

PLANNING & ZONING COMMISSION
November 11, 2014 – 7:05 P.M.

The Planning Commission met at City Hall on the above date.

Present: Commission Members Mazur and Newberry, Mayor Drucker,
Councilman Pelunis, Assistant Law Director/Prosecutor Stolarsky,
Planning Director Frankland, Secretary McConoughey

Absent: Commission Member Bentley

Also Present: Assistant City Engineer Welch, Fire Inspector Wolf

NOTES OF CAUCUS DISCUSSION:

(Secretary's note: Agenda items not mentioned under Notes of Caucus Discussion are items that were not pertinently discussed during Caucus)

Chairman Pelunis presided.

PENDING:

1. 5022 Hidden Creek Circle – Govind Dixit and Neera Gupta – fence variances: Mr. Frankland asked that this item be tabled to give the applicant the opportunity to submit a new landscape plan for the City's architect to review.

NEW:

5. 33003 Aurora Road – Ruff Neon Signs (formerly Saaj) – number of wall signs variance, roof mounted sign variance, maximum window sign area variance: Mr. Frankland said as no comprehensive sign package was submitted, it is difficult to determine elevations. The Commission members agreed one drawing showing all of the elevations should be submitted. Mr. Frankland also noted roof-mounted signs are not permitted by Code and the window signage would need a variance.

Mr. Mazur said he would like to see a more complete sign package.

Mayor Drucker said she would be willing to approve the same signage that was previously approved for Saaj.

6. 6250 Camp Industrial Road – Schwebel Baking Company – site plan for fueling station: Councilman Pelunis said an ordinance was recently approved by the Council permitting 12,000 gallon tanks for businesses.

Fire Inspector Wolf said the Fire Department reviewed and approved the location of the tank.

Mrs. Welch said a Spill Prevention Plan is required by the EPA and is part of the Fire Prevention Code.

7. Intersection of Route 91 and Miles Road – Pro-Built Homes, Inc. – driveway width variance, maximum amount of accessory pavement variance, various minimum driveway side yard variances, two minimum driveway rear yard variances, dwelling orientation variance, various front yard variances, not parallel to street variance and site plan approval for (3) two-family condominiums: Councilman Pelunis questioned the orientation of the homes and Mr. Frankland said there are issues with the orientation of the buildings and a variance would be required to have the back of the buildings face SOM Center Road. A new plan showing the correct orientation of the homes should be submitted.

Councilman Pelunis asked if the plan is for a private street where City services such as trash pick-up are not provided and whether a homeowners' association would be created.

Councilman Kotora believes the parcels will be part of the Chagrin Valley Homeowners' Association.

Mayor Drucker advised the City does not get involved with homeowners' associations. They are private matters involving the property owners.

Councilman Pelunis understands the property was rezoned to R-2, however, he said there should be a way to develop the property without the need for so many variances.

Mayor Drucker said the Planning Department has worked with the developer for months, however, she is not in favor of the current plan and will not support it.

There was discussion regarding fire truck access and Fire Inspector Wolf said even if it is a dead end street, the fire trucks will still be able to access the buildings. He said it is not unusual for the fire trucks to have to pull into streets and back up.

Mrs. Welch noted sidewalks are required.

Attorney Kenneth Fisher entered the caucus on behalf of the applicant. Although he has not been closely involved with the plan, he believes the driveway will be private but is uncertain regarding plans for trash removal. It was his understanding that there will be some type of homeowners association. Mr. Fisher said the orientation of the buildings and one dead-end street was determined to be the best solution rather than three separate drives because of the busy road conditions on SOM Center Road.

The Planning Commission discussed the possibility of tabling this item as there are numerous issues that need to be determined. Mr. Fisher said he would discuss the matter with the developer who was not present for the caucus.

BOARD OF ZONING APPEALS

The Planning Commission members will convene as the Board of Zoning Appeals to consider an appeal to the decision of the Director of Law and the Director of Planning and Development in which an occupancy permit for CrossFit Solon for 29001 Solon Road, in the I-2 Zoning District was denied.

Councilman Pelunis said discussion will take place during the meeting and Mr. Stolarsky will review the rules pertaining to the appeal.

The caucus ended at 7:25 P.M. and the meeting began at 7:30 P.M.

CHANGES TO THE AGENDA:

There were no changes to the agenda.

COMMENTS FROM THE AUDIENCE:

Ms. Eileen Parmelee, 33885 Country View Lane, was present to speak regarding Item 7, the condominium development proposed at the intersection of Route 91 and Miles Road. She provided information dating back to 2006 regarding the history of the parcels for the proposed 6-unit condominium development. She said the property was re-zoned through legal proceedings without regard to the vote of the residents of Solon who voted against the re-zoning. Ms. Parmelee believes the developer is well aware of the Zoning Code requirements as they initiated the legal proceedings to change the zoning to R-2 and, therefore, they should be required to build within the parameters of the R-2 Zoning Code. She urged the Commission to carefully consider the issues before approving the eleven variances and to implement the City's Zoning Code for the betterment of the City and its residents.

Councilman Pelunis announced that Mr. Stolarsky informed him that Item 7 will be tabled tonight.

Mr. Stolarsky explained during the Caucus, discussion took place with Kenneth Fisher, attorney for the applicant, regarding the Commission's concerns with the submitted plan. Mr. Fisher and the developer have agreed to meet with City representatives to try to design a plan that meets the requirements of the judicially re-zoned R-2 District and minimizes the number of variances.

Councilman Pelunis said although Item 7 will be tabled, residents may still make public comments.

Ms. Christie Cox, 33250 Miles Road, was present to speak regarding Item 7. She expressed her frustration at the item being tabled and the possibility of a new plan being submitted. Ms. Cox believes the proposed plan is uncharacteristic of the neighborhood and feels the City should be vigilant about maintaining the Zoning Code requirements. Ms. Cox is aghast that the courts ruled in favor of re-zoning the parcels and overturned the residents' vote.

Ms. Molly Logan, 33150 Miles Road, was present to speak about Item 7. She said most of her concerns are regarding safety issues as she described in her email sent on November 6th. Ms. Logan said her main concern is the proposed access drive which will be approximately 30' from her home. As the proposal indicates, the drive will be a dead end street so she is also concerned about cut-through traffic if a second access road to SOM Center Road is ever provided. Ms. Cox said she is still appalled that a judge was able to overturn the vote of the residents to re-zone the parcels.

Ms. Penny Passalacqua, 34750 Forest Lane, was present to speak about Item 7. She strongly believes the City should enforce the rules set forth in the Zoning Code and insist the developer follow those rules and regulations. Ms. Passalacqua is stunned that the courts ruled in favor of the developer and overturned the vote of the residents to re-zone the parcels. She now feels it is up to the City to hold the developer to the highest standards and require them to follow the requirements of the R-2 District.

APPROVAL OF MINUTES:

Motion by Mayor Drucker, seconded by Mr. Mazur to approve the minutes of the October 28, 2014 meeting as presented.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

PENDING:

1. 5022 Hidden Creek Circle – Govind Dixit and Neera Gupta 080-2014 5
 - 30' fence setback from residence variance
 - 19' fence setback from street right-of-way variance (Miles Road)
 - 19' fence setback from street right-of-way variance (Hidden Creek Circle)
 - Fence type variance
 - 1.5' fence height variance

Motion by Mr. Mazur, seconded by Mr. Newberry to table consideration of Item 1.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

2. 5429 & 5437 Stone Creek Drive – Stone Creek Estates 100-2014 5
Development, LLC – PP#'s 951-37-008 &
951-37-038
 - Lot consolidation

Mr. Rick Dinallo, Stone Creek Estates Development, was present. He displayed a plan indicating two parcels and explained a client has asked to consolidate the parcels to form one larger 1.7 acre lot. Mr. Dinallo said the client's home will be built in the center of what is now the two parcels and indicated the location on the plan. Mr. Dinallo said one sanitary sewer, one storm sewer and one water line have

been removed from the development. Therefore, the parcels can never be split again for development purposes.

A public hearing was scheduled and Councilman Pelunis opened the public hearing and asked for comments.

There were no comments from the audience, therefore, the public hearing was closed.

Motion by Mayor Drucker, seconded by Mr. Mazur to approve the lot consolidation for PP#'s 951-37-008 and 951-37-038.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

NEW:

3. 6801 Cochran Road – Saint Gobain Ceramics/Verizon 101-2014 7
 ▪ Site plan for new antennas

Motion by Mr. Newberry, seconded by Mayor Drucker to schedule a public hearing for November 25, 2014.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

4. 38610 Flanders Drive – Meyyappan Somasundaram 102-2014 3
 ▪ 15' rear yard setback variance

Mr. Mark Barker, H&M Landscaping, was present representing the applicant. He displayed a plan indicating the corner lot property. Mr. Barker said the variance is necessary as the proposed patio will encroach on the rear yard setback which is due to the property being a corner lot. He explained that the homeowner has a large, extended family and in order to accommodate everyone, the proposal is to add a large patio.

In response to Mr. Newberry's question, Mr. Barker said there is a deck located on the property.

Mr. Barker explained that the property has elevation changes and in order to accommodate this, the patio will be terraced.

Mr. Mazur referred to the plan and asked if the pergola will be attached to the home and Mr. Barker said it will.

Motion by Mr. Newberry, seconded by Mr. Mazur to approve a 15' rear yard setback variance.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

5. 33003 Aurora Road – Ruff Neon Signs (formerly Saaj) 105-2014 6
- Number of wall signs variance (to permit 1 additional sign)
 - Roof mounted sign variance
 - 45.5% maximum window sign area variance

Mr. Michael Cave, Ruff Neon Signs, was present.

Councilman Pelunis said during the Caucus, there was discussion about seeing one rendering depicting all of the various elevations with the requested signage.

Mr. Cave said he has no such rendering.

Councilman Pelunis suggested the item be tabled to allow the applicant to submit a rendering depicting all of the signage at the next meeting.

Mr. Newberry agreed it would be helpful to view one rendering depicting all of the signage. He said there was discussion during the Caucus as it was difficult to envision all of the requested signage in total.

Mr. Mazur said during the Caucus, there was also concern expressed about increasing the total number of signs since signage has already been increased for this location. He recommended Mr. Cave contact the Planning Department for feedback since he does not feel the Commission will be supportive of the entire proposed sign package.

Councilman Pelunis said one of the major concerns is the roof-mounted sign. He encouraged Mr. Cave to meet with the Planning Director to determine what the Commission would like to see in the rendering.

Mr. Cave said he was unaware of any of the concerns since the paperwork he received in the mail did not mention any issues. He asked if the concerns were only just discussed during the Caucus.

Councilman Pelunis said the concerns were discussed during the Caucus.

Motion by Mr. Mazur, seconded by Mr. Newberry to table consideration of Item 5.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis

Nay: None

Motion Carried

6. 6250 Camp Industrial Road – Schwebel Baking Company 106-2014 6
- Site plan for fueling station

Mr. Bill Marshall, Schwebel Baking Company, was present. He displayed a site plan indicating where a fueling station is proposed to refuel the tractor trailers. The proposal is to add a 12,000 gallon above-ground storage tank.

Councilman Pelunis said a recently approved ordinance permits a 12,000 gallon storage tank. He asked if this plan permits the necessary maneuverability for the trucks.

Mr. Marshall said the trucks will have to back in and out to refuel, which is common and normally occurs at typical gas stations. He displayed a rendering indicating the tank location and the fueling lane.

Mr. Newberry said there appears to be two tanks on the rendering and Mr. Marshall clarified one of the tanks is a saddle tank.

Fire Inspector Wolf said the Fire Department has no issues with the 12,000 gallon tank as long as all fire code requirements are met and they have the spill prevention control counter measure plan as required by the EPA. He said the EPA will inspect the tank and review the plan on an annual basis.

In response to Mr. Mazur's question, Mr. Marshall said the light pole will be 16' in height.

Motion by Mr. Mazur, seconded by Mr. Newberry to approve a site plan for a fueling station for 6250 Camp Industrial Road.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

7. Intersection of Route 91 and Miles Road – Pro-Built Homes, Inc. 104-2014 4
Parcel A: 952-40-006, Parcel B: 952-40-018 and Parcel C: 952-40-005
- 9' driveway width variance
 - 8 sq ft maximum amount of accessory pavement variance – Parcel B
 - 25' minimum driveway rear yard setback variance – Parcel A
 - 10' minimum driveway side yard setback variance – Parcel B (north lot line)
 - 10' minimum driveway side yard setback variance – Parcel B (south lot line)
 - 10' minimum driveway side yard setback variance – Parcel C
 - 6' minimum driveway side yard setback variance – Parcel A
 - 16' minimum driveway rear yard setback variance – Parcel B
 - 5' minimum driveway rear yard setback variance – Parcel C
 - Dwelling orientation variance – Parcels A, B and C
 - 4.9' minimum front yard setback variance – Parcel A
 - 93.5 minimum front yard setback variance – Parcel B
 - 36.5 maximum front yard setback variance – Parcel C
 - Not parallel to street variance – Parcel A
 - Site plan for condominiums - (3) two-family dwellings

Motion by Mr. Mazur, seconded by Mr. Newberry to table consideration of Item 7.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

BOARD OF ZONING APPEALS:

8. The Planning Commission members convened as the Board of Zoning Appeals to consider the appeal of CrossFit Solon, for 29001 Solon Road, Unit P in which an occupancy permit was denied.

Councilman Pelunis said the applicant is appealing the decision of the Planning Director and the Law Director to deny an occupancy permit to CrossFit Solon to occupy 29001 Solon Road in the I-2 Industrial District, pursuant to Chapter 1294 of the Codified Ordinances of the City of Solon.

Mr. Stolarsky said pursuant to Chapter 1290.04, the Planning Commission will be acting as the Board of Zoning Appeals and their decision shall be considered final. As a quasi-judicial proceeding, all witnesses will be sworn in and all evidence submitted and marked to become part of the record for this proceeding.

Mr. Stolarsky said he spoke earlier with the applicant's attorney, Mr. David Firestine and informed him that there will only be 4 members of the Commission present tonight and, therefore, an affirmative vote would be required by 3 of the members in order to grant the appeal. He said as the proceedings commence, Attorney Firestine and the applicant can determine if they wish to continue. However, he has been made aware that the next two meetings will only have 4 members in attendance as well.

Mr. Stolarsky requested that the 12-page appeal document, dated October 23, 2014, received in the Clerk of Council's office on October 27, 2014, be marked as applicant's Exhibit A and admitted into the record. He said the Planning Director's 10-page memo dated November 5, 2014, will be marked as the City's Exhibit 1 and admitted into the record.

All of the exhibits were approved by Attorney Firestine and Councilman Pelunis and submitted to the Clerk.

Councilman Pelunis said the applicant can present any testimony or evidence beyond the written appeal which will be made part of the record. Mr. Stolarsky will swear in anyone who will be giving testimony.

Mr. Stolarsky said anyone who will be speaking should come to the podium and give their name and he will swear everyone in at the same time.

1. Jason Elrod, 1531 Commerce Drive, Stow, OH
2. Betsy Finley, 3825 Faith Lane, Richfield, OH
3. Marcie Ridenbaugh, 4462 Yorkdale Drive, Stow, OH
4. Scott Farwell, 4239 Lansbury Court, Copley, OH

Mr. Stolarsky asked Mr. Frankland to stand and be sworn in as he will also be speaking.

Mr. Stolarsky swore in the individuals listed above.

Attorney Firestine, Akron, OH, representing CrossFit Solon was present. He explained he will present information about CrossFit substantiating that it is not a typical gym or fitness center and it should be permitted within the Industrial District.

Attorney Firestine believes CrossFit will become recognized as an organized and regimented sport in the future just as skateboarding did 30 years ago with recognized athletes such as Tony Hawk and Olympian, Shaun White.

Attorney Firestine compared CrossFit to the Spirit Athletics center located in the Industrial District. He believes CrossFit meets all of the same criteria as Spirit Athletics and is not a typical fitness center like Bally's. He said the definition within the Zoning Code specifically excludes health and fitness clubs, shooting ranges, archery ranges, racquet clubs, and batting cages. Attorney Firestine said CrossFit trains athletes with specific individual programs at designated times with instructors. This is unlike Bally's where a member can show up at any time and perform any exercises they choose to do. The training received at CrossFit prepares participants for competition where prize money is awarded and should not be considered a health and fitness club.

Attorney Firestine displayed a photograph of CrossFit's Copley location indicating their sign. He said the Copley CrossFit is located in the building his office occupies. He said CrossFit was granted an occupancy permit for the location and is an example of poor zoning in Copley as he hears weights banging, music playing and athletes grunting when classes are in session. He explained that the location is inappropriate for CrossFit and has caused problems for his office and other surrounding tenants. Whereas, Attorney Firestine believes Solon's Industrial District is a more appropriate location.

Mr. Stolarsky requested that the photographs be submitted as Exhibit B to the Clerk.

Attorney Firestine displayed an article, marked Exhibit C, from the *Akron Beacon Journal* where a CrossFit was approved, based on Akron's zoning, in a multi-use building that has residential and retail. He said the article is about CrossFit disturbing the neighbors and that it needs to be located in the right zoning district. Attorney Firestine believes the proposed location in the Industrial District will be appropriate for CrossFit. He submitted a letter from Spirit Athletics supporting CrossFit's request.

Councilman Pelunis advised the witnesses are still under oath.

Mr. Scott Farwell stated that CrossFit is considered a sport and fits into the sports facility demographic. He explained the programs the athletes are involved in and the noise level associated with lifting heavy weights. He said the types of programs offered by CrossFit are not the programs offered in typical fitness centers.

Mr. Farwell said at a meeting between Law Director Lobe and Mr. Frankland, the impression was that fitness was not a good word and CrossFit was considered a fitness center. Mr. Farwell said the training CrossFit participants receive is very intensive and prepares them for worldwide competitions in the sport of fitness.

Mr. Farwell presented literature about the program. He said sport, by definition, is an activity that involves physical exertion and skills in which an individual or team competes against others for entertainment. He believes CrossFit fits perfectly into this definition as a sports facility. Mr. Farwell said CrossFit training revolves around the CrossFit games of the worldwide open and leads to regionals then nationals. He said over the past seven years, prize winnings for CrossFit games have totaled approximately \$4,000,000.

Mr. Farwell said Law Director Lobe said they are looking at this application with traditional eyes. He said just like skateboarding was not always recognized as a sport, this is similar to what CrossFit is experiencing.

Mr. Stolarsky requested the literature be considered Exhibit D.

Mr. Farwell submitted a letter from doctors at University Hospitals explaining that CrossFit is a sport. The doctors consist of an orthopedic surgeon, a podiatrist and two are family-practice doctors. Mr. Farwell said the doctors are avid CrossFit participants and they see patients on a regular basis who participate in CrossFit which they clearly describe as a sport.

Mr. Stolarsky requested the letter be considered Exhibit E.

Mr. Farwell submitted a second letter from Spirit Athletics, the gymnastics facility located two doors down from CrossFit's proposed location. He said the woman who runs Spirit Athletics competes in CrossFit competitions and is also an advocate for them. Mr. Farwell believes CrossFit fits into the classification of sports facility.

Mr. Stolarsky requested the letter from Spirit Athletics be considered Exhibit F.

Mr. Jason Elrod, who was previously sworn in, said he is the owner of CrossFit Akron North in Stow, OH, and feels CrossFit is a new entity. He feels that most are accustomed to viewing fitness as one entity and sports as another entity and CrossFit is a new creation which is the sport of fitness. Mr. Elrod said CrossFit has athletes participating, not members. The athletes have personalized programs and instruction provided by high level degreed coaches with specific goals in mind. The workouts are scored and logged into a system for comparison with other athletes in order to track results.

Mr. Farwell displayed his smart phone to emphasize the system used to track results. He said times are logged in, results are posted and the athlete knows their standing in their own gym as well as other participating surrounding gyms.

Ms. Betsy Finley, previously sworn in, is an Assistant Principal for Hudson City Schools who works out every morning at 5:00 AM. She believes this is a great stress relief and CrossFit also promotes comradere as athletes cheer for each other. Ms. Finley said it embodies more than just working out as you are also given instructions for eating better. She said the coaching she has received has been vital for her participation in CrossFit competitions where she has won various medals in her division.

Ms. Marcie Ridenbaugh, previously sworn in, is a teacher and a coach at Solon High School who lives in Stow and attends CrossFit Akron North. She coaches girls' cross country varsity at the high school, varsity softball, and middle school basketball in Solon. Ms. Ridenbaugh is passionate about athletics and was also a college athlete. She started CrossFit one year ago and feels it has made her a much stronger athlete and competitor and has given her the atmosphere she lost after college graduation. Ms. Ridenbaugh said she attended a CrossFit Endurance Conference to better herself as a coach where she gained knowledge about mobility and strength which has helped her and the athletes she coaches improve. Ms. Ridenbaugh believes Solon athletes would benefit from a CrossFit in Solon and gain skills they would not otherwise receive to become better overall athletes.

Councilman Pelunis said as there are no additional witnesses, Mr. Frankland will give his presentation and Attorney Firestine can then provide his final remarks.

Mr. Frankland, Planning Director for the City of Solon, previously sworn in, said it is obvious that CrossFit is a great company and is gaining popularity. He believes it would be a great addition to the City of Solon, however, the City Code mandates that CrossFit is permitted in commercial areas but not permitted in industrial areas.

Mr. Frankland said regarding the nature of changing, restricting or expanding uses within the City of Solon, Article 14 of the City Charter states that the City is a referendum community. This means a permitted use cannot be added or deleted from the list without the residents voting. Mr. Frankland said under Section 1290.02 of the Zoning Code, it is specifically stated that any use of land that is not explicitly permitted under the terms of the Zoning Code, shall be considered to be prohibited. Mr. Frankland said the Code governing sports training facilities, which is very narrowly tailored, is intended to prevent general commercial activities from expanding into the industrial district.

Mr. Frankland said there are three criteria which need to be met in order to be considered a sports training facility. The first criteria is the business must occupy an enclosed structure and it must be at least 8,000 sq ft in area and this location is not 8,000 sq ft. The second criteria is the business must be devoted exclusively to advanced and/or professional college or high school level instruction and training relating to specific sports activities, such as; gymnastics, boxing, soccer, golf, baseball or basketball and it must not be a commercial recreational service catering to the general public such as a health and fitness club. Mr. Frankland said the argument being made is that CrossFit is similar to gymnastics but the problem is the City Code has a specific prohibition against health and fitness clubs. This is

about the prohibition the Solon voters approved against health and fitness clubs because there was a concern of commercial uses expanding into the industrial area.

Mr. Frankland said the industrial area has been very important in the development of Solon and Solon is the City it is today because of the industrial area. He said much research went into this decision based upon information about CrossFit with much testimony given about the company. However, at issue is the listed uses for the area which are; gymnastics, boxing, soccer, golf, baseball and basketball. He said all of the sports training facilities that have been approved have been specifically listed including a Tae Kwon Do business approved in 2005 based upon the specific instruction found to be similar to boxing training. All of the listed sports are considered as recognized sports and although CrossFit may someday be recognized as a sport, currently it is not. CrossFit is a registered trademark of CrossFit Incorporated and offers their customers the same types of workout equipment typically found in a gym, i.e., barbells, Olympic weight plates, medicine balls, resistance bands, kettle bell weights, etc. These are all objects found to promote physical fitness. Although CrossFit sponsors games, it is about working out and getting fit. This does not mean CrossFit is not a fitness club simply because participants are receiving awards because they are considered to be the fittest.

Mr. Frankland said he has received other requests about opening a CrossFit in the industrial district. One of the concerns when looking at the CrossFit website is the definition itself. The CrossFit website definition states, "CrossFit begins with a belief in fitness. The aim of CrossFit is to forge a broad, general and inclusive fitness. We have sought to build a program that will best prepare trainees for any physical contingency, not only for the unknown but for the unknowable. After looking at all sport and physical tasks collectively, we ask what physical skills and adaptations would most universally lend themselves to performance advantage. Capacity culled from the intersection of sports demands would quite logically lend itself well-to-well sports. In summary, our specialty is not specializing."

Mr. Frankland referred back to the definition of a sports facility which must be devoted exclusively to an advanced or professional college level instruction related to specific sports activities such as, gymnastics, boxing, soccer, golf, baseball and basketball. He said although CrossFit may get a person fit and coordinated which will assist when playing sports, it is not considered to be a sport itself under the City's Code. He understands the argument that CrossFit is like gymnastics, however, the next organization that wants to locate into the industrial area will use the same argument.

Mr. Frankland said he does not enjoy saying no and would rather say yes and fill the buildings. However, this use is specifically prohibited under the City's Code, Charter and Zoning Code and must be taken seriously. CrossFit is a broad, physical fitness and is not specific training for a specific sport activity.

Mr. Stolarsky asked if there were other locations within the City where CrossFit would be considered a permitted use.

Mr. Frankland said CrossFit would be permitted in most of the City's commercial classification districts. He said there are seven classifications in the commercial district and the only one CrossFit would be prohibited in would be the C-4 District. He said there are currently vacant buildings within the permitted commercial district that are available. He said the Macklin Event Center on Enterprise Parkway, Slam Jams, Sears and the Earth Fare locations are all available. Mr. Frankland said the former Office Max building will soon be a new health club.

Mr. Frankland said the City has a 2,000 acre industrial area which is the heart of the City. The goal of the City's master Plan is to fill vacant retail spaces and re-develop the downtown area. He believes CrossFit would be a great addition to the City's downtown area and CrossFit would be welcomed there. CrossFit is a permitted use in that area and although comments were made about noise issues, the City's office district prohibits commercial uses because of noise. Mr. Frankland said the Industrial District is very important to the City and since 1951, the City has been very careful to keep commercial uses out of that district. Therefore, the City must be very careful about expanding uses, especially ones listed in the Code as explicitly prohibited.

Councilman Pelunis asked if there were any further submissions from Attorney Firestine.

Attorney Firestine said he would like to make rebuttal remarks.

Mr. Mazur asked what the height requirements would be for a CrossFit.

Mr. Farwell said as rope climbing, wall balls and gymnastic rings are used, a ceiling in excess of 15' is necessary.

Attorney Firestine said the Code expressly provides for these types of commercial activities to be in the industrial area. Therefore, he believes the Code would not have provided for these exceptions if they were prohibited. He feels when an exception is written into a Code, it stops being an exception and becomes part of the rule, which in this situation is that high level instruction and training related to gymnastics, boxing, soccer, golf, baseball and basketball are permitted. Attorney Firestine said the Commission is not being asked to change the Code, only to change their interpretation of the Code as it pertains to CrossFit. He said when the term, "such as" is included, it is open to interpretation.

Attorney Firestine said it is an elected official's job to interpret the Code, legislate and determine if a business makes sense for a specific district. He feels all the evidence presented about CrossFit indicates it is appropriate for the Industrial District. He does not understand how it can be argued that a gymnastics and cheer facility and a Tae Kwon Do facility are expressly permitted uses in this district and that a CrossFit facility is not.

Attorney Firestine said with regard to Mr. Frankland's statement about expanded uses only being permitted by the voters, Attorney Firestine said the decision to permit Tae Kwon Do in the industrial district never went to the voters. He said the Tae Kwon Do business was approved as it was determined that it was close enough and met with the Code language to be a permitted use. It is, therefore, his belief that CrossFit is very similar to gymnastics and enough evidence was submitted to back this up and explain how CrossFit fits into the Industrial District.

Mr. Frankland said once again he will refer to the definition on the CrossFit website that states it is about a fitness regimen and, therefore, by definition is a health and fitness club. He noted a reason for CrossFit to go into the industrial area listed on the application was also regarding cost, as it is more expensive to lease space in the commercial area. He said retail space is 70% higher on average than industrial space. This creates motivation for commercial uses to try to locate to the industrial area. The reason the Tae Kwon Do business was permitted in the industrial district was because it was found to be substantially similar to one of the permitted uses.

Mr. Frankland said there was recently a comprehensive revision of the entire Zoning Code and it was voted on and approved at the November 4, 2014 election. Therefore, the voters have implemented these requirements. The definition of a substantially similar use is a use that is not explicitly listed as a principle accessory or prohibited use within a particular zoning district but which possesses characteristics that are so similar to a specifically listed principle use, accessory use or prohibited use that makes the two uses virtually equivalent. Therefore, this is a prohibited use as it is substantially similar to a prohibited use.

Mr. Farwell said the CrossFit website offered more information than what was mentioned previously. He said it is also listed as the sport of fitness on the website. Mr. Farwell said Law Director Lobe said the City is looking at this through traditional eyes and that the concept of CrossFit is difficult to understand. He said CrossFit is an advanced training facility offering fitness training with specific movements and skills and at least 50% of CrossFit participants compete. He said CrossFit is the sport of fitness and has evolved to a level that is widely accepted, contrary to comments previously made. Mr. Farwell noted that CrossFit was on ESPN on Sunday night, the same time that football aired.

Mayor Drucker offered her thanks to the applicants as she understands many of them had to drive in from a distance. As the Mayor of the City, she does not like to say no to a perspective business since they want to promote businesses. However, she does respect the City's Zoning Code and the vote that just passed on November 4th for the amended permitted uses. She would welcome CrossFit to Solon but in the Commercial District. Mayor Drucker said everything she heard tonight mentioned the word fitness. She said her impression of CrossFit is a high intensity fitness club. Mayor Drucker also respects the Industrial District which is the core of the City's livelihood and believes CrossFit to be a commercial business. She will not support the appeal for CrossFit to be located in the I-2 District but would welcome CrossFit into one of the City's commercial areas. As Mr. Frankland mentioned,

there are locations within the commercial area that are currently vacant that would be able to accommodate CrossFit.

Mr. Mazur said supporters of CrossFit did a very good job presenting the objectives and goals of CrossFit. He looked up CrossFit on Wikipedia where it was defined as a fitness company. Mr. Mazur said he is still struggling with the word fitness and trying to make sure that fitness is not a sports training facility. He does not believe that adding competition to a fitness regimen makes it a sports training facility. He said the Code specifically prohibits the use of fitness facilities in the Industrial District. Mr. Mazur agreed with Mayor Drucker and said that CrossFit would be a welcome addition to Solon but in the appropriate commercial area. He said an attempt through initiative petition could also be made to have the permitted uses changed.

Mr. Newberry said he has yet to hear a satisfactory reason why CrossFit does not want to locate in the Commercial District with the understanding that economic hardship is not a reason to grant a variance. He said while he applauds all of the athletes that participate in CrossFit, it is still missing college and/or high school athletes. Mr. Newberry said there was a baseball training facility previously located in the district that invited high school athletes to come to their facility. When Spirit Athletics came to the City, it was to specifically train high school and college gymnasts and cheerleaders. Mr. Newberry said educational facilities were permitted within the Industrial District and the Code was amended to permit advanced training facilities to be located within the Industrial District. Mr. Newberry agreed with Mayor Drucker and is not in a position to change the definition of what constitutes a health and fitness club for a sports training facility in order to accommodate CrossFit.

Councilman Pelunis commended Attorney Firestine for presenting CrossFit's position. However, he feels there are many other areas in Solon where CrossFit could locate where it is a permitted use. He was unaware of CrossFit until today but believes it sounds like a great concept.

Motion by Mr. Newberry, seconded by Mayor Drucker to approve the appeal to the decision of the Director of Law and the Director of Planning and Development to deny an occupancy permit for CrossFit Solon, 29001 Solon Road, Unit P, in the I-2 Industrial District.

Roll Call: Aye: None

Nay: Drucker, Mazur, Newberry, Pelunis

Motion Failed

Mr. Stolarsky said pursuant to Chapter 1294, the decision of the body acting as the Board of Zoning Appeals is final.

MINOR ALTERATIONS FROM THE PLANNING DEPARTMENT:

1. 33605 Aurora Road - Planet Fitness

Mr. Frankland displayed an aerial view of the property indicating the rear of the building formerly occupied by OfficeMax in Solon Square Shopping Center. The proposal is to add a man door in the rear of the building.

The Commission agreed no further review of this item was necessary.

2. 3317- Solon Road – SSSS

Mr. Frankland displayed a site plan indicating the parking lot where ADA parking spaces were previously approved. The proposal is to relocate them and Mr. Frankland indicated the minor location change.

The Commission agreed no further review of this item was necessary.

3. 6440 SOM Center Road – Verizon Wireless

Mr. Frankland displayed a photograph of the Verizon location indicating two sets of double doors used for entering the business. The proposal is to remove one set of double doors, the center doors, and wall it in with glass to match the rest of the storefront.

Fire Inspector Wolf said the Fire Department does not have any issues with this proposal.

Mr. Newberry said Verizon is expanding into the adjacent tenant space.

Mr. Frankland clarified that when minor alterations are approved by the Planning Commission, it only gives the applicant the authority to begin the administrative review process.

The Commission agreed no further review of this item was necessary.

4. 28020 Miles Road – Blue Star Tavern

Mr. Frankland displayed an aerial view of the property. He said the proposal is to re-stripe the parking lot and add ADA spaces in the rear of the building.

The Commission agreed no further review of this item was necessary.

5. 29300 Cannon Road – Nestlé R&D Center

Mr. Frankland displayed a site plan and indicated where a previously approved patio and landscaping was to be installed. The proposal is to delay the installation until the spring.

The Commission agreed no further review of this item was necessary.

COMMENTS FROM THE COMMISSION:

Mayor Drucker said this morning at 11:00 A.M., the City held a service at Veterans Memorial Park in honor of veterans. She gave special thanks to Solon AMVETS, Solon VFW and all of the City employees who assisted. Mayor Drucker said it was a great turnout and the weather was beautiful. She said it is always an honor to pay tribute to those who have served and sacrificed for our country.

In turn, Commission members thanked veterans for their service to our country.

COMMENTS FROM THE AUDIENCE:

There were no comments from the audience.

Motion by Mayor Drucker, seconded by Mr. Mazur to adjourn the meeting at 9:30 P.M.

Roll Call: Aye: Drucker, Mazur, Newberry, Pelunis

Nay: None

Motion Carried

Chairman

Secretary