands in previous meetings there was a lot of discussion about stormwater. He stated that he wanted to bring the Board back to their legal duty when it would come to area variances.

He stated that all the variances before the Board this evening, basically leaves them with a too big, too tall, too many. He stated that he heard from the Board this evening the theme of demolish and removed. So, there were other applicants before the Board this evening that wanted to build a new shed, garage, outbuilding, however they want to term it; and those other applicants did tell the Board tonight that they would be removing their existing building.

He stated that all the area variances like the Board knows, and he was telling them things that they already know, come back to the practical difficulties test with *Duncan v. Middlefield*. You have the 7 factors, and then the Ohio Supreme Court basically told you what substantial justice is. In the end they said: "substantial justice requires the interest of the community, neighborhood and adjoining property owners to be given due consideration." Also, one of the most important factors they talk about is whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.

He stated that his clients sit directly behind this property. He was asking for a very large, over 1,000 square foot building. He stated that he didn't see in the plans any driveway proposed. All he sees in the application was a lift. He stated that he hears tools, and he sees working the garage. He stated that the placement of the garage would actually be closer to his clients' property than it would be to the applicant's property.

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He stated that it was a very residential area, under an acre lot in size. He stated that they weren't out on 5 acre lots where you could situate a building of this size and screen it from the neighbors behind you.

He asks the Board tonight to consider their legal obligations with the variances. He stated that he knows the stormwater issue comes in, and the concern of extra flow; and we live in northeast Ohio where we get 100 year storms every other day. So, stormwater is growing and growing; but he does want the Board to see that the objection from the neighbors behind is too many, too high, too big. Now if the applicant were to consider moving the structure closer to their property, maybe demolishing the existing shed. He talked to his clients, and that was something that they would not be opposed to. He knows they have attempted to have discussions with the applicant. To date those discussions have fallen on deaf ears. He stated that the plan as submitted, he would ask the Board to take into account what he said on the factors and just note his clients objections for the record.

Chairman Moreal thanked Attorney Marong. It was very well said.

Mr. Bredt stated that it really touches on things the Board have discussed in multiple reviews of this proposal, and he shares past conversations with why would this be put so far back. He stated that you would really want to have the use of an accessory building, especially relative to the adjacent property owners; he thinks it should be closer to the main building.

Mr. Monteleone stated that he said it last time, and he was saying it again. He stated that there was no water to deal with up top. He stated that it would be closer to the residence. It might be higher though. He stated that the residents behind there would see it more because it would be at a higher elevation.

Mr. Bredt stated that the Board has said in the past, tear the shed down, make it the legal maximum size; and none of them have to deal with it.

Chairman Moreal stated that he would still put it back where the neighbors; but by the Code, he would be 10 foot off the rear, 15 foot off the side. So, he would be allowed to do that. He stated that he what he would think the Board was trying to do was work together with Mr. Brzoska and the neighbors; and like Attorney Marong stated before, nobody has been able to communicate. The Chairman stated that he would like to see that happen before the Board would do anything with the neighbors, with the homeowner; and again address another issue which was the water issue. He stated that in their world it was still a big issue. The Chairman stated that the Board could talk about the matter all night. He personally would like to table the matter again and maybe get everybody together, and maybe that would be up to them to get together and come back with something other than this one said this and that one said that and nobody said anything.

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Mr. Monteleone stated that he would like to consider the neighbors too in the situation; so he would back the Chairman up on that. He stated that they have heard water from Sandy. He stated that he thinks they hear from the other one who doesn't want it so close to their house.

Law Director O'Brien stated that for the applicant's benefit, and the Attorney for the neighbor did correctly set forth some of the *Duncan v. Middlefield* and candidly one of the earlier ones would be if the variance would have a substantial detriment. He stated that what the applicant wants to do there, if it was just a storage shed, perhaps that argument would be a little less substantive; but there would be power tools back there. He stated that he didn't even know how Mr. Brzoska would get cars back there. They have to talk about that. He stated that moving it closer to the applicant's home would certainly perhaps obviate that particular element of *Duncan v. Middlefield*.

Attorney Marong thanked the Chairman. He stated that he didn't want to take up more time and go through all the factors before the Board this evening. He thanked the Law Director for pointing that one out. He stated that he doesn't think the applicant could meet even one of the factors quite frankly with the current proposal given what he will call the vagueness of what would go on back in that shed, and the other issues that have been talked about. He stated that he does apologize that he wasn't in the previous meetings and didn't hear everything. He stated that he didn't need to say anything further. He stated that if the Board's intention was to table, he could wait until the meeting in which the Board would make their decision.

Chairman Moreal stated that he thought it would be the best right now, and like he said, if everybody could try to get together and work something out. He stated that he will say from his end, he would not favor a second building. So, just so the applicant would know how the Chairman stands on that. He stated that if the applicant would want to go with the larger accessory building the other one would have to come down. He stated that he knows it was talked about as one of the variances, but that was how he stood on that. That was his opinion.

Mr. Bredt stated that he would like to reinforce that if the shed would come down and a legal size building would be proposed; then the Board would not have to deal with it. He stated that as long as the building would be larger than the Code would allow, then he thinks tabling the matter and getting it relocated with the adjacent neighbors' input would be the key factor.

Law Director O'Brien stated to Mr. Bredt that he articulated another factor in *Duncan v. Middlefield*, and that was whether the property owner's predicament can be obviated through some method other than a variance. He stated that he was essentially setting forth that standard in *Duncan v. Middlefield*.

Mrs. Fortlage stated that one of the things about Zoom is that they can't always tell; but as she sees it there are 2 neighbors have their hands raised electronically to speak.

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Chairman Moreal stated let's hear them.

Mrs. Fortlage stated it was Karen and Diane.

Diane Pokorny stated that she just wanted to stated that her backyard would be east where the four-car garage was being proposed, and she stated that her backyard floods all the time.

Chairman Moreal asked Ms. Pokorny if she was off Brettin? He asked if that was the backyard coming off Brettin?

Ms. Pokorny agreed. She stated that she lived next door to Ryan MacRaidl.

Councilperson Walchanowicz asked Chairman Moreal if he swore in Ms. Pokorny.

The Chairman asked Ms. Pokorny if she was sworn in.

Ms. Pokorny stated that she was sworn in, but she was not sure if the Board could hear her or not.

The Chairman swore in Ms. Pokorny.

Ms. Pokorny stated that she just wanted to state two points. One was that her backyard does flood at times. She stated that she has the trench in her backyard. She stated it was where the surface water from the rain runs west to east. She stated that it ends up ending in a small ravine on the east side of the yard. Then the water travels into a pipe under the ground in the Newton's yard. She stated that once the water travels, when there's a significant amount of snow melting or rain, the poly drain can't handle all that water which results in her backyard flooding along with the Newton's. She stated that one side of the yard, which was the east side of her house is under water also. She stated that she did send in a video from July 22, 2017.

Ms. Pokorny stated that the second thing was in 2017 she would have loved to put her shed in the backyard, maybe even build a bigger shed; but due to all the flooding back there, she had to put the shed behind her house. She stated that as of today, the backyard still floods. She stated that there was a video from May 15, 2020. She stated that in the video you could see the water from the rain creating a hundred foot creek along the drain tube. She also stated that she has 2' x4's back there covering post holes in the yard; and the flow of the rainwater that day carried those 2' x 4's from the west to the east to the small ravine at the east end of her yard.

She stated one other example, one last example was that she did put up a split rail fence. She stated that the ground back there was saturated for months. They started Friday, March 27th and did not finish digging the holes until the middle of July due to all the water back there. She stated that the deeper they dug, the water kept coming up and the hose would collapse.

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She stated also they even had a situation where they dug three holes on a Saturday, and it was dry, no rain. She stated that they went back there the following day, and the holes were filled with water. She stated that she had no idea where the water came from, but there was a lot of water back there.

Ms. Pokorny stated that was basically all she had to say about it.

Chairman Moreal stated that there was somebody else with their hand raised.

Mrs. Fortlage stated that she believed it was Karen Haslow.

Karen Haslow stated that they live at 6815 East Sprague. She stated that as far as the unsightliness of the neighborhood; they would probably have the most impact from the site of the building because when you would sit on their deck and look back, it would be there. She stated that she was positive that Matt would make it presentable. She stated that his yard was immaculate. He keeps everything very, very nice. She stated that she didn't see an issue with it ruining the view of the neighborhood.

Chairman Moreal asked if Mrs. Haslow was right next door.

Mrs. Haslow stated that was correct.

Mr. Bredt asked Mrs. Haslow if she was the one speaking on the telephone when he was there somewhere around 4:00 p.m.

Mrs. Haslow stated that was her.

Mr. Bredt asked if he was correct in looking at the plot plan that Mr. Brzoska's property extended past the back property lines of the property off of Brettin?

Several people replied yes.

Mr. Bredt stated that was all he needed to know.

Chairman Moreal stated that all that being said, the Board has heard everybody; the Board heard a lot of issues.

Mrs. Fortlage stated that the Board hasn't quite heard everybody. Sandy Munley had her hand raised as well.

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Sandy Munley stated that she would like to say also that she sees water as being an issue back there. She stated that there was water that flows above surface through their backyards. She stated that she was at 6726 Brettin, so she was kitty corner to the property, and she was on Brettin. She stated that her drainage, she has been told by the City, goes out the back, her storm sewers go to the back; and when that water is at its worst, she has had trouble with water backing up in her house. She stated that whether it was because there was nowhere for that water to go at times, or whether there were some other issues, she was not sure; but she did have great concerns about the water flow back there.

Chairman Moreal stated that he was there the other day when Ms. Munley was there. He stated that they discussed her storm drain. He stated that he really didn't believe that the water down there backs up to her house. He stated that he really thinks that her drain tile from many years ago, and they have all had it. He stated that at his parent's house it was the same thing. They just dug up and found root systems in the clay pipe. He stated that Ms. Munley was probably getting it from her runoff water off her roof, down her gutters and it's not coming where it is supposed to, it was backing up. He stated that he gets it. There's a lot of water is an issue; but hers might be more on her end. The Chairman stated that he did hear her.

He stated that it all goes back to what he stated earlier. He thinks that the Board is in no position to act on the request yet.

Councilperson Walchanowicz stated that Heather MacRaild wanted to speak as well.

Ryan MacRaild stated that everything has been said about the water as much as they possibly could; but of course after the last meeting he wasn't able to attend, he spoke with Mr. Brzoska directly. He went back to talk to him about possible relocation of the project. He stated that he hadn't really considered that a second building wasn't permitted. He stated that they have looked at elevations, the request for 15 to 17 foot. He stated that obviously height would be an issue for them from their viewpoint. He stated that according to the plot map that was there, it looked like it will be built up another 2 feet which puts that roof line at about 19 feet. He stated that he wouldn't be opposed to replacing the existing shed that was above the ditch that was back there with a 2 foot increase. It would be up the hill a little bit. It would be out of that water area, and it will help that problem. He stated that even if it would be in the opposite corner from the shed. He stated that it would be out of sight, out of water, out of mind. He stated that they have suggested that in the past, and like he stated, it has not really been accepted.

Mr. MacRaild stated that if Mr. Brzoska could consider moving it up above that ditch area, that would be south of the ditch; he thinks it would be agreeable to everyone on their side of it.

Chairman Moreal thanked Mr. MacRaild. He stated that just so Mr. MacRaild would know, the Board does a lot of time conditions certain things like for site issues. He stated that let's say Mr. Brzoska wanted to keep it down where it was, if the Board could condition it on putting some

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arborvitae behind it; so they take into consideration the site issues with all the neighbors. The Chairman stated that the Board does act on that, but if Mr. MacRaid was the last one to talk, and he asked if anyone else had their hand raised.

The Secretary stated no one else had their hand raised.

Mrs. Fortlage stated that she would want to ask one question that would be added to the mix here. She asked if the City Engineer Ramm could give the Board a little bit more about the site and the water potential. She stated that now that she sees the painted outline of the building, it would take away a lot of trees and large plantings which she is no environmentalist, she thought those drink a lot of water; and if they would be gone, it would be one more element that won't be there to take water. She would like to hear more about that from somebody who knows the situation better than her.

Chairman Moreal stated that the one tree was half dead.

Mr. Monteleone stated that it was three quarters dead; and the vegetation they would be removing there was mostly scrub shrubs, so they were nothing major. The one tree that was there was dead probably due to a lot of water being back there.

Mrs. Fortlage asked if the scrub stuff would drink water. That was her question.

Mr. Monteleone stated that it did drink a little bit of water, and then he thinks they would fix that problem when they would do the rooftop runoff which would go into some sort of drain that would have to be part of the project for sure. He stated that if you were losing that, you would definitely want to have something to shoot the water to that stream for sure, a catch basin or bio-retention basin.

Mr. Bredt stated that trying to address that, but he would want to know more of what Don Ramm's input where he has the stone runoff area in the extreme northeast corner of the proposed location.

Chairman Moreal stated that Diane Pokorny had her hand raised again.

Ms. Pokorny stated that she just wanted to say that as Mr. Brzoska's property was being cleared, as he was clearing the trees and the brush out, that was when the flooding got worse. So, she would like to know if anybody has seen the video from July 2017. She asked if anybody saw that video?

The Chairman stated that the Board looked at it last month.

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Ms. Pokorny stated that was a lot of water coming through, and so now they are in 2020; it hasn't gotten any better because they were losing a lot of the bushes and the brush and everything back there. She stated that if anything the flooding has gotten worse.

Mr. Bredt stated to the Chairman that they both know that 3 or 4 willow trees back there would probably help.

The Chairman agreed.

The Chairman stated that he thinks the Board has touched on everything, but like he stated before, he would like to table the matter.

Mr. Brzoska stated that he would like to speak a few more things before the Board would end the meeting.

Mr. Brzoska stated that you know the building sitting lower than the homes around it, he paid a professional surveyor to create that topo map; and he was telling him it was not in a flood zone. He stated that originally he talked with the City Engineer Don Ramm, he was looking at FEMA maps. The City Engineer told him that FEMA has their own measurements, and Independence has their own flood zone. He stated that he had his map created for his backyard; but the City never came to him with any elevations that they could prove to him that it was a flood zone. He stated that he has no flood zone attached to the deed on his property, so he doesn't see what the problem is. He stated that it was a higher area.

Mr. Brzoska stated that as far as the building size, it was 2 foot. It was 4 foot deeper, and 4 foot wider. It would not really create that much more water. He stated that he doesn't know if anyone has run a circular saw or not, but he thinks everybody does.

Chairman Moreal stated that being said to the noise, whatever the Board would do or whatever would happen, the Board could put conditions on that too. It could run with the structure, wherever it would go. He stated to keep that in mind.

Mr. Brzoska stated that he has a full-time job. It was not like it would be a shop he would work in every day, if that was a concern.

Chairman Moreal stated that he understood. He stated that the Board was trying to get this worked out; so he just thinks that everybody would need to get together and maybe again address more of the water issue. He asked the City Engineer if he could help somehow. He could look at the survey that Mr. Brzoska had done from his engineer. The two engineers could get together and come up with some kind of plan. He stated that he heard there's a lot of water, but it was a swale. He stated that no matter where the water would come from, there was only a little bit of

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open creek there; so if the creek wasn't even there, there would be water flowing through the backyards no matter what. It would have to go to a low point. He stated that as long as the low point was taking the water because it does go away a day later. He stated that he has it going through his backyard, and the next day it is gone. When it rains heavy, it's everywhere throughout the City. He stated that the sewers can only take so much, the land can only take so much. He asked if he was correct by saying that?

City Engineer Ramm agreed, and he stated that he would like to speak to some of the comments. He stated that they haven't taken an in depth study, but they did look at a simple watershed map and topography; and they surmised that the area, about 9, upwards of 10 acres of upland flow, the perimeter highlighted in blue, does ultimately drain through here. He stated that they spoke last time at the meeting that it was definitely an overland flow route. Mr. Brzoska was correct in that the FEMA flood zone maps do not identify his property as FEMA flood zone; but they do know with just local knowledge of the significant event in 2006 that this was the major flow route and certainly a source of flooding that ultimately impacted numerous homes in Kingscote and Brettin in the low lying area which is fed in part through this overland flow route.

The City Engineer stated it was a legitimate issue. He stated that there was a significant water that does flow through there when conditions are saturated and with a significant amount of rainfall, it flows through there. He stated that the extent of what they looked at so far, but it could warrant some additional study for sure.

Mr. Monteleone stated to Mr. Brzoska, let's say we get over the water issue as the City Engineer just said there. He stated let's say the water is not an issue. He asked Mr. Brzoska if he was willing to take down the first shed.

Mr. Brzoska replied yes.

Mr. Monteleone stated that Mr. Brzoska would be willing to take down the first shed to build the second one.

Chairman Moreal stated that he thinks everybody gave some good input, voiced their concerns. He stated he would like to make a motion to table the matter until next month, and the Board did their work. He stated that the Board was still doing their work. He stated that everybody needs to do their work. He stated to Mr. Brzoska that he is the one who wants this, he would like him to try to get together with his neighbors and try to work something out. He wanted everybody to be neighborly and see if they could come to some kind of conclusion here.

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A motion was made by Chairman Moreal, seconded by Pasquale Monteleone, to table this matter.

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

Chairman Moreal thanked everyone.

A motion was made by Chairman Moreal, seconded by Charles Brett, to adjourn the Board of Zoning Appeals meeting of August 20, 2020.

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

There being no further business, the Board of Zoning Appeals meeting of August 20, 2020 was adjourned at 7:14 p.m.

Chairman Mark Moreal

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

