

PLANNING & ZONING COMMISSION
November 25, 2014 – 7:15 P.M.

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

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

Absent: Councilman Pelunis

Also Present: Fire Inspector Eisenhuth, Councilman Kitora, Project Engineer Lyndon

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)

Vice Chairman Mazur presided.

PENDING:

2. 5022 Hidden Creek Circle – Govind Dixit and Neera Gupta – fence variances: Mr. Frankland said he met with the applicant who is still working with the City's landscape architect and asked to remain on the Active Agenda as he plans to attend the December 9th meeting.

5. 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: Mr. Mazur said the applicant requested the item be tabled.

BOARD OF ZONING APPEALS:

6. Appeal to the decision of the Director of Law and the Director of Planning and Development to deny an occupancy permit for Fight Fit, LLC, 27000 Richmond Road:

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 Fight Fit for 27000 Richmond Road, in the I-2 Zoning District was denied.

Mr. Stolarsky reviewed the procedures that will be followed during the appeal and explained to Ms. Fox that items will be labeled as exhibits.

Mr. Stolarsky said as there are only four Commission members present, a vote in the affirmative will be required by three members. He said any applicant can request their item be tabled until there is a full Commission.

Mr. Frankland said he has two minor alterations to present. He displayed a picture of the front of Orchard Middle School where the proposal is to change the doors. In addition, a proposal to add an awning over the front entrance is also requested. Mr. Frankland said there are no variances associated with the proposal and asked the Commission if they were comfortable viewing this as a minor alteration.

The Commission determined viewing the proposal as a minor would be appropriate.

Mr. Frankland said the second minor alteration is for Zircoa on Solon Road. He displayed a picture of the building indicating the older windows and said the proposal is to replace all of the windows with larger windows. This will not impact the appearance of the building but will make it more functional.

The caucus ended at 7:21 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:

There were no comments from the audience.

APPROVAL OF MINUTES:

Motion by Mayor Drucker, seconded by Mr. Newberry to approve the minutes of the November 11, 2014 meeting as presented.

Roll Call: Aye: Drucker, Mazur, Newberry

Nay: None

Abstain: Bentley

Motion Carried

NEW:

1. 35275 Chestnut Court – Laurence Karns 107-2014 1
 - 320 sq ft maximum amount of accessory pavement variance

Mr. Larry Karns was present and displayed an aerial view of his property. He explained that Southside Cement poured a 10' x 22' section of concrete at the top of his driveway on October 1st; however, he did not obtain the required permits. Mr. Karns said there have been multiple incidents with vehicles backing out of the garage and into parked vehicles in the driveway. He said the intent of the extra

concrete was to be able to park four additional vehicles and prevent collisions. Mr. Karns has five children which produces a substantial amount of visitors and additional vehicles.

Mr. Karns said an 8' x 10' section of the 10' x 22' concrete area was to replace damaged pre-existing concrete and the 14' x 10' area of concrete is new. He said the concrete work was done very well and it achieved their goal to park vehicles in a safe location away from vehicles backing out of the garage. Mr. Karns said the additional pavement is not visible from the street and cannot be viewed by either of his neighbors.

Mayor Drucker said when work is performed without a permit, she makes her determination about a variance request based on whether she would have approved the item if it had come before the Commission through the appropriate application process. As she would have approved this requested variance and believes there is a need for it, she has no objection and will support the variance.

Mr. Mazur said even if the variance is approved, there will be a fine imposed for performing work without the required permit.

Motion by Mr. Bentley, seconded by Mayor Drucker to approve a 320 sq ft maximum amount of accessory pavement variance.

Mr. Mazur said as one member of the Commission is absent, three of the Commission members must give an affirmative response for the item to be approved. He said a two-to-two vote from the Commission results in the item failing.

Roll Call: Aye: Bentley, Drucker, Mazur
Nay: Newberry

Motion Carried

PENDING:

2. 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

Mr. Frankland said he met with the applicant and the City's landscape architect and the applicant requested to remain on the Active Agenda as he intends on attending the December 9th meeting.

Motion by Mr. Mazur, seconded by Mr. Bentley to table consideration of Item 2.

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

Motion Carried

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

Mr. Mike Knabe, Coraopolis, PA, was present representing Crown Castle for Verizon. He said Verizon is proposing the installation of a 26' x 12' pre-fabricated building and to mount 12 antennas on the existing cell phone tower located at 6801 Cochran Road.

Mr. Jeff Race was present, representing Crown Castle and displayed a site plan indicating the location.

A public hearing was scheduled and Mr. Mazur opened the public hearing and asked for comments.

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

Motion by Mr. Newberry, seconded by Mayor Drucker to approve the site plan for new antennas.

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

Motion Carried

4. 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.

Mr. Mazur said an updated rendering depicting all of the signage was submitted as requested.

Mayor Drucker said she previously stated that she would be willing to approve the same signage that was approved for Saaj. She viewed the property and will not support the sign on the front roof as she feels it will set a negative precedent and there is no other similar sign located in the City.

Mayor Drucker said she has no issues with the standing sign which is referred to as Sign D on the rendering. In addition, she has no issues with Signs B and C located on the top of the tower with the condition that no additional signage will be added to the bottom windows or the front windows.

In response to Mr. Cave's question about permitting the interior neon signage on the top windows, Mayor Drucker said that will be permitted as it is comparable to the number of signs approved for Saaj.

Mr. Bentley agreed with Mayor Drucker and also said there is no other signage on roofs located in the City.

Mr. Newberry has no issues with the signage in the upper windows as it is an area that is unoccupied and, therefore, there will be no security issues.

Motion by Mr. Bentley, seconded by Mr. Mazur to approve the number of wall signs variance (to permit 1 additional sign).

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

Nay: None

Motion Carried

Motion by Mr. Mazur, seconded by Mr. Newberry to approve the roof mounted sign variance.

Roll Call: Aye: None

Nay: Bentley, Drucker, Mazur, Newberry

Motion Failed

Motion by Mayor Drucker, seconded by Mr. Newberry to approve a 45.5% maximum window sign area variance.

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

Nay: None

Motion Carried

5. 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

Mr. Mazur said the applicant requested this item be tabled.

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

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

Nay: None

Motion Carried

BOARD OF ZONING APPEALS:

6. The Planning Commission members convened as the Board of Zoning Appeals to consider the appeal of Fight Fit, 27000 Richmond Road in which an occupancy permit was denied.

Mr. Mazur said the applicant is appealing the decision of the Planning Director and the Law Director to deny an occupancy permit to Fight Fit, 27000 Richmond 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 requested that the two page appeal document, dated November 10, 2014, be marked as applicant's Exhibit A and admitted into the record. He said the Planning Director's 34-page memo dated November 18, 2014, will be marked as the City's Exhibit 1 and admitted into the record.

Mr. Mazur said the applicant will have as much time as needed for the appeal process and may submit any materials and information they deem necessary.

Mr. Stolarsky said anyone who will be speaking should come to the podium and he will swear everyone in at the same time, including Mr. Frankland. Mr. Stolarsky swore in those individuals who intended to speak. He asked that each person give their name when they come to the podium to speak.

Ms. Sarah Fox, the owner of Fight Fit – Krav Maga, 17820 Englewood Drive, Middleburg Heights, OH, was present. She is seeking a reversal to the decision to deny occupancy for a Fight Fit in the Industrial District as she believes there is a misconception regarding the purpose and goals of Fight Fit.

Ms. Fox said the reason she was given for the denial was that Fight Fit is a fitness club which is not considered a permitted use in the Industrial District. It is her belief that Fight Fit is not a fitness club but is a Krav Maga Training Center. Ms. Fox opened Fight Fit in 2008 as the official Krav Maga Training Center for Krav Maga Worldwide which is based in Los Angeles, CA, and the regional training center for Fit to Fight which is based in Charlotte, NC. She explained the goal and purpose of Fight Fit is to teach the most effective and realistic forms of self-defense and combat fighting.

Ms. Fox said the premise of her facility is designed to teach people how to protect themselves and their families. She said she is the highest ranking Krav Maga instructor in northeastern Ohio and has attained black belt status. In addition, her facility has the most expert level Krav Maga instructors available in this area. Therefore, her facility offers the most advanced Krav Maga training in the area.

Ms. Fox said part of the training available is Krav Maga weapons defense, ground fighting and stand-up fighting. This is based on technique, mind set and physical capability.

Ms. Fox referred to the curriculum guide (Exhibit B) and explained these are specific categories for Krav Maga training, i.e., choke releases, head locks, etc. She said testing takes place for each category in order to advance in the program and testing for Level 1 averages 4 to 4½ hours. Ms. Fox said it is a very intensive form of fighting and in order to properly train individuals, the necessary training tools must also be provided in the forms of strength and conditioning. She said you cannot take fitness out of strength and conditioning as individuals are tested under pressure, resistance, fatigue and stressful situations.

Ms. Fox referred to Exhibit A, her appeal document, and reviewed the definitions of sport and health club. The definition of health club includes exercise equipment for the purpose of physical exercise. Ms. Fox said her facility is instructor-based with no treadmills or other exercise machinery. In addition, there is no open-gym time, no lockers and the instruction is determined by her based on the specific needs of the individual. Ms. Fox believes this type of instruction does not meet the definition of a health club.

Ms. Fox said an interesting fact is the Ohio General Assembly has written a bill to enact Section 3701.851 of the Ohio Revised Code to require health clubs to have an automated external defibrillator installed on their premises. The primary purpose of a health club was defined as a facility that assists patrons in physical exercise, weight control or figure development. Ms. Fox said her primary purpose is to train individuals in Krav Maga and prepare them for fighting.

Ms. Fox referred to Exhibit B, the curriculum guide, and explained that each level must be passed with an overall average score of 75. If this grade is not achieved, a person fails and cannot progress in the program. Ms. Fox asked her first witness to speak.

Mr. James Dombrowski, previously sworn in, said he is currently a Federal Police Officer with the Department of Veterans Affairs in Durham, North Carolina. He has worked with Ms. Fox in the past and would like to see the Fight Fit in Solon be approved as his son lives in this area and he would like his training to continue. Mr. Dombrowski said he is also an Air Force and Army veteran and tells officers that there is fitness training and then there is Krav fit. He said they are two completely different levels and, having worked with Ms. Fox, he can attest to it being a highly specialized and professional training that forces one to go beyond health club physical exercise. Mr. Dombrowski said his Level 1 test took him 4½ hours to complete and he would never have been capable of completing it without the fitness conditioning he received during training. He said Krav Maga is not a recreational activity, it is training to meet, avoid or overcome potential deadly encounters. Mr. Dombrowski said Fight Fit should not be considered a health club and possibly the Zoning Code should be changed to include Martial Arts Centers.

Ms. Anne DePhillips, 10793 Waterfall Road, Strongsville, Ohio, previously sworn in, said she is the owner of Select Fire Training Center in Berea, Ohio. She said it is an indoor shooting range, training center and retail store. Ms. DePhillips considers her business to be a recreational sports facility even though she offers higher level gun training courses and a concealed carry course. She considers her business as a recreational facility because the majority of patrons and the public use the facilities for recreational shooting and can come anytime the facility is open. However, specialized training must be scheduled in advance with qualified instructors.

Ms. DePhillips said Fight Fit is a worldwide licensed Krav Maga Center. The definition of Krav Maga includes, practitioners of self-defense systems to include; boxing, wrestling, Muay Thai and Judo, all of which fall under the category of sport. Ms. DePhillips said just as participants of boxing and wrestling need conditioning, which is provided at those facilities, participants of Krav Maga also need to be provided with the means for strength conditioning. Fight Fit is where someone goes to acquire the knowledge, skills and competencies for self-defense and/or combat fighting with specific goals in defending oneself against multiple attackers in different scenarios.

Ms. DePhillips said the definition of a training center is the process of bringing a person to an agreed standard of proficiency by practicing an instruction. She said this is exactly what Fight Fit is and a person does not join Fight Fit to use kettlebells or to run on a treadmill. A health club or fitness center would be joined if that is what someone wanted to do. People join Fight Fit to learn Krav Maga self-defense along with all of the other necessary components, such as, strength conditioning to advance their ability to defend and to fight.

Ms. DePhillips said Select Fire has a corporate membership with Fight Fit which allows all of her employees to train in Krav Maga since her employees are with members of the public with loaded firearms daily. She believes the knowledge of Krav Maga self-defense training could possibly save a life one day as Krav Maga is used in the military and in Federal law enforcement. Ms. DePhillips said this is not training you could receive at a health club as it is highly specialized and Fight Fit should be considered a training center.

Ms. Fox said Krav Maga has been adopted by many military and law enforcement agencies. Additionally, out of all of the communities in northeastern Ohio, Solon is the only community that has six Krav Maga force training instructors on their Police Department staff. This is a special certification program offered only to law enforcement officers.

Ms. Fox said during a meeting with Mr. Frankland and Mr. Stolarsky, there was discussion regarding verbiage on her website. She explained fitness cannot be taken out of the training program and this is necessary to achieve technique, strength and conditioning. Ms. Fox said any sports program has fitness associated with it. She distributed information to the Commission (Exhibit C) which was a copy of the website for a martial arts training center called World Kickboxing Academy located in Stow, OH. She explained that a company called 97 Display

designed her website and they use a template with certain words to encourage people to her site. Ms. Fox said 97 Display also designed the website for the World Kickboxing Academy which is owned by a well-known martial arts company called Asian Sun Martial Arts Franchise. The Kickboxing Academy website design is very similar to her website for Fight Fit with the same verbiage about getting in shape with classes.

Ms. Fox said the website for her new east side location will not be the same as her Middleburg Heights website as it will have different class offerings. She said her east side location will have a close quarters combat room and she displayed a photograph (Exhibit D) and said the room resembles a bus or airplane seating with two rows of seats with an aisle down the center. This will be used for teaching close quarters and hijacking training.

Ms. Fox said during her meeting with Mr. Frankland and Mr. Stolarsky, there was discussion about competition. She said competition is provided among the participants with sparring, self-defense drills with resistance and ground fighting classes where there is a winner and a loser with each exchange. In addition, there is the testing procedure which is either passed or failed. There is a belt color system for the various levels attained, i.e., the first level passed earns a participant a yellow belt.

Ms. Fox said another concern presented at the meeting was whether or not a participant could come and use the facility as just a fitness club to get in shape. She indicated a page from her website with a pie chart (Exhibit E) that breaks down the program interest from her website. Ms. Fox said over 90% of the interest is with her skill-based classes. She believes this is not the type of facility to join if a person is only interested in fitness.

Ms. Fox referred to the membership list (Exhibit F) and said she intends to make her east side location an unlimited membership program. She explained that joining the program will include a 12-month commitment at \$100 per month. Ms. Fox feels it would be very unlikely for a person to commit to this program to just use kettlebells but not attend the classes and it would be far less expensive for them to join a typical health club or recreation center. She explained the reason her fee is substantially higher than a health club is because the classes she offers are highly specialized and skilled and supplement the Krav Maga training. Ms. Fox said participants are paying this fee to learn Krav Maga.

Ms. Fox feels that zoning codes do not speak to the behavior of the customer but speak to the use of the land. She distributed zoning code appeals from Miami County, Ohio (Exhibit G) and the Cleveland Clinic Foundation (Exhibit H) as she wants to demonstrate how zoning codes can be interpreted.

Ms. Fox referred to sections in the Miami County, Ohio appeal that she believes gives a zoning board clear direction when viewing a zoning code. She read a section from the appeal which she believes clearly expresses the courts view that when interpreting a zoning code, restrictions on use should be in favor of the

property owner. Ms. Fox feels her business is more closely related to boxing than to a health club and should be considered a permitted use in the Industrial District. In addition, a Tae Kwon Do school was also permitted in the Industrial District which is a Korean martial art and Krav Maga is an Israeli martial art.

Ms. Fox referred to a section in the Cleveland Clinic Foundation appeal where it was the decision of the Supreme Court to also view in favor of the property owner when interpreting a zoning code. She referred to another section of the appeal and said when a zoning code is unclear, the ruling should be in favor of the property owner. Ms. Fox said it is clear that Fight Fit is not a health club and feels denial of the occupancy permit was based on lack of information about Fight Fit. She explained that Krav Maga was developed from a combination of boxing, wrestling, Muay Thai and Judo and is the Israeli defense forces combat system.

Mr. Raymond Charles Geyser, Strongsville, Ohio, previously sworn in, said he is 56 years old and wanted to learn a martial art. He researched martial arts on the internet and determined Krav Maga was the best one for him. Mr. Geyser said he also belongs to a health club where he swims, runs and lifts weights. He advised that the Krav Maga program he attends is nothing like a health club but is a program in highly skilled techniques for martial arts and asked the Commission to reconsider the occupancy denial.

Mr. Matthew Koogler, Westlake, Ohio, previously sworn in, said he is a teacher at Summit Academy Community Schools in Parma, Ohio, and teaches physical education and health and has been a member of Fight Fit. Mr. Koogler read a prepared statement highlighting the differences between a gym and a training facility. He believes that Fight Fit is a training facility which teaches important skills. One such important skill is the ALICE Training Program prompted by school shooting incidents and is taught by Ms. Fox. He said ALICE stands for alert, lockdown, inform, counter and evacuate and is a program designed for self-defense and defending students from one or more active shooters. Mr. Koogler said this was a free seminar given by Ms. Fox and offered to educators along with a 3-month free membership to gain the necessary strength for the techniques learned during the seminar. He strongly believes Fight Fit should be considered a training facility.

Mayor Drucker said with regard to (Exhibit E), the pie chart that breaks down the program interest, what is considered to be the 8.1% "other" interests.

Ms. Fox said the interest would be in kettlebells, TRX training, yoga and other programs that are not Krav Maga based but are considered strength and conditioning programs.

Mayor Drucker asked if a person could join Fight Fit and only take the strength and conditioning programs.

Ms. Fox said she cannot require someone to take the Krav Maga classes and as a member they can choose to take the classes they want.

Mayor Drucker said, therefore, a person could join Fight Fit and only attend the yoga class.

Ms. Fox said yes a person could join Fight Fit and only attend yoga class, however, it is unlikely that a person would join based on the fees charged and only attend yoga class. She explained that the yoga class is specifically offered for the flexibility required for the Krav Maga training. Ms. Fox said the majority of the classes offered are for Krav Maga training.

Mr. Mazur asked Ms. Fox why she did not consider the Commercial District.

Ms. Fox believes her clients would not come from the Commercial District. She said those that would come to her facility know what Krav Maga is and are coming to learn that specific skill. Ms. Fox said she is located in an Industrial District at her location in Middleburg Heights with a gymnastics school located next door. She explained that Krav Maga training is not for everybody and as it is very intensive training, it is considered to be explosive. Ms. Fox believes that those looking for a fitness club would be more apt to come from the Commercial District where those looking for Krav Maga training would be coming from the Industrial District.

Mr. Bentley agreed with Ms. Fox regarding the necessity for conditioning for any sports participation.

Ms. Fox said in order to correctly perform the explosive techniques taught in Krav Maga, it is essential to have the strength that can be gained from using core muscles which is why kettlebell classes are important for conditioning.

Mr. Frankland, Director of Planning and Community Development for the City of Solon, previously sworn in, said it is in the City's best interest to fill vacant buildings and not turn applicants away. However, it is also the responsibility of the City to enforce and protect the integrity of the City's Zoning Code. He said that the use was turned down as a prohibited health and fitness club and Ms. Fox feels Fight Fit is a Krav Maga training facility. Mr. Frankland said Fight Fit is both of these uses and, therefore, the use is not legal.

Mr. Frankland said Fight Fit is an advanced Krav Maga martial arts instruction facility but it is also a prohibited health and fitness club based on the City's ordinances. He explained that under the City of Solon Zoning Code a use must be wholly in compliance with the City ordinances in order to be permitted. It cannot be in partial compliance per Section 1290.02 of the Zoning Code, which states, if a use is not specifically permitted in a zoning classification then it shall be considered to be prohibited. Mr. Frankland said, additionally, according to the City's Charter, Article 14, only the voters can add to or subtract from the list of permitted or prohibited uses.

Mr. Frankland said fitness is a major component of Fight Fit and although advanced martial arts training is a permitted use in the Industrial District under Section 1261.02 of the Code, it is not explicitly listed but it is substantially similar to boxing

and a previously approved Tae Kwon Do studio. However, fitness clubs are specifically prohibited under Section 1261.02 of the Code.

Mr. Frankland indicated criteria needs to be met for Fight Fit to be considered as a sports training facility. The first item is the business must occupy an enclosed structure and must occupy at least 8,000 sq ft in area. He said this is not really an issue. The second item is a sports training facility is defined as a facility that 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 use catering to the general public; such as, health and fitness clubs, shooting ranges, archery ranges, batting cages, etc.

Mr. Frankland said the website is how a business reaches its customers and it is focused on bringing in people to the business. Therefore, items on the website are advertising which is the most important way to reach customers and bring in business. Mr. Frankland said a substantial portion of the Fight Fit business model on the website is regarding health and fitness classes that can be taken at regular health and fitness clubs which are specifically prohibited in the Industrial District. Mr. Frankland further described additional classes listed on the Fight Fit website that clearly makes Fight Fit a fitness center. He said Fight Fit advertises itself as a business that can provide health benefits for those who take the classes they offer. Mr. Frankland also described advertisements from the Fight Fit website regarding membership incentive programs and the programs available which can be found at other health and fitness clubs.

Mr. Frankland said based upon the questions that were asked by the City and the answers received from Ms. Fox during meetings about Fight Fit, the City's conclusion is that Fight Fit is a martial arts studio and has a substantial health and fitness component which is explicitly prohibited under the City's Code. Mr. Frankland said during the meeting, the question was asked if the health and fitness component could be separated from the Krav Maga training and the response was that it would not be economically feasible. Additionally, the City asked if Krav Maga training was required to take as a member of Fight Fit in conjunction with the classes and the response was a member is not required to take Krav Maga training.

Mr. Frankland said although it would be unlikely for a person to join Fight Fit exclusively for the health and fitness classes, it is possible that could happen. If the City permitted Fight Fit to locate in the Industrial District, then it would effectively be allowing health and fitness clubs. Mr. Frankland said martial arts training is a permitted use in the Industrial District and if the health and fitness classes were removed from the Fight Fit component, it would be considered a permitted use because of Krav Maga training.

Mr. Frankland said Fight Fit currently would be permitted in six Commercial Districts in the City of Solon; C-1, C-2, C-3, C-3-A, C-5 and C-6. Mr. Frankland said there are suitable vacant commercial locations available that could

accommodate Fight Fit. However, the rental rates are 70% higher per square foot for commercial space than industrial space.

Mr. Frankland said the Industrial District is very important to the City and since 1951, the City has been very careful to prevent commercial uses from locating in that district. He said the only commercial uses permitted, sports training facilities, are specifically defined in an effort to prevent fitness centers from locating to the Industrial District. Therefore, the City must be very careful from an economic, planning and sustainability standpoint about continuing to enforce the Code by not permitting commercial uses to locate in the industrial district.

Mr. Stolarsky commented on Exhibits G and H, the appeal exhibits, where Ms. Fox read that when a zoning code is unclear, the ruling should be in favor of the property owner. He asked Mr. Frankland if he sees any ambiguity in the City's Zoning Code as it relates to sports training facilities.

Mr. Frankland said the Code is written very precisely for interpretation and clearly states which uses are permitted and which uses are not permitted. He said a little bit of the prohibited use cannot be allowed or the entire prohibited use results in being permitted.

In response to Mr. Stolarsky's question about Ms. Fox's answer to allowing a member to just attend fitness classes without Krav Maga training, Mr. Frankland said Ms. Fox said a member could only attend fitness classes if they chose to.

Ms. Fox said the section about sports training facilities in the Code has the words "such as" in it and lists boxing and gymnastics as examples. She feels this is not an absolute but only examples of what might be considered as a sports training facility. Therefore, she does not feel it should be limited to only those examples.

Ms. Fox said the class offerings Mr. Frankland listed from the Fight Fit website that he said were fitness classes which can be found at many fitness centers are also listed on Exhibit C, The World Kickboxing Academy, owned by the Asian Sun Martial Arts Franchise. She said fitness, strength and conditioning cannot be taken out of sports and needs to be provided to students in order to train in Krav Maga. Ms. Fox said she would not offer Zumba classes, which are typically offered at fitness centers, as she does not feel her members would benefit from a Zumba class. She chooses classes which will specifically support Krav Maga training.

Ms. Fox believes zoning codes should be written to support the land use. She said the Code cannot dictate free will of her members just as no business can control what their customers do. Ms. Fox said her goal is to teach Krav Maga and the strength and conditioning classes provided give the added benefit of good health. She believes the Code is ambiguous and based on the appeal documents she presented, the courts have ruled that when a zoning code is unclear, the rights of the property owner are favored. It is her understanding that a code can be narrowly tailored but it cannot be narrowly interpreted.

Ms. Fox feels she has clearly demonstrated that Fight Fit is a Krav Maga martial arts training facility. She has no affiliations with fitness centers and all of her certifications and licensing are through Krav Maga associations. Her facilities offer the most advanced training of Krav Maga in northeastern Ohio, including training law enforcement personnel. The classes offered are directly related to strengthening and conditioning necessary to train in Krav Maga with Krav Maga classes being offered seven days a week. Ms. Fox said Krav Maga is substantially similar to boxing which is a permitted use in the Industrial District. Ms. Fox displayed her black belt in Krav Maga which took her nine years to achieve. She estimated that only 300 people in the country have earned a black belt in Krav Maga since it is very difficult to earn. Ms. Fox said she did not go through this difficult training to open a health club, nor would she have had to. She did it so she could open and teach the most advanced Krav Maga training in northeastern Ohio.

Mr. Newberry asked Ms. Fox about opening her facility in the Commercial District as he found her previous answer to be evasive.

Ms. Fox said although Mr. Frankland said the Commercial District is more expensive than the Industrial District, it is not the reason she wants to locate in the Industrial District. She believes that a location in the Commercial District, for example; near the Giant Eagle would generate foot traffic where people can view the training. Ms. Fox said the training is very physical and explosive and not typical. She feels that the majority of people who might stop in to see the facility would not be interested once they understood the program as well as the fees charged. Ms. Fox said there is also noise associated with the training that might disturb adjacent neighbors.

Mr. Newberry asked Ms. Fox about locating next to a fitness center in the Commercial District since he agrees that locating Fight Fit next to the Giant Eagle would not be appropriate.

Ms. Fox said the students that would come to Fight Fit are not the people that would be attending a fitness center. She said her student is looking for specialized training in Krav Maga street fighting skills.

Mr. Newberry asked Ms. Fox if she trains teams or groups. Ms. Fox said she trains individuals.

Mr. Newberry said the main purpose for allowing advanced sports training facilities in the Industrial District was to give groups and teams the opportunity to have advanced training in a facility. He said Fight Fit is a membership-based business with monthly fees where members are acquired through the website and referrals. Mr. Newberry said the purpose for permitting sports training facilities in the Industrial District was based on specific application for specific types of sports training. An example is the Spirit Gymnastics center for training gymnasts and cheerleaders whose business model was to offer student groups advanced training.

Mr. Newberry said if this was only a Krav Maga training facility, the Industrial District would be an appropriate location. However, the fitness classes concern

him. Therefore, Fight Fit should be located in the Commercial District where it is a permitted use.

Ms. Fox said there are two gymnastics facilities located in the Industrial District. They are Spirit Gymnastics and Elite Gymnastics Academy. Ms. Fox said Elite offers a non-competitive recreation program called First Flips. She displayed information she found on their website (Exhibit I) and read a segment, "without the pressure of competition or intensity to perform." Ms. Fox said this indicates that this is not competitive or part of a team as Mr. Newberry previously had concerns about.

Mayor Drucker admires Ms. Fox's passion and intensity with Krav Maga which is apparent by her taking nine years to earn a black belt. She is perplexed, however, as to why Ms. Fox permits 8% of her membership to attend fitness classes that are not related to Krav Maga when Krav Maga is the focus.

Ms. Fox said Krav Maga has the reputation of being intimidating as it is the official combat training of Israel. She said there are times when people are afraid to try Krav Maga classes since it is street fighting. Ms. Fox said people who have been attacked come to her facility but are frightened to take the class since it can trigger emotional responses. She will not tell a person they cannot train at her facility and possibly lose the opportunity to eventually work with them with Krav Maga training. Ms. Fox said she cannot force someone to take Krav Maga training but does not want to turn them away either.

Mr. Bentley said boxing and golf are individual sports so the team concern is not an issue for him. However, Fight Fit is a martial arts training center and a fitness center and that is a concern.

Ms. Fox said fitness and training cannot be taken out of sports and boxers train by lifting weights, jumping rope, etc.

Mr. Mazur commended Ms. Fox on her informative presentation and also commended the witnesses.

Mr. Stolarsky requested all documents, exhibits and a copy of the DVD be incorporated into the record as evidence of the proceedings for this meeting.

Mr. Newberry congratulated Ms. Fox on her achievement of attaining a black belt in Krav Maga. He said it is obvious that she has passion and dedication for Krav Maga. Mr. Newberry said he also appreciated all of the students who came to support Ms. Fox. He would welcome Fight Fit to Solon in the Commercial District.

Motion by Mayor Drucker, seconded by Mr. Newberry 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 Fight Fit, LLC, 27000 Richmond Road in the I-2 Industrial District.

Mr. Mazur said Ms. Fox made a very compelling argument but there are just too many fitness items being offered to consider Fight Fit as a sports training center. He would welcome Fight Fit to Solon in the right location.

Roll Call: Aye: None

Nay: Bentley, Drucker, Mazur, Newberry

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. 31501 Solon Road - Zircoa

Mr. Frankland displayed an aerial view of the property and indicated the area in the front of the building where the applicant proposes to expand existing windows and add more windows for an updated appearance.

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

2. 6800 SOM Center Road – Orchard Middle School

Mr. Frankland displayed a plan and explained the proposal to change doors on the main entrance of the building for security purposes. He said the new doors will be similar to the existing doors, however, a metal box overhang is proposed. Mr. Frankland said no variances are necessary and noted the entrance is not visible from the road.

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

COMMENTS FROM THE COMMISSION:

In turn, members of the Commission wished everyone a happy Thanksgiving.

Mayor Drucker said the Holiday Lighting Ceremony will be held on Wednesday, November 26th. Music begins at 6:30 P.M. and the lighting is at 7:00 P.M. Festivities will take place after the lighting at the Solon Center for the Arts.

Motion by Mr. Mazur, seconded by Mayor Drucker to cancel the December 23, 2014 Planning Commission meeting.

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

Nay: None

Motion Carried

COMMENTS FROM THE AUDIENCE:

There were no comments from the audience.

Motion by Mayor Drucker, seconded by Mr. Bentley to adjourn the meeting at
9:23 P.M.

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

Motion Carried

Chairman

Secretary