

SOLON PLANNING & ZONING COMMISSION
December 15, 2020 – 7:15 P.M.

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

Present*: Commission Members Greenspan, Mazur, Newberry, Councilman Bentley, Mayor Kraus, Assistant Law Director Stolarsky, Planning Director Frankland, Secretary Letourneau

Absent: None

Also Present*: Director of Information Technology Gibbs, Assistant City Engineer Lyndon, Councilman Pelunis, Fire Inspector Wolf

*Due to the COVID-19 health crisis all those present appeared via video connection.

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.)

Councilman Bentley presided.

Due to the COVID-19 health emergency, the general public was not permitted to attend, however, were invited to phone-in to provide comments.

NEW:

1. 5730 Elm Hill Drive – Mary Shuman - 25% uniform fence opening variance: Councilman Bentley advised the application was forwarded to the Police Chief for review and comments. He said the Police Department believes the privacy fence would be a safety issue. Councilman Bentley agreed and advised he will not support the variance.
2. 6722 Ayleshire Drive – Jaskirat and Jasdeep Sohi - 25% uniform fence opening variance: As with Item 1, the Police Department believes the privacy fence would be a safety issue.
3. 6150 SOM Center Road – Chick-fil-A – lot split: A public hearing is scheduled and Mr. Frankland will provide an explanation.
4. 5570 Harper Road – Chabad Jewish Center of Solon – parking variances and site plan: Councilman Bentley said correspondence was received late today in which an abutting neighbor objected to possible light shining through windows and the proposed parking location. The neighbor provided possible solutions.

Mr. Frankland advised a single access drive waiver is required and the applicant did not object. He suggested a contingency be added to approval of the site plan that

the City landscape architect review and approve the buffering of the parking lot along Cannon Road.

Mr. Lyndon referred to the Engineering Department memo of December 8th requesting the applicant restore access to a manhole that was buried at some point. Mr. Lyndon said the Engineering Department can help locate the manhole during construction which he believes to be under a landscape mound. It was discussed that a camera was run from the parking lot which located the area of the manhole.

5. 32317 South Roundhead Drive – John and Nadine Otterman – accessory pavement setback variance: Councilman Bentley said comments were received from a neighbor and the ward councilman.

Councilman Bentley said the neighbor's comments were regarding some landscaping that was removed. Ms. Nadine Otterman was present and indicated the removal of the landscaping was the result of the electric company performing maintenance work and was not related to her project. Councilman Bentley said a possible solution was to move the project to the other side. Ms. Otterman was not forwarded the neighbor's letter and was unaware of the proposal. Councilman Bentley said the comments were received earlier in the day. Ms. Otterman was open to reviewing the proposal by the neighbor at the meeting.

Mayor Kraus asked if the neighbor's comments could be emailed to the applicant before the meeting. Mr. Gibbs forwarded the email to the applicant.

6. 32975 Aurora Road – Jimmmabob, LLC - site plan: There were questions regarding architectural changes and Mr. Frankland said the applicant's architect and the City architect are still reviewing the plans, however, Mr. Frankland does not foresee major changes. He suggested approval be contingent upon approval of the City's architect in order to keep the project moving.

Councilman Bentley advised the Fire Department is requesting the address be placed on the building.

7. 33507 Aurora Road – Solon Square, LLC (Paul Shand) - window coverage variance (site plan): Councilman Bentley said the applicant requests covering some of the storefront windows.

Mr. Newberry clarified the proposal is to completely screen two existing windows. Mr. Frankland agreed, however, said the application is for a site plan alteration to cover windows, rather than a variance. Mr. Newberry agreed and said windows were removed and replaced with masonry.

The caucus ended at 7:31 P.M. and the meeting began at 7:32 P.M.

CHANGES TO THE AGENDA:

There were no changes to the agenda.

COMMENTS FROM THE AUDIENCE REGARDING AGENDA ITEMS:

There were no comments regarding agenda items.

MINUTES:

Motion by Mr. Mazur, seconded by Mr. Greenspan to approve the minutes of the November 10, 2020 meeting as presented.

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

Motion Carried

PENDING: No new items.

NEW:

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| 1. | 5730 Elm Hill Drive – Mary Shuman | 2020-00066 | 5 |
| | ▪ 25% uniform fence opening variance | | |

Mr. Sam Crea, GFC & Supply, Inc. dba Jackson Fence Co. was present representing the applicant and explained the request to install a decorative fence. Exhibit C, layout of the property, and Exhibit E, the fence and gate, were displayed. Mr. Crea said the applicant received emails supporting the height of the fence which were forwarded to the Council. Mr. Crea advised the fence location will conform to the City's regulations. He explained a chain link fence will cross the rear and the remaining part of the fence will be a Brazilian brown, expensive, solid fence and gates. Mr. Crea said as a former police officer, he does not believe a 25% fence opening provides visibility into a back yard. He asked if visibility is going to affect approval, could the fence be reduced in height to 5' instead of 6'.

Mr. Newberry explained the police need to see what is against the fence and a board-on-board fence allows that visibility. He is concerned that in order to see into the applicant's back yard, the police must enter the neighbor's property.

Mr. Crea said the entire yard will not be enclosed.

Mr. Newberry said he viewed the site and noted the neighbor to the left of the property supports the application.

Councilman Bentley advised he relies on the opinion of the Police Department. Chief Tonelli's response is that the department remains firm in upholding the verbiage outlined in Section 1287.06(c), Fences and Decorative Walls, of the codified ordinances stipulating that fences must maintain aggregate openings comprising of at least 25% surface area. Privacy fencing will prevent officers from observing what is behind a fence and would cause a safety issue. Therefore, Councilman Bentley does not support the variance.

Mr. Crea asked if the opinion refers to a 6' fence. Councilman Bentley said that is correct.

Mr. Newberry said the ordinance is not specific about height and variances have been granted for 100% occlusion for shorter fences.

Mr. Crea said if the height cannot be reduced for approval of a privacy fence, the applicant will consider a semi-privacy fence conforming to the code.

Mr. Mazur supports the recommendation of the Police Chief and believes a fence with a 25% opening provides sufficient screening.

Mayor Kraus indicated he will support the recommendation of the Police Chief.

Mr. Greenspan understood the opinions of both the Police Chief and the applicant. He said past solid fence approvals were not attached to the house.

Mr. Stolarsky recommended the applicant request to table the application to confer with his client.

Mr. Crea agreed with the recommendation to table. Councilman Bentley recommended Mr. Crea work with the Planning Department.

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

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

Motion Carried

2. 6722 Ayleshire Drive – Jaskirat and Jasdeep Sohi 2020-00067 6
▪ 25% uniform fence opening variance

The applicant was not present.

Councilman Bentley said the homeowners' association provided a letter of approval for the proposed fence. As with Item 1, he does not support the variance.

Mr. Newberry said this fence request differs from Item 1 as the fence is not proposed to be connected to the house and the back yard is exposed to the cul-de-sac in the rear yard. He said he is inclined to support this application. Although he understands the Police Chief's concern, Mr. Newberry believes officers can easily reach the end of the fence to view the other side.

Mr. Mazur said he would like to hear from the applicant.

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

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

Motion Carried

Councilman Bentley requested the Clerk contact the applicant to advise them that the application was tabled and request their presence at the next meeting.

3. 6150 SOM Center Road - PP# 952-17-003 - Chick-fil-A 2020-00068 6
▪ Lot split

A public hearing was scheduled.

Mr. Allan Wiley, GBC Design, Inc., was present representing the applicant.

Councilman Bentley opened the public hearing and asked for comments.

Mr. Frankland said there is an encroachment at the northwest corner of the Chick-fil-A property into the access drive. The request is to split off the encroaching property and is part of a land swap with the City.

Mr. Lyndon further explained the City sold a piece of its property that did not serve a public purpose. As part of the process, Chick-fil-A offered to swap their property for the City-owned property. The Safety and Public Properties Committee and Council approved the land swap, therefore, Chick-fil-A is continuing the process by splitting the lot.

At Mr. Newberry's request, Exhibit E was displayed. He indicated the property location on the plan and indicated the part of the roadway that will become part of City-owned property.

Mr. Wiley advised if the lot split is approved, the applicant will return at a later time with a lot consolidation plat application.

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

Motion by Mr. Mazur, seconded by Mr. Newberry to approve the lot split of PP# 952-17-003 at 6150 SOM Center Road.

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

Motion Carried

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| 4. | 5570 Harper Road – Chabad Jewish Center of Solon | 2020-00069 | 5 |
| | <ul style="list-style-type: none"> ▪ 78' parking front yard setback variance ▪ 16' parking side yard setback variance ▪ Waiver to permit a single access drive ▪ Site plan | | |

Mr. Ronald Klutchin, Ronald Klutchin Architects, Inc. was present representing the applicant. Exhibit E was displayed. Mr. Klutchin explained the proposal to construct an 11,000 square foot addition to the existing Chabad building and a 36-car parking area on the corner of Harper Road and Cannon Road. He said a lot consolidation was approved in April, 2020 and filed with the county. He explained the purpose of the lot consolidation was to use the 5.74 acre property to build the addition and parking. He noted 12% of the land will be covered when complete. Two houses on Cannon Road that are not occupied will be demolished. The other two houses will remain, the Chabad building and the 88 space parking lot will remain. Exhibit F, the site plan, was displayed. He explained the new building will be approximately 10,000 square feet with a 36 space parking lot on the north side of the property for mainly overflow. A new detention basin will be installed on the Harper Road side. Mr. Klutchin identified a lawn area with fence for gathering. A

recreation area secluded by the two buildings will be added and will be a safety feature for children. Exhibit G, the landscape plan, was displayed. Mr. Klutchin said landscaping should screen the parking area completely. Exhibit J, the floor plan was displayed and was explained. It was noted the social hall is strictly for Chabad use only. Exhibit L, building elevations, and Exhibit M, building rendering, was displayed and explained. Exhibit Q, lighting plan, was displayed. Mr. Klutchin said a photometric plan was submitted with a zero lumen at the property per the Code.

Councilman Bentley said an email was received after hours from a neighbor across the street with concerns regarding the close proximity of the proposed parking lot to residences, overflow of lighting, insufficient landscape buffering and the street access drive on Cannon Road.

Mr. Stolarsky said comments were received from a resident at 29795 Cannon Road as well with essentially the same concerns.

It was discussed why this issue is not on the ballot for a vote of the people and how a parking lot is permitted in a residential area. It was explained the proposed project is permitted by the Zoning Code and places of worship are permitted in residential areas.

Mr. Mazur said there was a comment regarding noise and use of a bull horn as well, although noise is not considered by the Planning Commission. He believes the applicant should be notified of the noise comment. Mr. Stolarsky said they would be subject to any general noise ordinance. Mr. Newberry added that although there were noise complaints, none have been recorded.

Mr. Newberry congratulated the applicants for their success. In regard to noise complaints, he believes the applicants can tend to them.

Mrs. Miriam Greenberg, Solon Chabad, thanked everyone for their comments. Mrs. Greenberg said noise complaints they received were immediately addressed to the satisfaction of the resident. She appreciated the neighbor bringing the issue to her attention.

Councilman Bentley said the landscape architect will review the plan and noted that a single access drive waiver was added to the application at the request of the Fire Department. Mr. Wolf concurred.

Mr. Mazur advised of the Engineering Department's requirements outlined in the memo dated December 8, 2020. Mr. Klutchin said his engineer has been forwarded the memo and each will be addressed.

Mr. Newberry said in regard to lighting, he finds the lighting levels acceptable at the edge of the pavement.

Mayor Kraus said the houses that will be demolished are eyesores and the end project will be a dramatic improvement.

Mr. Greenspan is supportive of the project and believes it will be a nice addition.

Motion by Mayor Kraus, seconded by Mr. Mazur to approve a 78' parking front yard setback variance.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None Motion Carried

Motion by Mr. Mazur, seconded by Mr. Greenspan to approve a 16' parking side yard setback variance.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None Motion Carried

Motion by Mr. Newberry, seconded by Mr. Mazur to approve a waiver to permit a single access drive.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None Motion Carried

Motion by Mr. Mazur, seconded by Mr. Newberry to approve the site plan contingent upon approval by the City's landscape architect and compliance with the Engineering Department memo of December 8, 2020.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None Motion Carried

5. 32317 South Roundhead Drive – John and Nadine Otterman 2020-00070 2
 ▪ 15' accessory pavement setback variance

Ms. Nadine Otterman was present.

Councilman Pelunis was present and advised he was contacted by a neighbor, Mr. Griffith with objections in a letter that was displayed. He said Mr. Griffith would support the project if the driveway extension was relocated to the other side and noted the project was started without a permit. Mr. Griffith indicated that some shrubs and grass were damaged by the contractor and would like it repaired.

Ms. Otterman addressed Mr. Griffith's comments. Ms. Otterman said there was a permit issued for work involving a shed and driveway widening. When the contractor staked the area, Mr. Otterman changed the plan to lengthen the proposed driveway which required a new permit. In regard to the damaged landscape, Ms. Otterman said the damage was caused by the electric company doing work in the area and she believed the grass issue was resolved.

Exhibit D was displayed and Ms. Otterman explained the plan is to widen the driveway by 8' extending towards the neighbor's property. If the extension was located on the other side, Ms. Otterman said it may appear odd if vehicles are parked in front of the front walkway, porch and door. She said a basketball pole will be relocated.

Ms. Otterman explained the code requirements and calculations involved in determining the variance but questioned if it is necessary based on certain the definition of street line, right-of-way and property line.

Mr. Newberry explained in this case, each have the same meaning and can be found in the definitions section of the code, which he finds to be the sidewalk line. He explained the Commission understands that older homes were not built for the number of vehicles owned by property owners today and said such variances are normally granted.

Councilman Pelunis said he discussed the issue with the neighbor earlier in the day. He referred to the City Engineer's memo of December 9th which noted the project was started without proper approvals and permits issued for the work. He understands that the permit issued was for the shed only and not the driveway when the work was started. Councilman Pelunis said also based on his discussion with the neighbor, he understood that Mr. Griffith still objects. He said Mr. Griffith did not mention damage to the bush and the City Engineer was not certain that the electric company damaged the bush. He added Mr. Griffith was unable to attend the meeting this evening.

Mr. Greenspan advised if the accessory pavement was located 25' from the property line, a variance would not be necessary and the neighbor would not have been notified of a variance. Mr. Greenspan does not support moving it to the other side of the house and supports the variance.

Mr. Mazur said if the curved section is removed, a variance will not be necessary. He said although similar applications were approved in the past, objections were not made by neighbors or a city councilman.

Mayor Kraus agreed and advised he shares the same position.

Ms. Otterman said Mr. Griffith did not object to the actual driveway. Mr. Mazur said Mr. Griffith requested it be moved to the other side, which would be an objection. Mr. Mazur recommended the pavement be reduced.

Ms. Otterman requested to table the application to allow time to speak with Mr. Griffith again.

Councilman Pelunis offered to meet with both parties as well.

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

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

Motion Carried

6. 32975 Aurora Road – Jimmmabob, LLC
 - Site plan

2020-00071 6

Mr. Izzy Schachner and Michael Dubois, 32975 Aurora Road, were present and explained the plan to open a restaurant called Birdigo in the former Mama Joe's

Pizza space. He explained the menu is mainly chicken dishes offering vegan, vegetarian and gluten free choices.

Mayor Kraus thanked the applicants for investing in Solon during a pandemic and noted they also operate Imperial Wok and 56 Kitchen.

Mr. Schachner expressed his appreciation to the City of Solon for their support.

Councilman Bentley advised the Fire Department requested the address be placed on the front of the building and Mr. Schachner agreed.

Mr. Frankland said the applicant's architect is discussing the plan with the City architect. He asked that it be made a contingency to approval.

Mayor Kraus advised new opportunities will be forthcoming in this area.

Councilman Bentley looks forward to improvements to the building.

Motion by Mr. Newberry, seconded by Mr. Mazur to approve the site plan contingent upon approval by the City's architect and compliance with the Fire Department memo dated December 8, 2020.

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

Motion Carried

7. 33507 Aurora Road – Solon Square, LLC (Paul Shand) 2020-00072 6
~~75% window coverage variance~~ Site plan modification

Mr. Chad Arians, Lingle Design Group, was present representing the applicant. Mr. Arians explained the plan to open a Dollar Tree in the former Tuesday Morning space. Mr. Arians said the office area will be in the front of the building to monitor the check-out area. He said the entire front of the space is storefront windows, therefore, they are proposing to apply window film on two sections of the storefront in order to build a false wall for the office. He said screening the window will require a variance.

The elevations plan was displayed and Mr. Arians indicated the panels will be at the far left of the space.

Mr. Newberry recalled during caucus that a variance may not be necessary as vision glass will be changed to spandrel which is not a window covering issue but rather a site plan modification. Mr. Arians said it is not spandrel but rather window tint.

Mr. Frankland agreed that the application is a site plan modification and not a variance request.

Motion by Mr. Newberry, seconded by Mr. Greenspan to approve the site plan modification for 33507 Aurora Road.

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

Motion Carried

COUNCIL REFERRAL:

8. Proposed amendment to Section 1288.04(3)(d) entitled "Non-Commercial Opinion Signs" of the Zoning Code

Councilman Bentley said outside legal counsel is reviewing this item.

Motion by Mr. Newberry, seconded by Mr. Mazur to table consideration of Item 8.

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

Motion Carried

9. Proposed amendment to Section 634.10 of the General Offenses Code, Power Equipment and Hand Tool Limits (Noise Regulations)

Motion by Councilman Bentley, seconded by Mr. Mazur to schedule a public hearing on January 12, 2021.

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

Motion Carried

The Planning Commission adjourned at 9:04 P.M. into a meeting of the Board of Zoning Appeals.

Roll Call: Bentley, Greenspan, Kraus, Mazur, Newberry

BOARD OF ZONING APPEALS:

10. Appeal from Attorney Brian Bonham, representing Liberty Investment Group, 32811 Aurora Road, regarding issuance of a zoning violations letter for prohibited property conditions

Councilman Bentley explained this is an appeal pursuant to Chapter 1294 of the Codified Ordinances of the City of Solon from the October 19, 2020 letter from the City of Solon to Liberty Auto Group regarding alleged, prohibited property conditions at 32811 Aurora Road, Solon, Ohio.

Mr. Stolarsky explained pursuant to Chapter 1290.04 of the Codified Ordinances, this body will be acting in the capacity of the Board of Zoning Appeals. Pursuant to Chapter 1294, the determination of the appeal by the Board of Zoning Appeals will be final. He said it will be a quasi-judicial proceeding and asked that all witnesses be sworn and all evidence admitted or properly marked and made part of the record of the proceeding.

Ms. Malorie Alverson, Wickens, Herza, Panza, attorney representing Liberty Investment Group and Mr. Patrick O'Hara, general counsel for Liberty Investment Group were present representing the applicant.

Mr. Stolarsky swore in Ms. Alverson, Mr. O'Hara, Mr. Frankland and Mr. Galaska.

Mr. Stolarsky requested the following exhibits be entered into the record:

- Appeal filed November 18, 2020 with attachments including the City of Solon letter dated October 19, 2020 and various provisions of the Solon Zoning Code;
- Letter from Patrick G. O'Hara, general counsel for Liberty Ford to the City of Solon dated November 17, 2020;
- Letter from Bryan W. Bonham, Wickens, Herzer, Panza, with seven pages attached with photographs dated November 18, 2020.

Councilman Bentley explained that Liberty can present any testimony or evidence beyond the written appeal which will be made a part of the record.

Ms. Alverson said the property located at 32811 Aurora Road previously operated as an auto dealership and ceased business operations in 2018. She said it is a vacant premises with no commercial activity since 2018 and is currently on the market. On October 14, 2020, a site inspection performed by Solon Zoning Inspector Galaska resulted in a prohibited property conditions letter dated October 19, 2020 indicating 12 zoning violations. Of the 12 violations, 11 violations were corrected and Liberty is only appealing one violation; repair of potholes and gravel in an area considered to be the parking area of the premises in accordance with Solon Code Section 1288.021(g).

Ms. Alverson said it is Liberty's position that this is vacant land on the premises and does not fall under Solon's definition of a parking area in the Zoning Code. She referenced Code Section 1261.02 and referred to the definition of a parking area defined as "an open, hard surfaced area including designated parking spaces and aisle ways, that is used for the temporary storage of operable passenger automobiles and commercial vehicles, and which is available to the public, whether for compensation, free, or as an accommodation to clients or customers. For the purposes of this code the terms "parking area" and "parking lot" shall be considered to be synonymous."

Ms. Alverson said there is no business activity or storage of vehicles on the premises and it is private property with no parking and no trespassing signs at all access points on the property as well as on the premises. She said specific to the definition, Liberty does not offer any public parking neither for compensation, for free, nor an accommodation to any clients or customers as it is a vacant lot.

Ms. Alverson said over the past few months, there has been a collaboration between Liberty, the City, Police Department and Prosecutor as vehicles were attempting to park on the lot. She advised by working together, any subsequent public parking on the premises has been prohibited as depicted in the submitted pictures showing no parking and no trespassing signs on the property.

Ms. Alverson said all violations were corrected with the exception of the gravel and pothole violation and asked for reconsideration of the violation.

Mr. Stolarsky asked Zoning Inspector Galaska questions in which Mr. Galaska advised he inspected the site in October and compiled a list of violations which was sent to Mr. O'Hara. Although a second inspection did not take place, Mr. Galaska

indicated when driving past the property, he observed several violations had been repaired, however, the parking lot had not been repaired. He described the parking lot as filled with several pot holes and gravel with no uniformity, striping or sealcoating and is crumbling in almost every quadrant of the lot. Mr. Galaska reported that the imperfections are visible to pedestrians, traffic and the residential area across the street on Aurora Road.

Mr. Stolarsky asked if the letter of October 19, 2020 was prepared in conjunction with other members of the Planning Department including Director Frankland. Mr. Galaska said yes.

Mr. Stolarsky continued with questions in which Mr. Galaska reported in late October or early November 2020, there was an online auction taking place and the equipment being auctioned was from the Executive Caterers of Landerhaven. He said it was being stored at the Liberty Ford location and all winning bidders were to pick up their purchases at the Liberty Ford location no later than three consecutive Mondays following the auction which started on Thursday. Mr. Galaska said a cease and desist letter was sent to Mr. O'Hara who stopped the online auction immediately.

Ms. Alverson explained the building was used to store some materials from Landerhaven. As indicated, there was an online auction which Liberty was not aware of and once made aware, they immediately stopped the activity. She said it is not a common practice and is not a site that is used for this type of business activity. She said it was a one-time occurrence unknown to Liberty and was immediately ceased upon Liberty's knowledge of the auction.

Mr. O'Hara explained the relationship of the principal owner of Liberty Investment Group and the owner of Landerhaven, who is creating a new restaurant, as good friends. Mr. O'Hara referred to the code and said they were allowed extremely short-term storage otherwise it would be subjected to warehouse provisions of the zoning code. He advised Landerhaven was permitted to store items, however, the auction was unknown to Liberty. As soon as he was notified of the online auction by Mr. Galaska, Mr. O'Hara shut it down immediately and said it was never authorized. He apologized that it did happen. He said Liberty was issued an adjudication order by the Building Department. Mr. O'Hara advised he and the Building Inspector inspected the premises and they removed every item from the property to show they are in compliance. He said they are trying to be a partner in the process and he said he was surprised by the violations. He said they will comply with the parts that make sense to them except asking to improve a parking lot that is no longer a parking lot does not seem reasonable to him.

Mr. Stolarsky requested Mr. Frankland respond to Mr. O'Hara's comments about the hard surface no longer being a parking lot.

Mr. Frankland said this is a complex issue to propose that because something is vacant, it is no longer considered to be what the permits were issued for. The premise of the appeal is that the condition of the former Liberty Ford parking lot is not a violation of the zoning code because it is not a parking lot. This is an unusual take on this situation, something for which permits have been issued and the

conditions by which it is existed but no longer being used for that specific use so it is believed that this is a vague use and no longer subjected to the Zoning Code requirements. However, it is still considered to be a parking lot under the City Zoning Code.

Mr. Frankland continued that everything in the Zoning Code has a deliberate use, either specifically listed as a permitted use or substantially similar to a permitted use or it is a prohibited use. It cannot be a vague use.

Section 1260.01 Purpose of the Zoning Code was displayed on the screen. He read from the Code that no structure or premises shall be used, and no structure shall be erected, moved, or altered except in conformity with the regulations prescribed herein for the district in which the building and/or premises is located. Therefore, everything has a use and there are no vague uses under the Zoning Code. Section 1290.02, Compliance Required, of the Zoning Code was displayed indicating that if any land use is not explicitly permitted in this Zoning Code then that use should be considered prohibited. Therefore, the hard surface asphalt that is in disrepair and unsightly is a parking lot under the definition of the City Zoning Code. The next item displayed the definition of a parking lot under the Zoning Code, an open hard surface area including designated parking spaces and aisle ways that is used for the temporary storage of operable passenger automobiles and commercial vehicles which is available to the public, whether for compensation, free, or as an accommodation to clients or customers. For the purposes of this Code, the terms "parking area" and "parking lot" shall be considered to be synonymous.

Mr. Frankland said the appellant feels it is not being used as a parking lot because it is vacant, however, the City's Zoning Code confirms that it is a parking lot. This is because it does not need to be exact and only needs to be a substantially similar use. The next item displayed was regarding Use, substantially similar – A use that is not explicitly listed as a principal, accessory or prohibited use within a particular zoning district but which possesses characteristics and impacts that are so similar to a specifically listed principal, accessory, or prohibited use as to make the two uses virtually equivalent. The determination as to whether a use qualifies as a substantially similar use shall be at the sole discretion of the City of Solon. Therefore, it is the City's determination that the area in question is a parking lot. It was designed as a parking lot and intended as a parking lot and zoning approvals were given for a parking lot. The interpretation of the appellant that it is not a parking lot now because it is vacant would be contrary to the terms of the City Zoning Code.

Mr. Frankland said whether or not it is considered to be a parking lot is irrelevant to the terms of the Zoning Code. The same property maintenance conditions that apply to parking lots apply to all structures and are regulated under the same section of the code. He said the parking lot is a structure.

The next item displayed gave the definition of structure, any thing erected, constructed or reconstructed on a foundation, posts, piles, skids, sills or any other means of support, whether such foundation, posts, piles, skids, sills or other means of support are permanently located in, or attached to the ground. The word

"structure" shall include, but not be limited to the word "building." Mr. Frankland said this is all encompassing for anything constructed is considered a structure. Therefore, the area in question is not only a parking lot, but is also a structure.

The importance of a structure is related to the next item displayed. Section 1289.02 of the Zoning Code, Prohibited Property Conditions, as related to deteriorated or decayed building or structures. This is all inclusive, exterior walls, structures and appurtenances – every exterior wall, door, porch, patio, floor, step, chimney, railing, window, sill, sash, molding, lintel, frame, gutter, downspout, lattice, fence, gate, driveway, parking low, street access drive, or any other exterior portion of a structure or any parts or features thereof shall be maintained free from holes, cracks, damaged, decayed, deteriorated, warped, loose or missing materials and shall otherwise be maintained in good repair and in a structurally safe, sound and functioning condition. All windows, doors, roofs, walls or other means of access to a building or structure shall be secured against uncontrolled outside access.

Mr. Frankland said this section prohibits both deteriorating parking lots and structures. Therefore, as clearly supported by the Code, this is a parking lot and it is also a structure. Just because the property is vacant, does not mean it is no longer a parking lot. There has been no application received to change the use of the area and permits were issued for the use as a parking lot.

Mr. Frankland agreed with the content of the letter of October 19, 2020 from Mr. Galaska. Mr. Frankland displayed sections of the Zoning Code and explained how the code applies to the Liberty property. He said the Liberty Ford asphalt is a parking lot by code and is subject to the same property maintenance requirements. He supports Mr. Galaska's interpretation of the issue and said the deteriorated parking area would still need to be repaired.

Ms. Alverson questioned Mr. Frankland regarding Liberty's status as a currently operating active business. Mr. Frankland said it is a vacant property. She asked if his position is that although it is not actively being used as a parking lot, it is substantially similar to a parking lot per the city's Zoning Code. Mr. Frankland said it is considered to be a parking lot and is substantially similar to a parking lot. Ms. Alverson said one section states if it is considered a parking lot, it has to be available to the public and asked Mr. Frankland's position. Mr. Frankland said it meets the substantially similar section of the zoning code and constitutes a parking lot.

In response to Ms. Alverson's questions about the use of signage to prevent parking and trespassing that they installed, Mr. Frankland said the City requested the appellant install the signage. Mr. Frankland said the property was being used for improper, non-business type uses, trucks were parking on it, vehicles were abandoned on the property and the City was receiving complaints from residents. Mr. Frankland said all of the prohibited conditions have been rectified except the deteriorated condition of the asphalt.

Ms. Alverson said it is not appropriate to make Liberty pay for extensive repairs to private property that will not be used for the public.

Mr. O'Hara said that the City has essentially said it is illegal to park on the property, however, is requesting to make it a compliant parking lot. This is incongruent. If the City's wants it to be a parking lot and allow it to be used as a parking lot, Mr. O'Hara said he will make financial use of the property and rectify the issues. However, if the City does not want Liberty to use the property, then he will leave it as is.

Ms. Alverson said Liberty believes they have done everything the City has requested and are actively monitoring the area. It has been made clear that it is private property and not to be used for parking.

Mr. O'Hara said he has had many offers over the past couple of years to receive payment to have items parked on this property. Liberty has refused this as they have been working in conjunction with the City in order to sell this property for re-development. He feels Liberty has tried to be a partner with the City and cooperate with their requests.

Mayor Kraus said a compromise should be reached. He said Liberty has worked with the City by installing the signs. This property has not sold yet and might take some time to do so. It is in the middle of the City's retail area and as a compromise, a solution to repair or screen should be determined.

Councilman Bentley said if not a parking lot, then what would Liberty call it. Ms. Alverson said they are calling it a vacant lot. She said it is their belief that there is no reason or concern for them to have to make repairs to the lot as it is not being used by the public. The concerns that were necessitated by the violation letter she believes are alleviated because Liberty is not utilizing the area for any public purpose. It is going to stay vacant and Liberty will continue to monitor and ensure the signs remain.

Mr. Mazur commented that when McDonald's moved from their location, the building was removed and grass was planted. He suggested that if this is a vacant lot, the asphalt should be removed and grass planted or shrubbery added as a screening so it cannot be viewed.

Ms. Alverson preferred to confer with her client. She said Liberty will be willing to work with the City on a solution.

Mr. Stolarsky said nine out of the ten violations have been corrected.

Mayor Kraus said a new restaurant is opening near the location and it is still important for the property to look decent even if it waiting to be sold.

Mr. O'Hara agreed with Mayor Kraus and is willing to work towards a compromise but not at the expense of the current request to repair the deteriorated lot.

Mr. Greenspan said he would like to see a compromise reached. He asked Mr. Frankland what the Zoning Code requirements are for a vacant lot.

Mr. Frankland said vacant lots must be maintained with landscaping or mowed. Mr. Mazur's suggestion would be a solution to the problem. Mr. Frankland said it is not a vacant lot because there are structures on it.

Mr. Newberry said the violations letter addressed twelve violations and eleven have been addressed. The only item not addressed is the asphalt deterioration.

Mr. O'Hara reviewed the list of items that have been repaired and said they do not want to leave a dilapidated building behind.

Mr. Newberry said a dilapidated parking lot should not be left behind either.

Mr. O'Hara reiterated that it is not a parking lot.

Mr. Newberry said by the definition of the City Zoning Code, it is considered a parking lot.

Mr. O'Hara disagreed with Mr. Newberry.

Ms. Alverson said it is their position that the area does not meet the definition a parking lot.

Mr. Newberry said he believes there are many ways the last item, the deterioration of the area, can be resolved. He said this has happened before at other locations.

Ms. Alverson said the cost to Liberty would be exorbitant to repair the lot. Considering this area is for sale, the new owner will have to repair what the City is deeming a parking lot.

The Commission discussed whether or not this item can be tabled for further discussion.

Mr. Stolarsky said this item can be tabled.

Mr. O'Hara said he would not be opposed to tabling this, however, is not prepared to repave the lot. However, he would be willing to discuss other options such as screening. He would like to work towards a mutual goal.

Mr. Mazur suggested looking at decorative fencing for screening.

Motion by Councilman Bentley, seconded by Mr. Mazur to table consideration of the appeal from Liberty Investment Group.

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

Nay: None

Motion Carried

The meeting of the Board of Zoning Appeals adjourned at 10:07 P.M. and the Planning Commission meeting reconvened.

COMMENTS FROM THE AUDIENCE:

Ms. Jennifer Overman, 29895 Cannon Road, called regarding Item 1, the Chabad Jewish Center of Solon. She said she had been on hold for almost two hours and was unsure as to why she was unable to speak before this time.

Councilman Bentley advised the phone call may have come in after the "Comments from the Audience Regarding Agenda Items" portion at the beginning of the meeting.

Ms. Overman said she submitted a letter and was surprised as to why it was not part of the exhibits.*

(*Clerk's note: The letter Ms. Overman referred to was received by email in the Planning Department on 12/15/20 after business hours. The letter was forwarded to the Clerk of Council's office on 12/16/20 and did not meet the deadline to be added to the exhibit packet.)

Ms. Overman expressed concerns about the variances. She lives across the street from the proposed project and questioned the need for such a large variance.

Mr. Frankland said the variance is for an additional parking lot which the applicant has said they will screen.

Ms. Overman is concerned about lights shining into her windows.

Councilman Bentley said the City's landscape architect will have to approve the plan and ensure proper screening.

Mr. Mazur told Ms. Overman she would be able to ask questions at the December 21st Council meeting when this item will be heard again.

Ms. Overman asked if the meeting is conducted in the same fashion and will she have to wait on the phone.

Ms. Letourneau advised the Council meetings are open to the public and Ms. Overman is welcome to attend the meeting while following the COVID-19 safety protocol.

Mr. Newberry recommended Ms. Overman contact her Council representative.

Ms. Overman spoke with her Council representative and Councilman Bentley said he did receive a phone call from Councilwoman Meany about this item.

Ms. Overman asked for clarification about the drive portion and why it would be permitted in a residential area.

Mr. Frankland said this is a non-residential use in a residential district and is permitted under the City's Zoning Code. Typically, two means of ingress and

egress are required, only one is being requested and that is the reason for the variance. The Fire Department reviewed the area and has waived the requirement for the second access point.

Mr. Frankland said the City's landscape architect will be reviewing the plan and the concern over headlights will be brought to his attention.

Mr. Greenspan believes the parking will not be used regularly and only will be used as an overflow lot.

Ms. Overman said traffic is already busy because of Nestle and it causes issues. She is concerned that this will increase traffic. She said any issues she has had with the Chabad regarding noise over the summer were addressed and resolved. She said she has four children and when she bought the property, she thought it was a residential area and is concerned for their safety with all of these changes.

Ms. Overman asked if they could just add to their current parking lot instead of making the overflow lot. She believes the variance is too large and would like to explore a compromise.

COMMENTS FROM THE COMMISSION:

Motion by Mr. Mazur, seconded by Mayor Kraus to cancel the December 29, 2020 Planning Commission meeting.

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

Motion Carried

In turn, members of the Commission expressed their wishes for Happy Holidays.

Mr. Wolf reminded everyone to water their Christmas trees to prevent them from drying out to reduce the risk of fire.

Motion by Mr. Newberry, seconded by Councilman Bentley to adjourn the meeting at 10:25 P.M.

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

Motion Carried

Chairman

Secretary