

SOLON PLANNING & ZONING COMMISSION
JUNE 25, 2019 – 7:00 P.M.

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

Present: Commission Members Bentley, Mazur, Newberry, Councilman Pelunis, Mayor Kraus (arrived 7:25 P.M.), Assistant Law Director/Prosecutor Stolarsky, Planning Director Frankland, Secretary McConoughey

Absent: None

Also Present: Inspector Wolf, Assistant City Engineer Lyndon, Assistant Clerk of Council Buller

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 Bentley presided. He advised there are two separate meetings this evening: the regular Planning Commission meeting and a Board of Zoning Appeals meeting.

NEW:

1. 32873 Baldwin Road – Jean Miadich – 3' accessory structure side yard setback variance, 12' distance between structures variance: Mr. Frankland said the distance between structures variance would place the shed 10' from the apartment garage at the rear and 3' from the neighbors' shed next door.
2. 30865 Solon Road – Rose Bonsignore – various variances: Mr. Frankland said the applicant will be modifying the site plan and new plans will be submitted. He suggested tabling this item.
3. 5530 Ridge Lane – Celalettin Topbas – 25' accessory structure side yard setback variance: A copy of a letter received from a neighbor regarding the failure to secure a permit for the structure was provided to the applicant.

COUNCIL REFERRAL:

6. Proposed amendment to Section 1291.02 of the Zoning Code, Minor Exterior Alterations, to amend the approval process and requirements: Mr. Bentley advised this amendment will streamline the process for approving minor alterations. Mr. Mazur noted a public hearing will be scheduled for this item. Councilman Pelunis encouraged the Commission to refer this item back to Council after the public hearing to avoid delaying construction projects and to provide flexibility. Mr. Frankland agreed.

Mr. Frankland advised the Planning Commission Chairman would be updated of the minor alterations and the Planning Department would approve minors with caution.

Mr. Stolarsky noted minor alterations do not require variances.

BOARD OF ZONING APPEALS:

1. Appeal from Attorney Daniel Linder, representing Marc Cohen, regarding issuance of a permit for property located at 32060 Tracy Lane: Mr. Bentley reviewed the procedure for hearing the appeal.

Councilman Pelunis questioned why this issue is before the Board of Zoning Appeals as the variance was originally approved by the Planning Commission and Council and the permit has been issued. He understands the neighbor has the right to appeal, however, he believes the appeal should be heard by the Court system.

Although Mr. Stolarsky said he has never seen an appeal at this stage, Chapter 1294 provides any party aggrieved or affected by a decision of a City Official the right to appeal.

Councilman Pelunis requested a decision from the Law Department regarding whether the Board of Zoning Appeals can hear the appeal this evening.

Mr. Frankland agreed this is a "grey" area; however, there is a dispute as to whether the setbacks are correct. He said they are the same setbacks since 1978, but there is a dispute as to whether the setbacks that have been represented are the actual setbacks.

Mr. Stolarsky said the more relevant issue may be a time issue because Mr. Cohen's letter is dated April 11, 2019 and Chapter 1294 requires a decision be appealed within 30 days of the decision.

Mr. Linder, Attorney representing Mr. Cohen, said Mr. Cohen was never notified that the permit was issued. Mr. Stolarsky informed him the decision does not mention the need for notice. Mr. Stolarsky noted Mr. Linder submitted a cease and desist letter dated April 18, 2019, so his client was aware of the decision at that time.

Mr. Linder recognizes there will be an inverse condemnation here and recognizes a recent Supreme Court decision stating they can go straight to Federal Court as well. He said a variance was never granted which means the property owner does not have a right to rebuild. Mr. Linder said the structure, which is 22" from Mr. Cohen's house, is a nuisance because it has burnt down twice in eight years.

Mr. Newberry reminded the Board of Zoning Appeals that testimony should be heard at the meeting.

Mr. Stolarsky said there is a time issue but suggested going forward on the merits. Councilman Pelunis requested a decision on the time issue.

Mr. Stolarsky said permits were issued in 2010 and 2013 with no objections.

Mr. Frankland said a permit has been applied for and a stop order was placed on construction because of the setbacks so a decision regarding the permit is pending.

Mr. Frankland said he is not an attorney, but he believes the Zoning Code does allow for an appeal under that situation.

Mr. Linder believes the decision was made under false pretense and said his client's home was almost burnt down twice.

Mr. Stolarsky said the property owner is seeking to rebuild the exact pool house and for his purposes, the distance from the side yard is not important although it could be of importance to the Building Official. He said because the City cannot find variances from 1978 or 1979 does not mean there were none.

Mr. Cohen believed it was straightforward when Mr. Frankland told him he could not find any evidence of a variance being granted. Mr. Frankland said the 1970 files are very incomplete.

Mr. Bentley inquired if Councilman Pelunis' question has been satisfied and Councilman Pelunis said it has not.

Although there was further discussion regarding whether Mr. Cohen's appeal was filed in a timely manner, Mr. Bentley believed Mr. Stolarsky was comfortable with the Board hearing this appeal this evening.

Mr. Frankland said Chapter 1294 refers to any decision by a City Official, and questioned if there is a pending decision by the Chief Building Official regarding a stop order on the project and a determination of whether to allow the project to proceed, can it be considered at that time. Although Councilman Pelunis said that is a separate issue, he agreed the decision of the Chief Building Official can be appealed.

Mr. DeFabio asked what date the most recent permit was issued with the 1978 footprint. Mr. DeFabio said the building was there when Mr. Cohen bought his house.

Mr. Newberry reiterated his request to hear testimony on the floor.

There was further discussion regarding timelines.

Mayor Kraus entered the meeting at 7:25 P.M. and was briefed on the discussion.

Mayor Kraus said while he understands the timeliness of the official appeal, Mr. Cohen was not made aware of an appeal option until after the fact. Mr. Bentley said he recognizes that fact; however, does not want to run afoul of the law.

Mayor Kraus questioned if a variance was ever granted for this structure. Mr. DeFabio said that is unknown because it was built in 1978.

Mr. Bentley asked what recourse is available after the 30-day limit. Mr. Stolarsky said the 30-days seems to be required; however, he is reluctant to give a decision.

Councilman Pelunis asked if the resident who recently contacted him regarding a decision made six months ago could now appeal and believes this decision could open the door to untimely appeals.

Mr. Frankland asked if the Chief Building Official issues the permit tomorrow based on the Committee's decision this evening, can that determination be appealed.

Councilman Pelunis said the Law Department would make that determination. Mr. Stolarsky said the Chief Building Official is holding the permit for a different reason, not just for location.

Mr. Bentley suggested revisiting the Code time limits.

Mr. Stolarsky said Mr. Linder's April 18th letter clearly states an objection to the decision to issue a permit, so the letter can be treated as the appeal. Mr. Linder said regardless of the letter's form, it is the appeal.

Mr. DeFabio believed the April 18th letter is a cease and desist order, not an appeal. He said when they requested to rebuild the structure, they were asked to revise the plans, which they have done.

Mr. Bentley said the discussion can continue at the appropriate time during the meeting and adjourned the caucus.

The caucus ended at 7:32 P.M. and the meeting began at 7:33 P.M.

CHANGES TO THE AGENDA:

There were no changes to the agenda.

COMMENTS FROM THE AUDIENCE:

There were no comments from the audience.

MINUTES:

Motion by Mr. Newberry, seconded by Mayor Kraus to approve the minutes of the May 28, 2019 meeting as presented.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mr. Newberry, seconded by Councilman Pelunis to approve the minutes of the June 11, 2019 meeting as presented.

Roll Call: Aye: Bentley, Newberry, Pelunis
Abstain: Kraus, Mazur
Nay: None

Motion Carried

NEW:

- 3' accessory structure side yard setback variance
- 12' distance between structures variance

Ms. Miadich was present and displayed an aerial of the property. Ms. Miadich is requesting to build an 8' by 10' shed in the rear of the property in line with the neighbor's shed.

Mr. Bentley noted there is a commercial garage building behind her lot. Ms. Miadich confirmed that was correct and advised the shed would hide the garage from view enhancing the lot.

Motion by Mr. Mazur, seconded by Mayor Kraus to approve the 3' accessory structure side yard setback variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mr. Newberry, seconded by Mr. Mazur to approve the 12' distance between structures variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

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| 2. | 30865 Solon Road – Rose Bonsignore | 062-2019 | 6 |
| | <ul style="list-style-type: none"> ▪ Expansion of a non-conforming use variance ▪ 77' front yard setback variance ▪ 15' setback between structures variance | | |

Mr. Bentley said the applicant has indicated a revised plan will be submitted.

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

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

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| 3. | 5530 Ridge Lane – Celalettin Topbas | 063-2019 | 5 |
| | <ul style="list-style-type: none"> ▪ 25' accessory structure side yard setback variance | | |

Mr. Topbas was present and displayed a drawing of the property. Mr. Topbas indicated where a shed has been built and requested it be allowed to remain in that area because it is behind a tree line and there is a privacy fence. He said the opposite side of the yard is usually wet.

Mr. Bentley noted an objection was received from a neighbor and Mr. Mazur clarified the letter noted the applicant installed the shed prior to securing a permit.

Mr. Mazur inquired when the shed was built. Mr. Topbas said the 10' by 10' shed was built a couple weeks ago and he did not realize he needed a permit. He said this is his first house and it was unclear to him where to begin the right-of-way measurement so he incorrectly measured 40' from the side of the road instead of from his property line. Mr. Topbas said the mistake was discovered when the fence inspection was performed.

Mr. Mazur understood how this happened but alerted Mr. Topbas that a penalty will be assessed. Mr. Topbas said he understands and wants to correct his error.

Mr. Frankland said the fine will be no more than \$150.00.

Councilman Pelunis said, after viewing the topography of the property, he has no objection to the shed's location.

Mr. Bentley said during certain seasons the trees will hide the shed from view. Mr. Topbas added the 6' high fence will also make the shed less visible.

Mr. Newberry said the back line of the Ridge Lane properties has a wet area that extends to Pine Lane.

Motion by Mr. Mazur, seconded by Mayor Kraus to approve the 25' accessory structure side yard setback variance with the acceptance of a penalty assessed.

Mr. Newberry advised Mr. Topbas it is customary for him to vote in opposition of variances requested after the fact.

Roll Call: Aye: Bentley, Kraus, Mazur, Pelunis
Nay: Newberry

Motion Carried

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| 4. | 27320 Miles Road – Miles Road Properties, LLC | 064-2019 | 5 |
| | <ul style="list-style-type: none">▪ 70' building setback variance▪ Parking lot material variance▪ 2 space total parking space variance▪ 50' parking lot front yard setback variance▪ 3' parking lot side yard setback variance▪ 12' drive aisle width variance▪ 10' parking lot setback from building variance▪ 119' building setback from residentially used land variance - west side property▪ 85' building setback from residentially used land variance - east side property▪ Site plan | | |

Mr. Kevin Young, 5705 Emerald Ridge Parkway, was present and displayed a proposal to eventually build three buildings on his property. Mr. Young said he is submitting the drawing prior to performing additional engineering work and is currently requesting approval to build one 5,000 sq ft commercial building at this time. He indicated an existing garage on the property and noted a grandfathered residence burned down last March. Mr. Young displayed the building's floor plan and elevations. He stated it is a storage type building that will house a motor home, possibly a boat and rental space.

Mr. Bentley noted the building will have vinyl siding and an asphalt shingled roof. Mr. Young said in all probability the siding and roofing will be changed to metal to match the structure next door. Mr. Frankland said those material changes would be considered a minor alteration.

Mr. Frankland said the reconfigured parking lot plan would eliminate the total parking variance. Mr. Young displayed the reconfigured site plan that would eliminate the front parking and move the parking to the side of the building.

Councilman Pelunis asked if the Fire Department has approved the plan. Mr. Wolf said the initial plan was approved; however, he has not seen the revised plan. He said the department approved the 12' around the back because it allows enough access to the front main side of the middle structure and then leads to the third structure in the back. Mr. Young said this plan allows 40' motor homes and/or semi-trucks to navigate the lot and noted the side parking will not change the traffic pattern.

Mr. Newberry requested clarification of the 3' parking lot side yard setback. Mr. Frankland said the pavement encroaches on the west side property line and indicated the area.

Mr. Newberry also requested clarification of the parking setback from the building variance and Mr. Frankland explained the parking area includes the drive aisles and spaces, so the variance is for the gravel area that abuts the building.

Mr. Mazur questioned the use of a gravel surface versus a paved surface. Mr. Frankland said it is unusual that a variance is required; however, similar situations have appeared before the Commission and a time limit could be placed for the installation of a paved surface. Mr. Young said the circulation in the front of the existing garage is a combination of asphalt and gravel, so a gravel surface would mesh with the new building. Mr. Mazur asked Mr. Young if he would be willing to stipulate a hard surface be applied with the future buildings and Mr. Young agreed. Mr. Newberry recommended stipulating curbing also, since none exists at this lot.

Mr. Newberry questioned the location of the flood plain in this area. Mr. Young said the property is neither wetlands nor a flood area. He said that information will be provided to the Engineering Department.

Motion by Mr. Newberry, seconded by Mr. Mazur to approve the 70' building setback variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Councilman Pelunis, seconded by Mayor Kraus to approve the parking lot material variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mr. Mazur, seconded by Councilman Pelunis to accept the withdrawal of the 2 space total parking space variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mayor Kraus, seconded by Mr. Mazur to approve the 50' parking lot front yard setback variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mr. Mazur, seconded by Mr. Newberry to approve the 3' parking lot side yard setback variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mr. Newberry, seconded by Mayor Kraus to approve the 12' drive aisle width variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Councilman Pelunis, seconded by Mr. Mazur to approve the 10' parking lot setback from building variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mayor Kraus, seconded by Mr. Mazur to approve the 119' building setback from residentially used land variance – west side property.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mr. Mazur, seconded by Mr. Newberry to approve the 85' building setback from residentially used land variance – east side property.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Motion by Mr. Newberry, seconded by Councilman Pelunis to recommend approval of the site plan contingent upon compliance with the June 20, 2019 Engineering Department memo requirements and the installation of hard surface pavement and curbing upon the application for a second building.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

5. 6700 Ayleshire Drive – Michael and Mozelle Jackson
▪ 11' 10.5" rear yard setback variance

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Mr. Michael Jackson was present and displayed the plans for a paved and covered patio. Mr. Jackson said the variance is due to the pie shape of the lot.

Motion by Mr. Mazur, seconded by Mayor Kraus to approve the 11' 10.5" rear yard setback variance.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

COUNCIL REFERRAL:

6. Proposed amendment to Section 1291.02 of the Zoning Code, Minor Exterior Alterations, to amend the approval process and requirements

Mr. Frankland explained minor alterations are incidental changes to approved plans or existing conditions, such as moving a window or door, changing landscaping or a parking lot. He said the Zoning Code requires a change to be presented to the Commission and approximately 99% of minor alterations are approved. Mr. Frankland said the process has been streamlined to include a broader range of the types of projects the Commission can approve as minor alterations. This proposal will enable incidental changes upon administrative review and approval by the Planning Commission Chairman. Mr. Frankland said if the Planning Department would like input from the Commission, the minor alteration would be presented at a meeting.

Councilman Pelunis believes it is important to move this amendment forward to facilitate projects to avoid delays and incurring additional costs.

Mr. Bentley agreed this amendment will benefit the businesses and streamline the minor alteration process.

Mayor Kraus said businesses will be pleased to learn how easy this process will be.

Motion by Mr. Newberry, seconded by Mr. Mazur to schedule a Public Hearing for Item 6 on July 9, 2019.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis

Nay: None

Motion Carried

Planning Commission members adjourned the Planning Commission meeting and convened as the "Board of Zoning Appeals" at 8:11 P.M.

Roll Call: Mr. Bentley, Mayor Kraus, Mr. Mazur, Mr. Newberry, Councilman Pelunis

1. Appeal from Daniel Linder representing Marc Cohen, regarding issuance of a permit for property located at 32060 Tracy Lane

Mr. Bentley said the Board of Zoning Appeals is meeting pursuant to Chapter 1294 of the Zoning Code in regard to an April 11, 2019 City decision to issue a permit for the reconstruction of a pool house at 32060 Tracy Lane.

Mr. Stolarsky explained after reviewing the procedural issue discussed during the caucus, it appears that although the Code provides an appeal procedure, it does not specifically describe what constitutes an appeal; therefore, Mr. Linder's April 18, 2019 letter will be considered a specific objection to the decision indicated in his (Mr. Stolarsky's) letter of April 11, 2019 to Mr. Cohen and Mr. Cohen's letter should be considered an appeal.

Councilman Pelunis disagreed with Mr. Stolarsky's statement as the dates discussed during the caucus were April 11th (Mr. Stolarsky's letter indicating his decision) and Mr.

Cohen's letter of May 31, 2019 clearly indicating it is an appeal. As the "appeal" letter from Mr. Cohen was received after the 30-day deadline, Councilman Pelunis believes the Board of Zoning Appeals does not have the ability to consider the appeal.

After further review of Mr. Linder's April 18, 2019 letter, Mr. Stolarsky is of the opinion that it constitutes an objection to the April 11th decision and was received by the City within the 30 days from the decision. Therefore, the Board of Zoning Appeals should consider the letter as the appeal because Solon's Chapter 1294 is not specific and does not feature a specific format.

Councilman Pelunis questioned if an objection to a Magistrate's decision in Court was sufficient for an appeal. Mr. Stolarsky explained that Civil and possibly the Criminal Rules have specific details as to procedure and Solon's Chapter 1294 is not very specific in that it says the decision of a City Official in the enforcement and/or administration of this Code may be appealed but it does not clearly state how or in what format it is done.

Councilman Pelunis stated that a 30-day time limit still exists and Mr. Stolarsky agreed. Councilman Pelunis remained in disagreement.

Mr. Bentley thanked Mr. Stolarsky for reaching a decision regarding consideration of the appeal.

Mr. Stolarsky said pursuant to Chapter 1294 this body will be acting in the capacity of the Board of Zoning Appeals and pursuant to Chapter 1294, the determination of the appeal by the Board of Zoning Appeals shall be final. Mr. Stolarsky asked that all evidence to be submitted be marked and made part of the record. He asked all witnesses to rise and be sworn in.

Mr. Stolarsky requested his April 11, 2019 letter, Mr. Cohen's appeal filed May 31, 2019, as well as Mr. Linder's April 18, 2019 letter be submitted into evidence.

Mr. Linder, Attorney representing Mr. and Mrs. Cohen who reside at 32100 Tracy Lane, said his clients live adjacent to the 32060 Tracy Lane residents who have requested a permit to rebuild a pool house.

Mr. Linder displayed a picture recently taken by a surveyor indicating the pool house has been determined to be located 22" off the property line. In response to an inquiry by Councilman Pelunis, Mr. Linder said the surveyor is not present, however, he provided the record.

Mr. Cohen said he moved into the house approximately 21 years ago. Mr. Linder asked Mr. Cohen to provide a history of the neighboring pool house. Mr. Cohen said the pool house has burned down twice in the last eight or nine years and is located 22" from his property line, close to his deck and home. Mr. Linder asked if his family was in the house during the fires. Mr. Cohen said the first time his family was asleep and he was away on business. The second time the children were not at home and he and his wife were away on vacation. Mr. Linder asked if his property was damaged in these fires and Mr. Cohen said yes, both times.

Mr. Cohen said it is his understanding the permit was issued to rebuild the pool shed 4'4" from the property line. He noted the evidence indicates otherwise. Mr. Cohen said it is his understanding an 8' side yard setback is required. Mr. Linder asked Mr. Cohen if he has investigated if a variance was ever granted for less than an 8' side yard setback at this location. Mr. Cohen said during a phone call, Mr. Frankland indicated there was no variance granted in 1978. Mr. Linder said it is the City's responsibility to maintain variance records but there is no variance on record and Mr. Cohen said that was correct. Mr. Linder displayed a drawing attached to the permit referencing the 4'4" placement of the structure on the surviving existing base, noting that placement was a false presumption of a variance in place.

Mr. Linder asked Mr. Cohen whether this pool house is a nuisance and Mr. Cohen said yes, two fires in nine years and potential harm to his home and family is an absolute nuisance.

Mr. Linder cited Codified Ordinance Chapter 1293 Section A, which states specifically a variance is required as, "no one may deviate from the requirements of this Zoning Code except as approved by a variance, by the Board of Appeals and/or City Council as further prescribed within the Code." Both he and Mr. Cohen believe there is no variance on record.

Mr. Linder displayed a drawing of the property and asked if the pool house could be placed in a different location. Mr. Cohen said that is the property owner's decision but based on the size of the property and where the pool is located, a rear or adjacent side location could be possible.

Mr. Linder said Mr. Cohen's large wood deck is not illustrated on this drawing but he indicated its location off the back of Mr. Cohen's house. Mr. Cohen said he incurred a loss of trees and bushes due to the past fires.

Mr. Linder said both fire reports are attached to his May 31, 2019 letter to the Board. He noted the recent permit indicated the applicant had until April, 2020 to rebuild the pool house and Mr. Cohen agreed. Mr. Linder read a portion of Code Section 1286.04 (C) regarding reconstruction of a non-conforming use and reiterated the lack of evidence of a variance ever being granted. He emphasized the portion stating the structure may be reconstructed and restored at the exact dimensions and location of the original structure providing that such reconstruction is completed within one year from the date of said damage or destruction. Mr. Linder said the second fire occurred on July 3, 2018 and Mr. Cohen agreed. Mr. Linder said, according to the Code, the pool house must be rebuilt by July 3, 2019 and Mr. Cohen said that is what the Code requires. Mr. Linder inquired if there was a variance for an extension of time and Mr. Cohen said he was not aware of any time extensions being granted.

Mr. Linder summarized it is highly unlikely for a pool house to catch fire twice and it is not Mr. Cohen's intent to be a bad neighbor or to prevent his neighbors from using their pool; however, his client is concerned for the safety of his family and property. Mr. Linder suggested there are other options available to resolve this issue other than building 22" from Mr. Cohen's property line.

Mr. Stolarsky asked if Mr. Cohen agreed the City records indicate the pool house was constructed in 1978 and Mr. Cohen replied to the best of his knowledge he agreed. Mr. Stolarsky asked if the pool house was in that location when he purchased his home in 1998 and Mr. Cohen said yes it was. Mr. Stolarsky asked if he objected when the pool house was reconstructed in 2010. Mr. Cohen said he did object but was informed by City employees he had no recourse. Mr. Stolarsky asked if he filed anything with the City at that time and Mr. Cohen said he was told verbally by City employees there was nothing he could do.

Mr. Stolarsky asked Mr. Cohen if he objected in 2013 and Mr. Cohen reiterated he was again told there was nothing he could do and he was not informed of any means or appeal procedures available. Mr. Stolarsky asked Mr. Cohen when he purchased his property in 1998 if he was concerned with the proximity of the pool house to his property and Mr. Cohen said it did not raise a flag. Mr. Stolarsky asked Mr. Cohen the closest distance of the preexisting pool house to any part of his structure and Mr. Cohen said he was uncertain and would have to measure it but noted it is 22" inches from his property line. Mr. Stolarsky asked Mr. Cohen if he constructed the wood deck and Mr. Cohen said the deck was there when he purchased the home. Mr. Cohen noted the physical dimensions of the deck have not changed since he purchased his home. Mr. Stolarsky repeated the question regarding the measurement between the deck and the pool house and Mr. Cohen said that is not what is in question, the pool house is too close to the property line based on the permit issued the second time and the present City Code.

Councilman Pelunis questioned if the tape measure picture displayed earlier could be considered as evidence because there is no proof it was performed by a surveyor. Mr. Cohen said he spent \$600.00 for a property survey. Mr. Cohen noted Mr. Mazur investigated his property last weekend.

Councilman Pelunis questioned Mr. Newberry, who is familiar with surveys, his opinion regarding the photo provided as evidence of the setback.

Mr. Newberry advised there is no indication who placed the items there or if they were subsequently moved. Mr. Newberry advised normally a plat would accompany the physical survey to demonstrate what the surveyor found. Councilman Pelunis asked if the Board's packets contained evidence of that. Mr. Newberry said the packets did not contain such evidence.

Mr. Linder asked Mr. Cohen if he was notified prior to the issuance of this permit that an application was requested. Mr. Cohen replied he was not notified and he actually advised the Mayor of the permit's issuance. Councilman Pelunis asked Mr. Cohen if he was present when this permit was being discussed and Mr. Cohen replied he attended a Council meeting to question why he never received a response from Mr. Stolarsky. Mr. Cohen said the appeal process was mentioned after that Council meeting as well as when he attended a meeting with Mayor Kraus, Chief Shaw and Mr. White.

Mr. Linder asked if anyone else is impacted by this variance and if he was legally notified. Mr. Cohen said he was not notified and he is not aware of anyone else being impacted by this variance.

Mr. Stolarsky reminded Mr. Linder the permit is not a variance. Councilman Pelunis said this is being called a variance and a non-conforming use. Mr. Linder emphatically said this is not a non-conforming use but is something that requires a variance and his client was never notified that a permit was going to be issued for something outside of the City Code 8' regulations.

Mr. Mazur said when he visited the property it was mentioned a tree was lost in the fire. Mr. Cohen said a number of landscaping trees were lost, including in the first fire a 75' tall maple tree. Mr. Cohen said he has incurred thousands of dollars of damage on his homeowner's insurance policy and that the claim on his neighbor's insurance was denied because the Fire Department could not determine a reasonable understanding of what occurred.

Mr. Mazur noted he is not a surveyor, but he did see what appeared to be professional measurements at this property. Councilman Pelunis said no report accompanies the measurement picture. Mr. Mazur said the stake he saw was very close to the wooden deck structure. Mr. Cohen offered to provide a surveyor document. Councilman Pelunis said the appeal is being heard this evening and documentation should be presented at this time. Mayor Kraus noted the surveyor document could always be submitted. Mr. Linder said they would be happy to oblige.

Mayor Kraus asked Mr. Cohen if he would object to the pool house being built 4'4" from the property line. Mr. Cohen said he wants his neighbors to enjoy their back yard but his main concern is no longer the 4'4" and, initially, no variance was issued so the structure is illegal. Mr. Linder said the structure is an obvious safety issue and could be moved so it would not pose a risk to Mr. Cohen's house. He offered to meet with the neighbors and the City to resolve the issue.

Mr. Mazur asked where the 4'4" setback originated. Mr. Frankland said the 4'4" setback was indicated on the 2010 permit but, as noted on that permit, it was approved as a non-conforming use in a non-conforming location but the application at that time reflected 4'4" for the rebuild; the owner submitted a site plan when it was rebuilt after the first fire.

Mayor Kraus said if it was 22" it would be inaccurate and Mr. Frankland said it would be, but they were not required to show the setback. Mr. Stolarsky said it was rebuilt at the same location.

Mr. Jamey DeFabio, 7937 Meagan Meadow Drive, Hudson, Ohio was present representing the 32060 Tracy Lane property owner, his mother. Mr. DeFabio said it has been established it would be difficult to locate a variance issued in 1978. He said this structure has had two previous permits and the building was present in 1998 when Mr. Cohen purchased his house.

Mr. DeFabio inquired when the current permit was approved. Mr. Frankland said he does not have the exact issue date but it should have been April 12, 2019. Mr. DeFabio asked when the appeal was filed, Councilman Pelunis said May 31, 2019 and Mr. DeFabio said that date extends the appeal time period.

Mr. DeFabio said Mr. Cohen claims he was not notified regarding the pool house permit being issued yet his mother was not notified when Mr. Cohen constructed a room addition to his house.

Mr. DeFabio said this is a non-conforming use with the rebuild in the exact footprint with proper materials and fire rated walls.

Mr. Stolarsky asked what the distance is between the reconstructed pool house and the closest neighboring structure, which is Mr. Cohen's deck. Mr. DeFabio said the corner of the deck is at least 15' to 20'.

Mr. DeFabio requested the permit be issued based upon the untimeliness of the appeal. Councilman Pelunis agreed with Mr. DeFabio's request due to the time period.

Mayor Kraus asked Mr. DeFabio if he was aware of the fire damage to Mr. Cohen's property. Mr. DeFabio said after the first incident Mr. Cohen submitted an insurance claim for trees and the insurance company paid \$20,000. Mayor Kraus asked what the insurance company paid on the second fire and Mr. DeFabio said he did not know. Mr. Newberry asked whose insurance company filed the claim. Mr. DeFabio said both claims were filed with his mother's insurance company but he was unaware of the settlement amount for the second claim.

Mayor Kraus asked Mr. DeFabio if he viewed this structure as a safety hazard and Mr. DeFabio said it is being built properly to specifications with firewalls. Mayor Kraus asked Mr. DeFabio, based on the history of the two fires, if he would feel comfortable living in Mr. Cohen's home and Mr. DeFabio said yes, he would.

Mr. Mazur asked if there is any reason the new structure could not be built at a 4'4" setback. Mr. DeFabio asked the Board if they would be paying for the new plans. Mr. Mazur is inclined to say the structure should be built at the 4'4" setback. Mr. DeFabio said it is a non-conforming use since 1978 and will be built on the same exact footprint.

Councilman Pelunis said since the structure is being reconstructed at the same location, the utilities and such are also located there. He said, if there would be a fire, a situation would still exist at a 4'4" location versus where it is now. Councilman Pelunis said if the structure is built according to regulation, no judgment exists as to its safety. He referenced similar instances where a burned structure was allowed to be rebuilt. Mayor Kraus asked if those instances damaged neighboring property. Councilman Pelunis was not certain.

Mr. DeFabio said there is probably 8' to 10' between the two houses, so if a fire occurs what's to say Mr. Cohen's house couldn't catch on fire and burn his mother's house. Mr. DeFabio said it is 20' to 25' from the closest structure on Mr. Cohen's property.

Mr. Bentley said documentation based on the correct fire code regulations has been submitted regarding the proposed construction.

Mr. Stolarsky asked if Mr. Frankland had been sworn and he had. Mr. Stolarsky asked Mr. Frankland if a pool house is a permitted use in this residential district and he said

the 2005 Zoning Code allows it. Mr. Stolarsky asked Mr. Frankland if he told anyone a variance was never granted for this pool house. Mr. Frankland said Mr. Cohen had asked if there was any record in the file and there is not a record in the file for a variance. Mr. Stolarsky asked if a 1978 record cannot be located does that mean it did not occur. It is Mr. Frankland's opinion that records prior to 1990 can be incomplete.

Mr. Stolarsky said the City has issued pool house permits at this exact location in 2010 and 2013 and Mr. Frankland said that was correct. Mr. Stolarsky asked what is the allowed distance between structures in this zoning district and Mr. Frankland said the minimum distance under the 2005 Zoning Code is 15'. Mr. Stolarsky said Mr. DeFabio indicated the distance between the proposed pool house rebuild would be 16' to 20' and Mr. Frankland said he heard that testimony.

Mr. Stolarsky noted this evening's Planning Commission Agenda Item 1 allowed a 3' distance between structures and Mr. Frankland agreed.

Mr. Stolarsky asked what was allowable in an accessory structure. Mr. Frankland said accessory structures typically store lawn equipment along with other items. Mr. Stolarsky asked if a pool house is considered a nuisance. Mr. Frankland said, in his opinion, a pool house is not inherently a nuisance.

Mr. Linder asked Mr. Frankland if this pool house, on prior permits, was built where it was located prior and Mr. Frankland said that was correct. Mr. Linder said it was indicated earlier that the permits reflected 4'4" from the property line. Mr. Frankland said the permit showed 4'4", it was constructed at the same location, the 2010 submitted map was apparently, according to testimony, incorrect. Mr. Linder noted it was incorrect in 2013, as well. Mr. Frankland said from the City's understanding, the pool house has been at its location since 1978. Mr. Linder believed that is unknown because the permit said 4'4" and it was built at 22". Councilman Pelunis objected. Mr. Linder cautioned Councilman Pelunis he was advocating as council. Mr. Frankland said it was his understanding the Building Department and the Zoning Inspector were insuring the structure was built in the same location, neither at 4'4" nor 22". Mr. Linder said there is no record there was ever a permit allowing its current location one way or the other prior to the 2010 permit and Mr. Frankland said that was correct, no site plan exists in the 1978 file.

Mr. Linder asked if Mr. Frankland has seen an explanation why this pool house, and only this pool house in the city, keeps catching fire. Mr. Frankland said it is very unusual. Mr. Linder asked if it was possible there was conduct occurring in the pool house that should not be occurring. Mr. Frankland said he did not know.

Councilman Pelunis noted he objected because Mr. Linder was referencing a document that was not from a surveyor and was merely the aforementioned tape measure with a pin in it.

Mr. Linder was curious as to why Councilman Pelunis was taking a high level of concern with this issue as he appeared to be advocating and not recusing himself. Councilman Pelunis said he takes this level of concern with everything. Mr. Linder cautioned that a Council person sitting in a judicatory position should not be taking an adversarial

position against witnesses. Mr. Bentley intervened by stating he perceived Councilman Pelunis was asking questions.

Mr. Stolarsky asked if Mr. Wolf had been sworn and he had. Mr. Stolarsky questioned if Mr. Wolf has reviewed the fire reports and made a determination as to the possible, potential or likely cause of the fires regarding this pool house. Mr. Wolf said he had reviewed the reports and both fires have been determined to be accidental, most likely due to the equipment inside, although they are unable to verify if it was a pump or a heater overheating or due to any of the components thereof. Mr. Stolarsky said there was no indication of any bad acts occurring. Mr. Wolf said that was correct.

Mayor Kraus asked Mr. Wolf if in this community he has experienced multiple fires at the same location. Mr. Wolf said no, never in his career.

Mr. DeFabio repeated his statement that the pool house is a non-conforming use, a pre-existing structure with a portion of the structure still standing. He said it is being rebuilt in the exact footprint with fire safety codes being met.

Mr. DeFabio suggested Mayor Kraus appeared to be advocating for the Cohens in this issue. Mayor Kraus assured him he is concerned about everyone's safety and with a record of multiple fires at this location there is a risk of a third fire. Mr. DeFabio said because there have been two incidents does not mean there will be a third. He said a licensed contractor will perform the work with the proper materials and equipment.

Mr. DeFabio asked Mayor Kraus when the permit was granted and when the appeal was filed and Mayor Kraus began to reply but was interrupted. Mayor Kraus said safety overrides and indicated the Assistant Law Director made the time period determination. Mr. DeFabio then asked Mr. Stolarsky the date of the appeal.

Mr. Bentley intervened and said the point has been made.

Mr. Stolarsky said Mr. Linder filed on May 31st but the objection letter is being treated as the appeal.

Mr. Linder pointed out conversation has been had regarding building the structure but it is the equipment that is causing the fire. He asked what is being done with regards to the replacement of the equipment. Mr. Bentley said the Board of Appeals understands his point. It is Mr. Newberry's opinion that question is immaterial to the appeal.

Mr. Stolarsky said all testimony is closed. He requested all documents, video and audio of the proceedings be admitted to the record. Mr. Bentley admitted the materials into the record.

Motion by Mr. Newberry, seconded by Mr. Mazur to grant the appeal of the Cohens to the issuance of the building permit for the reconstruction of the pool house.

In turn, the Board of Zoning Appeals explained the reasons for their upcoming vote.

Mr. Mazur said he will be voting to accept the appeal. It is his opinion the 4'4" measurement has been prevalent from the first fire. The structure should be built at the 4'4" area and it is the responsibility of the pool house owner to verify it is 4'4" from the property line.

Mr. Newberry said he intends to vote against the appeal as it is his opinion the appeal was not filed in a timely manner. He said the Code is clear the structure can be rebuilt on the same footprint, no matter where it is on the property and irrespective of where a variance had been granted at some time in the past.

Councilman Pelunis agreed with Mr. Newberry. He said the property at issue has been located there since 1978. Councilman Pelunis is of the opinion the appeal was not timely filed and there is no good grounds for an appeal.

Mayor Kraus said he will always err on the side of safety. He said health and safety is paramount whether it's the DeFabio's property or the Cohen's property. He is aware of the legal issues but it is his job to protect the health and safety of the community, especially when the pool house could be built in a different area. Mayor Kraus expounded there has never been a multiple fire situation at the same location and consideration should be given before it is allowed a third time.

Mr. Bentley said he has no issue with the pool house being rebuilt on the exact footprint. He said fires can happen to anyone at any time. Mr. Bentley said the Fire Department found no cause so there is no reason to believe there was anything afoul.

Mr. Stolarsky verified a yes vote will grant the appeal and a no vote will deny the appeal.

Roll Call: Aye: Kraus, Mazur*

Nay: Bentley, Newberry, Pelunis

Motion Failed

*Mr. Mazur commented he does not accept the logic of Mr. Newberry or Councilman Pelunis because the Assistant Law Director's legal opinion as the moderator and legal representative to this Board made the decision the appeal was appropriate. Mr. Mazur fails to understand how Board members can refute the Assistant Law Director's determination when it is a legal opinion.

Mr. Stolarsky said pursuant to Chapter 1294, the decision of this appeal is final and not appealable to the City.

Motion by Mr. Newberry, seconded by Mr. Mazur to adjourn the Board of Zoning Appeals meeting at 9:00 P.M.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis

Nay: None

Motion Carried

The Planning Commission reconvened at 9:01 P.M.

MINOR ALTERATIONS FROM PLANNING DEPARTMENT

1. 6795 Solon Boulevard – Roxbury Elementary School

Mr. Frankland displayed an aerial of the property and said a new generator will be installed behind the school and will not be visible from adjacent or neighboring properties.

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

2. 6221 SOM Center Road – ALDI/Hobby Lobby

Mr. Frankland displayed landscape plans that would be approved for the site and an aerial of the property. He explained fencing along the rear property line between the commercial and residential properties would have eliminated the 40' buffer but would require the removal of the neighbor's structures from their property. He said this landscape plan to include 17 additional giant arborvitae trees behind the site on the inside western side of the property's existing chain link fence would not disturb the buffer. Additionally, Mr. Stolarsky's conversations with the owner's attorneys assured the neighboring encroaching structures will not be required to be removed.

Mr. Bentley said Mr. Mazur and he walked the property and discussed this plan with the store owners. He said the landscape plan works well for both the neighbors and store owners. Mr. Mazur agreed.

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

3. 34165 Aurora Road - Wendy's

Mr. Frankland said Wendy's was initially granted a variance for a patio but the submission failed to show a covered patio area. He displayed an aerial of the property, site drawings and a rendering of the building and indicated where the covered patio would be located. Mr. Frankland said the patio roof will enhance the building's appearance, will not impact any properties and the setback previously granted is the same.

Mr. Mazur asked if there would be seating at this patio and, if so, would bollards be installed for the patrons' protection. Mr. Frankland said bollards would be included for the outdoor seating.

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

COMMENTS FROM THE AUDIENCE

Mr. Pete Moissis, 33700 Aurora Road, was present representing Simply Greek. Mr. Moissis thought Simply Greek's sign variance was to have been on the agenda this evening.

Mr. Frankland said the City has been looking forward to his restaurant and Councilman Pelunis said residents have contacted him inquiring when they can dine there.

Mr. Frankland recalled the request would be for two signs. Mr. Moissis explained the existing sign is obsolete and after a sign inspection a previous west facing sign was discovered. He said in 2006 two signs were approved for the Pizza Pan; however, in 2007 they went to a single sign.

Mr. Moissis said the opening date is approaching and requested a preliminary approval based on the content and recollection of the use of the property. Mr. Frankland apologized and said this item can be expedited; however, a vote cannot be taken without proper notification to adjacent properties. Mr. Frankland offered to present this item at the July 9, 2019 meeting if Mr. Moissis is unavailable. Mr. Frankland informally asked the Commission if they foresee an issue with this item and the Commission did not expect an issue and apologized for the delay.

COMMENTS FROM THE COMMISSION

In turn, the Commission wished everyone a happy and safe Fourth of July and encouraged everyone to attend the fireworks display at dusk on July 3rd.

Motion by Councilman Pelunis, seconded by Mr. Mazur to adjourn the meeting at 9:15 P.M.

Roll Call: Aye: Bentley, Kraus, Mazur, Newberry, Pelunis
Nay: None

Motion Carried

Chairman

Secretary