

**NORTH RIDGEVILLE BOARD OF ZONING & BUILDING APPEALS
MINUTES FOR THE REGULAR MEETING HELD SEPTEMBER 27, 2018**

TO ORDER: The meeting was called to order at 7:00 p.m. with the Pledge of Allegiance.

ROLL CALL: Present were members Planning Commission Liaison Jim Smolik, Neil Thibodeaux, Vice Chairperson Linda Masterson, and Chairman Shawn Kimble.

Absent was Member Mario Cipriano.

Also present was Chief Building Official Guy Fursdon, Assistant Law Director Toni Morgan, Council Liaison Michelle Hung and Deputy Clerk of Council Donna Tjotjos.

MINUTES:

Chairman Kimble asked if there were any comments or corrections regarding the regular meeting minutes dated August 23, 2018. Hearing none, he stated the minutes will stand approved as presented.

PLANNING COMMISSION REPORT(S):

Chairman Kimble addressed Planning Commission Liaison Jim Smolik and asked if there were any reports from Planning Commission.

Member Smolik responded that there was no report.

OTHER REPORTS OR CORRESPONDENCE: None

Chairman Kimble asked the Clerk to read the first application.

PUBLIC HEARINGS:

APPLICANT: Chris Brown, K. Hovnanian Homes, 3296 Columbia Road, Richfield, OH 44286

OWNER: K. Hovnanian Homes, 3296 Columbia Road, Richfield, OH 44286

REQUEST: A variance to install an eight foot walking path on the east side of Waterbury Boulevard.

LOCATION: Shady Drive North and north of Terrell Drive in a PCD District
Permanent Parcel Nos. 07-00-035-102-128, 07-00-035-900-003, and 07-00-035-102-024

Application was read along with comments from Chief Building Official. A memorandum from the City Engineer was read apologizing that he could not attend the meeting and provided his support along with the administration's support regarding this application.

Chairman Kimble asked if there was a representative and if so, could they step to the mic and give their name and address and he would swear them in.

Chris Brown of K. Hovnanian Homes, 3296 Columbia Road, Richfield, OH 44286 was sworn in.

Chairman Kimble asked if he would tell the Board a little bit about his application.

Chris Brown stated that they had proposed to install an eight foot wide walking trail. They are currently developing phase 9 of the new Waterbury Subdivision. Access will be currently from Sugar Ridge Road down to West Fenwick. That was also noted in Mr. Rodriguez's memo as to what was being constructed currently. As they construct phase 10, which will be sometime later next year, they are obligated to finish Waterbury Blvd. to make the physical connection to Terrell Parkway at that point. At that time, they will be extending the multipurpose trail down to the intersection of Terrell and Waterbury.

Chairman Kimble stated he is somewhat familiar with the area over there as he has been through there a number of times. However, before the Board gets into the application too much he had a couple questions for the Law Department. He addressed the Assistant Law Director and asked for advisement. He stated that he has read through section 1024 that the former engineer is quoting and which basically sent this applicant to the Zoning Board. He can't find the ordinance that backs up the requirement to install sidewalks on this stretch of road.

Assistant Law Director Morgan stated that the Chairman was correct. Our ordinances that may have been an intention and certainly for safety reasons it makes a lot of sense, but directly from the way it is written, she believes the ordinance requires that there be sidewalks in front of homes and in most cases they are along the road and hence they are there. She is assuming that is where Engineering got their opinion from.

Chairman Kimble stated that in this particular case and he asked to be corrected if he was wrong, that there are no homes that will front this street in question. He asked if that was accurate.

Chris Brown stated that is correct.

Assistant Law Director Morgan stated it is a very unique situation.

Chairman Kimble stated that there were other subdivisions within the city that have installed walking trails but it has almost been from the developers own decision to do that. He asked how our Engineering Department made them come in front of this Board requesting a variance and he is more confused on how this Board could grant a variance to an ordinance that technically doesn't exist.

Assistant Law Director Moran stated that the idea was something along the lines of when the Building Department makes a decision as we do have a couple of those appeals in front of the Board this evening, it is more in the nature of that decision. This was the decision of the Engineering Department and so, again, a unique situation. This is not spoken to directly in our ordinances at all. The Chairman is correct in that.

Chairman Kimble asked if there is anything in the ordinances that states the Engineering Department can just decide that they want something and it has to happen and if not, they have to go to the Zoning Board. He stated that the other applications that are further along on the docket tonight refer to ordinances that are specifically about what they are here for. He can't see that here with this application.

Assistant Law Director Morgan stated that the issues he raised are pertinent and again, because the Engineering Department has a lot of leeway, they check for grading and they have a say so in safety issues. Although none of those were directly stated in the memo. She believes that because this is a unique situation it was thought that this might be the best way to handle it, but it isn't perfect.

Chairman Kimble asked if this application was denied tonight, would the applicant be forced to put in two four foot sidewalks.

Assistant Law Director Morgan stated she would have to defer on answering that. There is no ordinance requiring that.

Chairman Kimble stated that he is concerned about the city's liability for what the Board may or may not do here this evening. Personally, he didn't feel that this application should be in front of this Board.

Assistant Law Director Morgan stated that it is hard to argue with what he was saying. She stated that if the Board is uncomfortable with making a decision, they could make a motion to that effect. That is the only way she could advise them because the Chairman is correct, there is no ordinance that speaks directly to this as it is sort of roundabout again, this is a relatively unique situation because no homes front on this street, which in most instances that is what happens and it just didn't happen here. She thinks that there was a lot of head scratching and she believes that this was the solution that was put forth and that is why it is here.

Member Smolik addressed the Chair and asked if he could jump in real quick.

Chairman Kimble stated that he is just concerned from the city's standpoint. Personally, he would say put the sidewalks in on both sides of the road. The more sidewalks the better, but his personal opinion means nothing as he is sitting in that seat as Chairman.

Assistant Law Director Morgan stated that his concerns are valid.

Member Smolik stated that the Board has to remember that Planning Commission did approve it with both sidewalks on each side. It is on the drawings and it is already approved. So now we are looking at a change from the approved Planning Commission drawings.

Chris Brown interrupted and stated that is not correct. The preliminary plan was approved with the eight foot wide walking trail in place.

Member Masterson addressed the Chair and excused herself.

Chairman Kimble apologized stating she was next in line.

Member Masterson stated she was next in line and apologized to James.

Chairman Kimble stated that was his mistake; not James.

Member Masterson stated she was the Chair at the last meeting when this came up and asked that both the Mayor be here as well as the Engineering Department and her reason for that was there was a letter dated May 4, 2018 from the Assistant City Engineer asking for this variance. That is why she asked that the Administration be here to clarify it as well as the Engineering Department.

Deputy Clerk Tjotjos stated that a memo was presented to the Board from the Engineer.

Member Masterson stated she understands that but she also asked for the Administration to be here and asked if there was a reason why they are not here.

Deputy Clerk Tjotjos stated that the Mayor did have plans to attend but was called away.

Member Masterson asked if there was any correspondence from the Mayor.

Deputy Clerk Tjotjos stated no, but the memorandum from the Engineer that was read tonight indicates that the Engineer met with the Mayor and received his okay along with his support.

Assistant Law Director Morgan noted that in the memo from Engineer Rodriguez he indicates his support along with the Administration. As to their view point, it appears that they are in favor of this type of walking trail as opposed to a sidewalk and she stated that the plan was approved, but we don't have the luxury of reviewing that plan this evening.

Chairman Kimble stated that is an interesting and somewhat important point, but he is still not sure it gives the Board a legit reason to act on this application. Personally, if there is no

ordinance stating what the applicant is required to do or allowed to do, why would he need to be in front of the Board and if they don't have to put in anything and they are choosing on their own accord, to put in an eight foot wide walking trail, how can the members make a determination on that from this Board.

Assistant Law Director Morgan stated that since it is on the agenda, she believes some action should be taken even if it is a motion to set it aside indefinitely. That is neither a denial nor an approval at this point and the matter can be explored further if that is what the Board wishes.

Member Masterson stated that she is not satisfied that she has a valid answer and that is why she came to the conclusion that she did and while she understands the memo given to the Board by the Engineer, she would still like the Building Department to be here, the Engineering Department and the Mayor.

Chairman Kimble addressed Member Masterson and explained that this Board is a semi-judicial Board that is not inclusive of them. He stated that he does appreciate those that are smarter than he is and their opinion, but the Board is an independent Board who make decisions on their own. He believes that if they felt it was important enough than they would be here. Actions speak louder than words.

Council Liaison Hung addressed the Chair and stated that she represents the people as she is on City Council and in doing so, she represents the health, safety and welfare of the constituents of this city and she does believe that a pedestrian walkway on both sides is the best way to go here, whether it is two sidewalks or a walking trail on one side and a sidewalk on the other. It is not for her to decide, but that is her opinion representing the people.

Chairman Kimble agreed with Councilwoman Hung but explained that from a Chairman's standpoint, he doesn't see how this Board can take action on this application. He asked how the Board could approve a variance against an ordinance that doesn't exist.

Council Liaison Hung understood and stated that the Streets, Sidewalks and Bridges Committee are committed to working on this, but that doesn't give the Board a solution this evening.

Chairman Kimble stated that in 15 years on this Board, he has never been faced with this. That is why he is bringing this issue to the floor.

Assistant Law Director Morgan stated she understood his dilemma but nonetheless it is an application that is in front of the Board at this moment.

Chairman Kimble stated that there is a room full of people who would like to give their opinion and two cents and stated that he definitely wanted to honor that. He moved the meeting forward and opened the floor to the audience and asked if there was anyone who would like to make a

comment. He again reiterated that he is faced with the same dilemma that there is no ordinance that requires the developer to do anything. He stated that the developer is here tonight merely being nice.

Chris Brown stated that they are here because the variance was requested through the Engineer's previous review.

Chairman Kimble agreed and stated that engineer is no longer employed by the city.

Chris Brown stated yes, the Assistant Engineer who is no longer here. He stated that they really did have the best intentions in trying to keep the city in mind and installing something so that it would give a nice access to the park facilities next door. He stated he knows the Park District is planning on expanding and so, it makes it even nicer.

Chairman Kimble asked if there was anyone in the audience that would like to speak on behalf of this matter.

Martin Austin of 34897 Shawn Drive was sworn in. He stated that he believes that lives matter here and a walking path behind the houses and a roadway with no sidewalks; how people will get from one side to the other side for this walking path. Children are going to be walking in the road. Sidewalks are here for the safety reasons of the people of North Ridgeville. He stated that the city shouldn't say they don't belong and bypass it the other way. There are children nowadays that are younger with cell phones and they don't pay attention. They could walk out into traffic. He asked if there was going to be parking on this roadway when these children will be walking out into the road. He stated that people will be walking animals and even if there is cross walks, he asked how would they get to the cross walk. He explained they would walk to the road to the cross walk to cross the street. There are just a lot of unknown variables that he doesn't think people are looking at and they don't want to see anyone get hit or killed. He stated it isn't the fact of will it happen; it will be the question of when it will happen. There are speed limits on roads and we know how people follow speed limits. He stated he believes we are just looking for trouble. The point is, is that there should be sidewalks. He believes this whole city should have sidewalks.

Brendan McCool of 38733 Sugar Ridge Road was sworn in. He stated that he wanted to echo what Marty said. Even though the ordinances say that you only need sidewalks on the front side of houses, you are telling a kid who is 15 that he has to get to Shady because he is late for baseball practice and he is told to go all the way down to Victoria and go across Terrell and there is where the cross walk is going to be. He stated if he was a 15 year old kid, he wouldn't do that. He would run and jump over his fence, run across the street to get to the walking trail on the other side. If he gets hit by a car, then that was a risk he was willing to take and apparently if he gets hit, then he lost. He stated that people will cut through there and cut across. They aren't going to go the long way; they are just going to go through their back yard, cut across the street

to the walking trail. For the safety aspect, he believes they should put in the sidewalks. The other reason is as we all know it is easier to put stuff in the right way the first time rather than come back and try and fix it. Heaven forbid something horrible like a child get hit by a car and someone get killed. The easiest example he can think of is Walmart, right in the corner of the city in Elyria. Ten years ago, everything was going to be great. The developer is going to take care of it and it will be the easiest thing to get in and out of and we aren't going to have any problems. Look at it now. Everyone knows it is a traffic nightmare. They want to fix it, but look what they have to do. The City, State, County, everyone is getting involved and they have already said the project is impossible to do because there is so many different bureaucracies involved, they will never get it done and so, what he is thinking is now, ahead of time, while we are planning it, we make the changes. It is easier to make changes now when it is on paper then when everything is in the ground and we have to come back and modify it later at more expense.

Chairman Kimble stated he agreed with the point about doing it right the first time and he honestly wished there was legislation in place that the Board could work with. It is not at the moment and unfortunately, this Board does not have the power to add that into the zoning code.

Assistant Law Director Morgan stated like the Chairman, she is very much by the book and there is no denying that we do not have an ordinance which speaks to this and it makes it extremely difficult and uncomfortable here. From hearing the testimony of the people, you can understand why the Engineer; and perhaps using the word variance was not quite the way to go, had concerns about safety. It is certainly up to the Commission but she will make a commitment to do an amendment to our ordinances to make this more explicit for the future.

Member Masterson explained that the Board is here to just address the variance. Everyone had a lot of phenomenally good points and one of the issues that she was concerned about is that one of the Boards that should have taken health and safety into consideration was Planning Commission. That is not our Board. She explained the Board is just here looking at a variance and decide yes or no. She agreed completely that Planning Commission has the authority in their Board to institute a traffic study to be implemented. They should have in Elyria when they put that facility in.

Brendan McCool stated what he wanted to say to that is if there is no ordinance to make a variance on then it would have to be put aside either until there is an ordinance or the plan would have to go through as is. What they were discussing amongst themselves was if he told the Board he was a millionaire, they could take the check and the Board would just have to trust him. He stated that there is no proof of it, but because he is saying he is a millionaire, it has to be believed. He stated that if there is nothing to appeal or to vary from, it can't really go anywhere other than to go away.

Chairman Kimble explained that this plan doesn't go away. They will still build it; they just don't have to put sidewalks in.

Brendan McCool stated he understood. He stated that there is no ordinance to vary.

Nancy Schartman of 8576 Avon Belden Road was sworn in. She indicated that her farm is at Route 83, 8576 Avon Belden and she also owns a farm, which is next to Waterbury and a little over a year ago there was a developer that wanted to put in a housing development on the other side of her property on Chestnut Ridge. The proposal was to put a road through and they wanted to go through her property over to Terrell and up to Sugar Ridge Road. The whole time it was considered a truck route. They did a lot of talking and it didn't go through. Now, this developer is starting from Sugar Ridge and going down to Terrell and eventually, they want to put it through her farm and over to Chestnut Ridge where they come off the 480 exit. There is no mention now that this is a truck route. According to what the plans were originally, starting from this other end, their road is going to be considered the truck route from that end and they certainly need to have sidewalks on both sides. Even if they do expand the baseball diamonds, there will be more kids all the time that are going to be crossing over that. It just shouldn't be.

Chairman Kimble explained that he remembers the application that came a year or so back. He was on the Board and he was against that application for a number of different reasons. Looking back at that application, there is a big difference. There were no sidewalks on that plan. The Engineer at the time didn't decide that sidewalks were required and that particular application that was approved would have been built with no sidewalks because the road is very similar to this where homes back up to the street. There were sidewalks on the road that branch off of it, but not the main truck route, which was the term, used that evening. That is the issue that is in front of this Board tonight because a year and a half ago, there was no sidewalk required by the engineering department but now there is. That is the dilemma this Board faces tonight. He then stated that he didn't know who was next to speak.

Member Masterson asked if the gentleman in the very back still wanted to speak.

Chairman Kimble addressed Mr. Boose.

Dennis Boose 6405 Denise Drive was sworn in. He stated first, the Board does have a dilemma legally and so, he appreciated that as he, like most here, tries to find ways in how to do something that will stick and that can be enforceable. Sometimes he thinks common sense can have a play into this and while the Law Director may say that there isn't a specific item or specific ordinance that directs this sidewalk or any type of walking facility be installed; we do have the Engineer saying he wants it required. We can argue all night whether that is legal or not, but that is what is on this application. City Engineer requesting sidewalk on both sides and applicant requesting eight foot multipurpose asphalt trail. He believes that we could look at it as that is where the variance needs to begin. Whether or not there is an ordinance tied to it or not, but the Board has a document, an official city document that is requesting some sort of action on this cause. Seems to him, that we have a willing person that wants to build a walking trail and to

him, he prefers a walking trail better than a sidewalk. It is wider, you can do more things to it and it serves the same purpose. So, he doesn't have a problem with the walking trail. He stated he would like some sort of walking facility on both sides because of many of the reasons that some of the people who have already spoke on safety. It is interesting that too many times in his position as a Council person that we come up and find new things that we could not have envisioned to make laws about because they haven't happened yet. He recalled when someone in his ward several years ago installed a windmill in their back yard. Who would have envisioned someone putting a windmill in their back yard? He asked himself how he could have envisioned this to ensure there was an ordinance where you couldn't put a windmill in your back yard in a residential district. He couldn't have envisioned this and so, you have to go to the next level and ask if this is a safety issue. If it really is a safety issue than he believes it has to come first. If there is a legal document from the city that is requesting some sort of action that creates some sort of safety precaution he believes that is good. He is hoping that somehow the Board could find a way to acknowledge the Law Director stating yes, if you could do this, it would work; there is a willing developer that wants to do it, he believes there is something that could be put together here.

Chairman Kimble asked if there were any other comments from the audience.

Albert Krage of 37903 Sugar Ridge Road was sworn in. He stated he lives on Sugar Ridge Road which is getting inundated with trucks. It is pretty rough. This road is going to be built and it will be a truck route. He believes that people will cross over that street and how many people will get hit. The trucks do come through at night as well. Sidewalks may not be required everywhere but like what was said, use common sense. It will be a big accident waiting to happen. Putting a truck route through a residential area is a bad move in the first place. You need to start somewhere with this because it will be a problem with everyone crossing there. He stated that there are 200 trucks a month coming down Sugar Ridge now. Imagine what it will be like when the truck route gets through. There will be way more. Sidewalks will be needed right there.

Chairman Kimble stated that the Board needs to remember that even though it is kind of known what will or will most likely happen with this road if it is completed, the members can only base their decisions and actions on what is in front of the Board today with this portion of the street and not what could happen in the future. Even though it is more than likely going to happen at some point, some day; legally we are bound by an obligation to look only at what is in front of the Board. He asked if there was anyone else that would like to speak on behalf of this matter.

Member Masterson addressed the Chair and stated she had a question of the law department. She thanked the gentleman from K.Hovnanian homes for coming in not just once, but twice and apologized for that. She addressed the Assistant Law Director and stated that all the Board is looking at tonight is the variance on the sidewalk issue as the Chairman already stated and the legality of this is an ordinance that isn't even on the books. The audience does have good points,

but the members here are just looking at this variance. Planning Commission deals with the plan, the subdivision and the traffic issues. The Administration is also to look at that. She asked the Assistant Law Director if the Mayor has the authority to arbitrarily designate a city street as a truck route and asked if that was legally possible.

Assistant Law Morgan stated that she is not sure that it isn't impossible. She added that she didn't know if this would muddy the waters more or if it will make the decision harder or easier and this is why lawyers are known to talk out of both sides of their mouth. It is because situations are very complicated. We don't have an ordinance that says they have to do this, but there are plenty of good people with good reasons as to why it makes sense and the Engineer thought it did too and that was our prior Assistant Engineer and the Board also has in front of them today, a memo from our Engineer and he says with Administrative support that they support just the walking trail and in the way this is phrased, that would be granting the variance and a lot of people have talked about why it is necessary to have sidewalks on both sides of the street. So, when a new situation presents itself, it is not uncommon for courts and this Board is quasi-judicial to look at and extrapolate and extend existing laws to cover new situations and the ordinance we have indicates there will be sidewalks in front of houses and that is because houses are usually on both sides of the street. Depending upon how the Board chooses to view this, but it would not be unheard of in the legal terms to extend that to situations where there aren't houses on both sides of the street with the logic being that it doesn't lessen the need that sidewalks serve even though there are no houses there and just because this development is different from the typical one which is when the ordinances were written, that it wouldn't be unreasonable to extend the logic that is indicated that it is in front of houses which are on both sides of the street. This is why legal matters get complicated.

Chairman Kimble appreciated what is being said and truthfully, when he started asking about this 40 minutes ago, which is far longer than expected, he was hoping she would have given an answer in about a minute as to why it was okay. He stated that the comment from Councilmen Boose, who he greatly respects, made a fantastic point that we have a city document in front of the members and with that, he feels much more comfortable proceeding forward then he did 30 minutes ago.

Member Masterson is getting the impression that the Board isn't going to table this.

Chairman Kimble stated when he opens the floor for a motion, she can make any motion that she likes.

Member Masterson asked for clarification and asked if the Board were to approve she wanted to ask the representative a couple of questions. She addressed the representative and asked where this eight foot walking trail will be located and if it will be located on the other side of the road from where the future phase is going down to the cut through.

Chairman Kimble showed the location on the drawing.

Chris Brown stated it will be located on the east side of the new proposed Waterbury Blvd. and would go currently to West Fenwick which is just south of Shady to Sugar Ridge Road.

Member Masterson stated if she is reading this correctly, according to the Engineer he wants a stop sign at the new road West Fenwick. She asked if there were stop signs at Shady Drive.

Chris Brown stated he doesn't believe currently there are stop signs at Shady Drive.

Member Masterson asked if he would be agreeable to putting stop signs there.

Chris Brown stated actually they are redoing the intersection there because of the construction of the new Waterbury Blvd. The old Shady Drive, which currently exists where it makes a 90 degree bend, they will cut into Waterbury Blvd. So, a stop sign will be a good idea as well.

Member Masterson asked if he agreed to put a stop sign there.

Chris Brown stated yes.

Chairman Kimble thanked the representative for dealing with all of his questions and legality issues and appreciated him hanging in there with them through this. Seeming the Board is going to hang their hats on the ordinance that requires a sidewalk in front of a house and then potentially behind as well, he asked what the representative's reason for having one walking trail versus a sidewalk on both sides of the road.

Chris Brown stated that they came up with the idea of having the walking trail on one side of the street which is on the park side, the east side simply because they thought it would be a nice amenity for the city to allow the residents to get from neighborhoods to a walking trail and into the park. He thinks regardless of whether there are sidewalks on both sides of the street, if you want to get to the park, you are going to have to cross that road at some point, regardless. In his personal opinion it seems if you just have a pedestrian walk way on one side of the road it seems it would be a heck of a lot safer than having sidewalks on both sides of the road simply because in his neighborhood where you have groups of kids and they are on both sides of the road walking down the street, one of them is going to eventually cut over arbitrarily and run across the street where if they have just one trail to walk on, they are cutting over from nothing. There is a similar situation in Meadow Lakes. If you are familiar with Meadow Lakes Blvd., it is a cut through passed Case. They weren't responsible for Meadow Lakes until phase ten, but this was already constructed and if you drive through there, there is people using that trail all the time. To him it seems like a much safer environment simply because when you are driving through there, you only have to concentrate on the pedestrians on one side where if you have kids and families on both sides of the road, it is much more distracting. They just wanted to do something that

they thought was nice for the city and the residents and in talking with Council and the residents, they see their point too about having sidewalks on both sides. It simply goes back to the ordinance that there are no homes facing Waterbury Blvd. Theoretically, nothing would be required as far as sidewalks, walking trails, anything.

Chairman Kimble asked for a specific drawing to be placed on the screen. He asked the representative if there will be any development happening through that portion of the land where houses would be fronting Waterbury Blvd.

Chris Brown stated he believes currently it is a horse farm and he doesn't know of any plans to develop that portion. Obviously, they aren't connecting streets in there.

Martin Austin had a question in regard to the parcel numbers listed as he didn't believe they were correct and thought that parcel number -003 was Shady Drive itself and then parcel 024 was the parcel just west of that. He asked if there was going to be a walking path on both sides of the new street being put in.

Chairman Kimble stated that it is going to be on the east side of Waterbury Blvd.

Martin Austin stated that the parcel numbers are actually Shady Drive.

Chairman Kimble asked the Deputy Clerk to pull up those parcel numbers on the County website to verify. He asked if Mr. Austin was referring to the parcel shown on the drawing and stated that is Shady Drive owned by the city.

Martin Austin stated when he brought it up on the website it actually showed Shady Drive as that parcel. The parcel to the west was 024. One parcel was on the east side and one was on the other east side. He stated it was confusing.

Deputy Clerk Tjotjos showed that one parcel is part of Shady Drive, the parcel to the west of Waterbury Blvd. and the other parcel is east of Shady Drive.

Chief Building Official Fursdon explained that the north/south portion of Shady Drive will be eliminated and that parcel will be incorporated with Waterbury Blvd. for the new right-of-way. That north/south portion of Shady Drive will not exist after Waterbury Blvd. is complete. Shady Drive, the east/west portion will T into it as an intersection.

Deputy Clerk Tjotjos showed all the parcels that were listed on the notice were verified as correct and will be used for Waterbury Blvd.

Chairman Kimble stated it was confusing but all the parcels will be combined for the new right-of-way. He asked if there were any other comments from the audience. Hearing none, he asked

if there were any other questions or comments from the Board members. Hearing none, he asked if the Administration had anything they would like to add. Hearing none, he entertained a motion.

It was moved by Masterson and seconded by Thibodeaux to approve the variance with condition that a stop sign be installed at Shady Drive.

Yes, 3 No, 1 (Smolik)

Deputy Clerk announced the motion passed with a vote of three yes and one no.

Chairman Kimble asked the Clerk to read the next application.

APPLICANT: Chris Sedevik, 37817 Stoney Lake Drive
OWNER: Chris Sedevik, 6050 Otten Road
REQUEST: **An appeal of the Chief Building Official's decision to require said applicant to install a sidewalk citing N.R.C.O. §1024.05(a) - All dwellings, apartments and commercial and industrial buildings constructed in the City shall be provided with sidewalks in front of such buildings before occupancy of the building is permitted; and §1024.06(b)(1) - A sidewalk does not exist within 2,000 feet in any direction from any property corner. (Closest sidewalk is 1,875 feet away)**
LOCATION: 6050 Otten Road in an R-1 District
Permanent Parcel No. 07-00-041-000-073

Application was read along with comments from Chief Building Official.

Chairman Kimble asked if there was a representative and if so, could they step to the mic and give their name and address and he would swear them in.

Susan Sedevik of 37817 Stoney Lake Drive was sworn in.

Chairman Kimble asked if she would tell the Board a little bit about her application.

Susan Sedevik passed out pictures of Otten Road where no sidewalk exists. She stated as it was stated sidewalks are required if you are within 2,000 feet of a sidewalk. They are building a new home and they are being told they have to install sidewalks. They are 1,875 feet away from a current sidewalk. They are asking that the Board take a look at this specific situation because there are no sidewalks on Otten Road currently between Barres and Case Road. The pictures show where their house will be and there are no sidewalks in either direction. The street is not paved asphalt. It is currently chip and tar. They would be willing to put sidewalks in if sidewalks did go onto Otten Road in between that area or if they were going to sell or transfer their house in any way. She stated on their application they stated they would be willing to

install those sidewalks in at that time. At this time putting in sidewalks leading to nowhere doesn't make sense and they were hoping the Board would look at that and maybe make a variance that they would not have to do that at this time.

Member Thibodeaux addressed the representative and asked if they bought the property with a home already on the property.

Susan Sedevick stated there is an existing house there.

Member Thibodeaux asked if it had sidewalks.

Susan Sedevick stated it does not have sidewalks.

Chairman Kimble asked if they would be tearing the house down.

Susan Sedevick stated that is correct.

Chairman Kimble stated he is very familiar with the property and this is very much unlike the last application. We do have ordinances that we can discuss and work with back and forth. Although, as he spent a significant amount of time reading through section 1024, he found it to be somewhat confusing in terms of the criteria that the city is asking for. There is a set number of 2,000 feet, but reading through 1024.06 b 2 it specifies something that could be used by this representative with a house being built and that is that this property is not within a subdivision. Part of what his confusion is that it contradicts the next section down where it states that if any one or more conditions stated in subsection b no longer apply, then it is basically required. So this ordinance almost somewhat works against itself. It forces him to go back to the guidelines that are set for this Zoning Board to help base their opinion in granting a variance or not and in this case reversing the decision by the Chief Building Official. The biggest item in his mind is, is this application reasonable with the amount of the request. He stated that the representative is 1875 feet away from the nearest sidewalk. That essentially comes down to a six percent variance that they are asking for and technically this isn't a variance but we are just using this verbiage. In any other situation, a six percent request is very reasonable. He didn't see why that should differ on this. He is a huge fan of sidewalks. This is not a popular thing in this city and he doesn't see that the city will be doing this at any time in the future and requiring sidewalks to be in the city and everywhere that they are not assessing those homeowners and putting them in. He wished that was the case, but that would be a very unpopular thing for elected officials. He is not elected so he can say it.

Susan Sedevick stated they aren't opposed to sidewalks, just sidewalks to nowhere is what they are opposed to.

Chairman Kimble stated that it was mentioned by Councilman Boose to use common sense

earlier and he tries to put himself in a situation driving down the road and seeing if things would be visually coherent or not. The entire road of Otten does not have a sidewalk anywhere on that street.

Susan Sedevick stated between Case and Barres. Once you get to the subdivision, then yes, there is a sidewalk.

Chairman Kimble stated yes, correct. Driving down people would see new home, new home and then a new home with a sidewalk and it will stand out. He believes that it would deter from the area as it is more of a country type setting road and one of the last few in the city. He stated if there is some sort of way of requiring everyone on Otten to put it in, then by all means, but like Neil pointed out, there is already an existing home on the property without a sidewalk. His opinion is that this application makes sense. He asked if there were any comments from the Board members.

Member Masterson asked if all this is, is exempting her from putting in the sidewalks now and asked if it was forever.

Susan Sedevick stated that is correct. They had the form notarized that if the city decided to put in sidewalks on Otten Road between Case and Barres, they would absolutely do it.

Chief Building Official Fursdon stated if in the future, the city wants sidewalks down there, it will be the city's decision on who will pay for them, but the sidewalks will go in.

Chairman Kimble clarified that the action the Board will be taking today will be to either affirm or reverse the decision of the Chief Building Official at this point in time. It is not a variance that is set in stone as other things that come in front of this Board. He asked if there was anyone in the audience that would like to speak on this matter.

Dennis Boose of 6405 Denise Drive stated that he is elected and he will tell you that he loves sidewalks. In fact, he has come up with a couple of sidewalk ordinances in the past that have not made it out of committee. He believes that sidewalks need to be throughout the city at some point. The conflict is if the city tells them that they have to build a sidewalk in and they don't, then we have to be able to do "what if they don't" and right now the city doesn't have the money to do "what if they don't". He is in favor of having a long term plan to have sidewalks and wanted to go on record to state that he is in favor of sidewalks, however, he does agree with the Chairman that the variance request sounds reasonable and thought out. He just wanted to make it on record that he is elected and he does want sidewalks.

Chairman Kimble asked if there were any other questions or comments from the audience. Hearing none he asked if there were any questions or comments from the administration.

Assistant Law Director Morgan stated as the Chairman alluded to, this is not a variance per say. A lot of the same questions will be asked for informational purposes, but this has been ruled on by the Chief Building Official that a sidewalk is required in this instance and he is correct per the ordinance. So, the motion would be to either reverse or affirm and there is a third option, to modify. That is the way the motion would go.

Chairman Kimble stated he felt it would be difficult to modify. He asked if there were any other comments from the Board members. Hearing none, he entertained a motion. He clarified and stated that if the Board sees fit that the representative does not have to install a sidewalk currently, the motion would be to reverse the decision of the Chief Building Official.

It was moved by Thibodeaux and seconded by Smolik to reverse the decision of the Chief Building Official.

Chairman Kimble asked the Clerk to call the roll.

Yes, 4 No, 0

Deputy Clerk Tjotjos announced the motion passed with a vote of four yes and zero no.

Chairman Kimble asked the Clerk to read the next application.

APPLICANT: Aaron and Teresa Wheeler, 37989 Pebble Lake Trail
OWNER: Same
REQUEST: **An appeal of the Chief Building Official's decision to require said applicant to install a sidewalk citing N.R.C.O. §1024.05(a) - All dwellings, apartments and commercial and industrial buildings constructed in the City shall be provided with sidewalks in front of such buildings before occupancy of the building is permitted; and §1024.06(b)(1) - A sidewalk does not exist within 2,000 feet in any direction from any property corner. (Closest sidewalk is 390 feet away)**
LOCATION: 34191 Chestnut Ridge in an R-1 District
Permanent Parcel No. 07-00-015-110-057

Application was read along with comments from Chief Building Official.

Chairman Kimble asked if there was a representative and if so, could they step to the mic and give their name and address and he would swear them in.

Aaron Wheeler of 37989 Pebble Lake Trail was sworn in.

Chairman Kimble asked if he would tell the Board a little bit about their application.

Aaron Wheeler stated that they are building a new home on Chestnut Ridge between the turnpike and the railroad tracks. It is a very rural area. There is one sidewalk that exists five doors down. Other than that, heading east, there is no sidewalk for two to three miles and in the other direction a half of a mile on the other side of the tracks where a tiny development was put in.

Chairman Kimble stated for his clarification, the sidewalk that is 390 feet away, he asked if it was the one that was where the development was put in that he referred to.

Aaron Wheeler stated no that is to the east.

Chairman Kimble stated that is 390 feet to the east and that development is to the west on the other side of the railroad tracks.

Aaron Wheeler stated that the development is in the other direction. Other than that one, the one is a few parcels down.

Chairman Kimble stated the sidewalk heading west over the railroad tracks is also within 2000 feet clearly.

Aaron Wheeler stated he didn't believe sidewalks are on Chestnut, he believes the sidewalks are in that development.

Chairman Kimble stated he believes the sidewalk wraps around that development onto Chestnut because he drives through there every day and it goes up toward the railroad tracks. He could be mistaken on that.

Aaron Wheeler stated the other thing he is concerned about is that there is a line of trees that runs along the road and to install a sidewalk those trees are going to have to be taken down or killed, thus removing all privacy for his lot from the street in a very rural area of the town.

Chairman Kimble stated that it is important to note to the members of the Board and to the audience that even though there are a number of applications that are similar in nature, every application is deemed its own. That is why each one is reviewed individually. There is no precedent here that is set because every parcel is separate and every home location is different and elevations are different. These have to be reviewed individually. His initial thought when he went through was based on that one sidewalk he had seen. He explained that it may change things a bit because there are sidewalks on both sides of him within 2,000 feet. As mentioned before, the ordinance is a bit confusing and so the Board is left with determining reasonable amounts and percentages alike. Just going off the 390 feet away from the nearest sidewalk, puts this application request at an 80 percent difference from what the number set in the ordinance and that is somewhat substantial.

Aaron Wheeler stated that there are other aspects of the law he read which interprets if it is not feasible to build in that area. Where the road is and where the property is, is a six foot difference. That starts immediately off the road and so, in order to do a sidewalk, they would have to do it 20 feet into their property or build up the land along side of the road.

Chairman Kimble stated that the house is built up and as he understands the existing grade may go down but come back up.

Aaron Wheeler stated that all around the house they had to build up due to the frost line.

Member Masterson asked if there was a septic system for this property.

Aaron Wheeler stated there is.

Member Masterson asked what the reason was to install the septic system.

Aaron Wheeler stated because there is no city sewers.

Member Masterson asked if that would be considered a hardship and if it would impact the installation of the sidewalk and if it would impact the leach field.

Aaron Wheeler stated the septic system is already installed and it is located just the other side of that tree line. If the sidewalk goes in, the trees will have to come down and the water will run into their leach field. The water would run off that road into their leach field without those trees there to suck up that water.

Member Masterson stated that one of the hardships could be that the city doesn't have sewers in that section.

Chairman Kimble stated potentially.

Aaron Wheeler stated the other argument to sidewalks to nowhere is that on the other side of the railroad tracks is a drop off. There is a gully there and the other way there is little or no room between all the exits and on ramps. The sidewalk would be for him and him only. They aren't opposed to putting in a sidewalk at which time the infrastructure there has been built up and it becomes less rural. Right now, they would spend all of the funds putting in a sidewalk, cutting down trees and by the time any other sidewalks go into the area, they will have to be replaced because they have degraded because it will be a very long time from now.

Chairman Kimble stated that Member Masterson referred to a leach field and the representative referred to it as a mound. He asked if he had a septic mound system or leaching system.

Aaron Wheeler stated it is a mound system.

Chairman Kimble stated that the topo shows the grade moving around the mound which per the County Health Department it would have to be a mound.

Member Masterson apologized and stated she didn't see that part.

Chairman Kimble asked if there were any other comments from the Board members. He asked if there were any comments from the audience. Hearing none, he asked if there were any questions or comments from the Administration. Hearing none, he entertained a motion.

It was moved by Smolik and seconded by Thibodeaux to reverse the decision of the Chief Building Official.

Chairman Kimble asked the Clerk to call the roll.

Yes, 3 No, 1(Kimble)

Deputy Clerk Tjotjos announced the motion passed with a vote of three yes and one no.

Chairman Kimble asked the Clerk to read the next application.

APPLICANT: Theresa Henderson, Azac Properties, 7410 Race Road
OWNER: Theresa Henderson, 21150 Indian Hollow Road, Wellington, OH 44018
REQUEST: **An appeal of the Chief Building Official's decision to require said applicant to install a sidewalk citing N.R.C.O. §1024.05(a) - All dwellings, apartments and commercial and industrial buildings constructed in the City shall be provided with sidewalks in front of such buildings before occupancy of the building is permitted; and §1024.06(b)(1) - A sidewalk does not exist within 2,000 feet in any direction from any property corner. (Closest sidewalk is 1700 feet away)**
LOCATION: 7410 Race Road in an I-2 District.
Permanent Parcel No. 07-00-039-000-077

Application was read along with comments from Chief Building Official.

Chairman Kimble asked if there was a representative and if so, could they step to the mic and give their name and address and he would swear them in.

Theresa Henderson of Azac Properties, 7410 Race Road was sworn in.

Chairman Kimble asked if she could tell the Board a little bit about their application.

Theresa Henderson explained that they are putting in their self-storage units and it is on Race Road, which is a very rural area. There are some houses but it is kind of a mixture of residential, some commercial and some industrial. Currently there are no sidewalks at all on Race Road. To her knowledge there are none on Sugar Ridge Road or Chestnut Ridge going the other way. They would like to continue with phase one of their project and install the sidewalks at a later date.

Chairman Kimble stated that the representative said they would install the sidewalks at a later date. He asked if they were going to install those or was she looking to get a full reversal of the Chief Building Official's decision.

Theresa Henderson stated that they are certainly willing to put them in when they are required to go down Race Road, but when they finish their project, they may have that option to think that they would just put them in. They are certainly not opposed to it, but they don't want to do it right now.

Chairman Kimble stated that there would be nothing to stop the applicant from at some point taking it upon themselves to put it in.

Theresa Henderson stated that they decided that if it looked nice, they could do it. There is no one that she is aware of that would be walking on it.

Chairman Kimble stated when he went by the property, and maybe Mr. Fursdon could answer this for him, he asked if the sidewalk that was measured from was on Center Ridge around the corner.

Chief Building Official Fursdon stated most probably yes.

Chairman Kimble stated that as he has mentioned a few times this evening, the Board does have some confusion and contradicting parts in the ordinance but one of the things that could potentially help in the hardship is that the stated sidewalk that is within 1700 feet is not even on this road. The sidewalk is on the road as you make a right down Center Ridge and is down quite a distance. That is a unique situation and also going by some of the things he mentioned previously about what they have to go by in the rules of zoning, this property is at a 15 percent difference, which to him is in the realm of being reasonable. If he were in her shoes he would be in front of this Board as well. He believed it is a well thought out plan and if they seem open to possibly putting the sidewalks in, in the future if they so choose, if it permits and they think it might look nice then they may do that.

Member Thibodeaux asked if that will affect the retention pond in there. He stated he drives by that every day and that is pretty deep.

Theresa Henderson stated her personal concern is that children might want to go on that sidewalk if there were a sidewalk, but if at some point they choose to put a sidewalk in, they will put a fence on the other side to separate the sidewalk from the retention basin. In the event anyone would be on that sidewalk, she wouldn't want anyone to go into that water.

Member Thibodeaux stated he was wondering if grade there would need to be changed because there isn't a whole lot of room there.

Theresa Henderson stated she didn't think it would have to be changed. She stated that her concern would be for safety and she would put a fence there when she chooses to put a sidewalk there.

Chairman Kimble stated that the retention pond is somewhat deep and does have a steep slope. That could be an issue as well. It may have to be built up more to have a steeper fall. He is speculating because he doesn't have a topo.

Member Masterson stated that the only thing she is finding is the closest sidewalk is located at the Goddard School, down on Center Ridge, around the corner.

Theresa Henderson stated that she really thinks that is odd because there is only that one sidewalk there. That is what they would look like.

Chairman Kimble stated that is sometimes the difficulty this Board has in weighing in safety, visual appearance and practicalities of it. He agrees with what she is asking. In his mind, the 15 percent seems reasonable and part of a practical difficulty is it is being judged by a sidewalk that is not even on the street. There are no sidewalks on that street. He asked if there were any other comments from the Board. Hearing none, he opened the floor to the audience for questions and comments. Hearing none, he asked if there were any questions from the Administration. Hearing none, he entertained a motion.

It was moved by Thibodeaux and seconded by Masterson to reverse the decision of the Chief Building Official.

Chairman Kimble asked the Clerk to call the roll.

Yes, 4 No, 0

Deputy Clerk Tjotjos announced the motion passed with a vote of four yes and zero no.

APPLICANT: Denise Hickle, 35399 Chestnut Ridge

OWNER: Same

REQUEST: The following variances to erect a privacy fence to be eight feet in height:

1. A 2 foot height variance from rear property line to front line of building.
2. A 4 1/2 foot height variance to go 24 feet beyond the front building line.
3. A 50% open variance to go 24 feet beyond the front building line.

LOCATION: 35399 Chestnut Ridge Road in an R-1 District.
Permanent Parcel No. 07-00-023-102-071

Application was read along with comments from Chief Building Official.

Chairman Kimble asked if there was a representative and if so, could they step to the mic and give their name and address and he would swear them in.

Denise Hickle of 35399 Chestnut Ridge was sworn in.

Chairman Kimble asked the representative to explain her application.

Denise Hickle explained they are requesting additional height so that they can have a little more privacy in their yard along the back and along the side because they have had some issues on their property. She has videos and she has photos and they feel as though they are being harassed a lot by the neighbor and they prefer to just end all of that and be able to live on their property and enjoy the house that they built. They want more privacy and to hide the unkempt yard toward the front passed their house. There are trash cans, overgrown weeds and things like that. They just don't want to see it.

Chairman Kimble stated that basically the reason the applicant is asking for additional two feet and all the other variances that go along with it is because of a neighbor dispute.

Denise Hickle stated that they want more privacy. They have a hot tub that they are purchasing and they have a dog that gets riled up and jumps pretty high. They would prefer not to have problems with their dog. Unfortunately, they have someone that likes to watch them and it is getting kind of creepy. He was crossing their back yard and pulled out his phone like taking a picture of her and she caught that on their cameras and she has photos. They just don't want any problems with him. He has been harassing since they bought the property. They thought this might help him keep his own business and take care of what he needs to take care of instead of being in their back yard all the time on his one foot of property.

Chairman Kimble asked her to explain the one foot of property.

Denise Hickle explained there is a ditch in their back yard that separates their property from his property. He owns about one foot in front of the ditch and therefore he put a four foot fence up right on that property line, when they already have a six foot fence going in, which will cover his fence anyway. They won't see that. He has mowed the area so that he can walk back there. She

didn't know why but he likes to walk back there and he is always looking into their back yard or if she is on the back porch with her dog. He has waived at her through her window in her kitchen. She doesn't feel safe there. She doesn't know how else to say it, it is just harassment. Every time something happens against him, he does something to harass them. He has painted big huge red x's with numbers on his trees that are right behind that ditch but facing them toward their property with no intention of ever taking them down. They are over 100 feet high. She believes he did that so that they had to look at that every day. Their six foot fence does not quite cover that but an eight foot fence will.

Chairman Kimble stated if the eight foot fence goes in and it covers up whatever markings are on these trees and all of a sudden there are red x's and numbers twelve feet up.

Denise Hickle stated they would definitely not be able to do anything about that. It would just be harassment. They want the eight foot fence to have a little more privacy in their yard because there is no privacy fence in their yard. They put a six foot privacy fence on the side thinking that would take care of it, but he gets up on his backhoe so he can see over the fence. He drives down his driveway and drives back. Doing no work or anything and it is numerous times. It is over and over and it is just getting to a point where it is 100 percent harassment.

Member Thibodeaux stated that there is already a six foot fence there. He asked how she would make it eight feet. He asked if they would take that six foot fence down and put up an eight foot fence.

Denise Hickle explained that they would put a decorative extension at the top with cedar. Right now they have a cedar fence. Her husband recycles telephone poles and they get those cut and they make it beautiful. They want to do something decorative. They don't want to tear their fence down. In the back, it isn't done yet as they are having more wood delivered. They would do straight eight feet in the back. It is all woods back there anyway. They would have to do two feet of decorative wood on the side though.

Chairman Kimble asked the reason for the 24 foot extension passed the house, also at eight feet.

Denise Hickle stated that she didn't think they could get eight feet. For the 24 feet passed the house, she didn't know what the maximum allowed for that was.

Chairman Kimble stated that it is three and a half feet with it being 50 percent open.

Denise Hickle stated they don't have the front of their house fenced in.

Chairman Kimble explained anything passed the front building line is considered the front. So, even if it was on the side of their yard, running down the property line, it is considered the front of the house. He asked if that was the home to the west.

Denise Hickle stated yes, she is terrible at direction.

Chairman Kimble explained that even on that western property line, once you get passed the point of where her home is, that is considered the front yard. Per the application, the applicant wants to go another 24 feet passed the front line of her home; still at eight feet in height and 100 percent closed.

Denise Hickle stated that it was four and a half feet in height because she believes you can only go three and a half feet. So, they would not be doing the eight feet. Just the maximum of what is allowed, which she believes is four and a half feet.

Chairman Kimble stated it is three and a half feet.

Denise Hickle stated the height of that fence it to just basically cover up the unkempt yard, garbage cans, debris and things like that.

Chairman Kimble stated that anytime the Board has an application in the front yard and things like that, the main intension of the ordinance is visibility and safety issues. That is why there is a maximum height of three and a half feet, 42 inches, and then 50 percent open so that you can see through potentially, if there was a sidewalk, to see if there are kids on bikes and cars backing out of their driveway.

Denise Hickle stated that it is quite a few feet from the road. It only goes to the middle of the house next to them.

Chairman Kimble stated that is the point he is getting at specifically on this request. His point with the three and a half foot with it being 100 percent closed, he didn't see how there would be any visual obstruction or safety issue created by having this fence.

Denise Hickle stated there is no obstruction or hazard of any kind.

Chairman Kimble stated that the applicant is asking for four and a half feet.

Denise Hickle stated that she wasn't sure what the maximum height allowance was for a fence in front of the house. Whatever they are allowed to have is what they would like.

Member Thibodeaux stated that the house to the west is set closer to the road and their house is set a little further back. He didn't know the exact measurement, but if they went as far as they wanted to it would be pretty close to be even with the front of the house next door. It was hard to tell.

Chairman Kimble stated when he roughly measured it on google that was pretty much the line he came up with as well. He came up with the assumption that, that is the point they wanted to get to. He asked the applicant if that was what they were looking to do is to basically be in line with the front of the house next door.

Denise Hickle stated she thinks that would be passed the trash cans. She just thinks it would improve the way their property looks too. It would enhance it. She didn't understand what he meant by 50 percent open.

Chairman Kimble explained that the fence they have up is a board on board fence. He stated that if every other board was taken away, you could see through the fence, so technically, that would be considered 50 percent open. He added that if you see a white picket fence in front of someone's house, there is a four inch slat and a four inch gap; then there is another four inch slat.

Denise Hickle asked if that is what they would need even though it wouldn't obstruct anything.

Chairman Kimble stated that isn't what you are asking for. He explained her application is asking for 100 percent closed.

Denise Hickle stated yes, for privacy.

Chairman Kimble stated that per ordinance, the applicant would be able to put up along their house a three and a half foot fence at 50 percent open and they wouldn't have to come in front of this Board. He stated that what the applicant is asking for is an additional foot and 100 percent closed. He explained the fence in the back yard is 100 percent closed. He stated that the applicant is also asking for additional two feet in the back.

Denise Hickle stated yes, that is correct.

Member Smolik addressed the Chairman and asked if the Board is going to treat each individual variance separately because there are two.

Chairman Kimble stated he believes this should be split. There are some big differences.

Member Smolik agreed.

Chairman Kimble explained that the Board here tonight has mentioned hardship and practical difficulties and he is trying to come up with the reason for what we have discussed of why this should be. Unfortunately, he isn't sure a disagreement with a neighbor qualifies for a hardship.

Denise Hickle stated that it is mostly for privacy in their yard so that they can be out in their yard and have a private setting and not have to worry about somebody creeping on them. She stated

she is sorry to say, but that is what it is. She continued to state that they want it for their privacy so that they can be out on their patio so they can entertain back there and not have to worry about somebody looking at them. They just want to enjoy their home and mind their own business. They don't want to associate with someone who creeps on them. They believe having more privacy in their yard would help in a lot of areas especially with their dog that gets all riled up. She explained again what has happened in the past. She stated it has gotten worse in the past few months and she doesn't know why. They haven't done anything to him and they just want to enjoy their home.

Council Liaison Hung addressed the Chairman and stated she had a question for the applicant. She stated she drove by and saw what she has done in the back and asked if they were going to do that all around and make that uniform so that she wouldn't have to worry about that foot back there.

Denise Hickle stated that the fence is going all the way to their property line.

Council Liaison Hung asked if she was going to fence all around.

Denise Hickle stated all around their home, no.

Council Liaison Hung asked if she was going to completely fence that back in for the dog.

Denise Hickle stated he is on a leash right now and thinking about an invisible fence for the front area. She stated that they don't want to enclose their whole yard with a fence. They just want to go across the back property line, which is one foot from their property line. He installed a fence right on the property line so there is one foot in between.

Council Liaison Hung stated if they extended their fence all the way around they wouldn't have to see anything because the fence is solid.

Dale Hickle of 35993 Chestnut Ridge Road was sworn in. He explained that they are going all the way to the left corner.

Council Liaison Hung asked if they were going to come all the way around.

Dale Hickle stated no because there is a metal fence that goes all the way down the east side of the property.

Council Liaison Hung stated that Mrs. Hickle's issue is that one foot of property and asked if they were going to block it with their fence.

Dale Hickle stated as mentioned, they are going to go all the way across the back yard.

Council Liaison Hung stated that will solve the entire problem then.

Denise Hickle stated he put up a four foot fence right after they received a permit. They are putting up a six foot fence and they didn't understand why he needed to install a four foot fence.

Council Liaison Hung stated that they are going to solve their own problem. She stated that her question about coming all the way around was because of the dog. She asked if they were just going to leave the dog on the line.

Denise Hickle stated that they might want to do that in the future, but right now, no.

Chairman Kimble asked if there were any other questions or comments from the Board. Hearing none, he opened up the floor to the audience for questions or comments.

Greg Oblak of 35451 Chestnut Ridge Road was sworn in. He quoted 1294.06 which states that from the street line to the front of the building no fence shall exceed three and a half feet and must be 50 percent open. If Ms. Hickle wants to install her fence per the city code, he has no problem with that. Allowing and installing higher than that will impede his visibility along with the visibility of the residents traveling down Chestnut Ridge Road. It is an accident waiting to happen. Driving out of his driveway with the incline in the winter, you have to get a run at it to go and you can't see if there are any cars coming. He asked the Board to deny the variance from the building to the street portion of the request. Also, he quoted 1294.06 regarding the maximum six foot height requirement. He asked that the Board stay within the city's ordinances and deny her request for an eight foot fence. He understood that the view of his yard is something she does not want to see. He tries to keep his yard as neat and tidy as possible. With a six foot fence and her garage adjacent to him should resolve the problem for her and have a good outcome for both of them. He asked the Board to deny the variance for the eight foot fence and keep it a six foot fence as the code states.

Denise Hickle began to speak from the audience.

Chairman Kimble asked her to approach the mic as the meeting is recorded.

Denise Hickle stated as far as being obstructed....

Member Masterson stated she would like to make a comment. She did stop at the property and did speak with Ms. Hickle. She mentioned at that time that there has been harassment. She asked Ms. Hickle if she contacted the police department for record of the harassments.

Denise Hickle stated that they take a while to get. She has the dates of the harassment that was filed with the police. She doesn't actually have the police reports. The first records that she

requested, the woman did not think she wanted records from her filings that she only wanted records that were reported against them. The woman didn't provide the records she wanted. She had to request them again to include hers.

Chairman Kimble stated the applicant had pictures and asked if she could present them.

Member Smolik asked from what perspective are these pictures taken.

Denise Hickle showed him where the neighbor's yard is located and where the fence will be. She stated that there is a lot of room where they want to end the fence in the front where it doesn't obstruct anything. They aren't asking to go all the way to the street. On the side of the house, he purposely let those weeds get to be six feet high to try and block their view. He cuts the grass everywhere else.

Chairman Kimble stated that situations like this tend to be difficult from the Board's perspective because he is completely nonbiased. He personally has to go by the practical difficulties or the hardship and why an eight foot fence would be needed.

Denise Hickle stated that it is basically for more coverage and more privacy.

Chairman Kimble stated he understood that.

Denise Hickle stated she didn't know why Greg was protesting because the fence doesn't obstruct anything. It's not affecting the view of the road and it is not affecting the visibility in the driveways. They are only going 24 feet in front of their house.

Chairman Kimble stated that there are two requests. One is for the fence in the front and the other is for the fence in the back. The front yard having a fence protrude out toward the street a foot higher than what is allowed and 100 percent closed.

Denise Hickle stated they would be okay with the three and a half foot fence. They would be okay with that and that would cover what they don't want to see.

Chairman Kimble stated that the Board can amend the application. With a three and a half foot fence at 100 percent closed does potentially create a hazard for visibility of the neighbor being able to pull in and out of his driveway. There is a potential for it and that is something the Board has to weigh. He explained if someone is in a lower car and can't see through it, it could potentially be a hazard.

Denise Hickle stated that by the time they get to the end of the driveway, there is no fence there and they can see both ends of Chestnut Ridge.

Chairman Kimble asked what would be the reason for this request.

Denise Hickle stated that they want to block the unkempt yard, the trash cans and the debris that is always over there.

Chairman Kimble stated that is not a hardship that this Board can grant a variance on.

Denise Hickle stated that they are just asking for more privacy.

Chairman Kimble stated that is still something that this Board can't take into consideration as it isn't a hardship. He agrees, he has a neighbor that he doesn't like either and he has a known drug house that he lives next door to and he wishes he had a thirty foot fence, but that doesn't change the fact of what is allowed and what could potentially be a hazard.

Denise Hickle stated that she doesn't see there being any hazard. She asked if they can't go 24 feet would they be able to go any farther at all. They thought that 24 feet was reasonable.

Chairman Kimble stated that the Board can't give them an arbitrary number of what would be allowed to go past.

Denise Hickle stated that is why they were asking for a variance.

Member Thibodeaux stated that it was mentioned earlier out of context but the rear yard is a no brainer and backs up to a large farm and mature trees at least 20 feet tall, it is just purely esthetics and personal wellbeing.

Chairman Kimble stated that we will be breaking up the variance request in two.

Member Thibodeaux stated that there have been previous fences in the city in front yards that were similar but this is from the side yard. He doesn't see any possible obstructions in leaving the driveway just because there is such a large area between where the fence stops and the roadway. He believes there is plenty of room for visibility.

Chairman Kimble stated one thought is that the eight foot fence in the back goes in their favor as the property does dip down quite a ways in the back.

Denise Hickle stated that the septic mound is there.

Chairman Kimble stated there is a pretty significant elevation difference from where the base of the home is and the property line.

Denise Hickle explained that they do have to fill in, in front of the mound as they had their

surveyor out and that is because it never dries up.

Chairman Kimble stated that is not what he is referring to and overall it seems like there is several feet of difference of drop between the west property line to where the driveway is. It is not a flat piece of property and almost to some degree gives a hardship that there is a large drop down and from a privacy perspective, if there is a hot tub directly out the patio door; the extra two feet may help from a visible privacy aspect. He stated he didn't see a difference in having the eight foot fence along the rear of the property line.

Member Masterson stated that the applicant didn't have a problem making the fence in the front 24 feet at 50 percent open and asked if she was willing to lower it to three and a half feet. Dale Hickle stated they would be willing to lower it to three and a half foot.

Denise Hickle stated that they would still like it closed.

Dale Hickle stated that if not, then they would have to go 50 percent.

Denise Hickle showed another picture of the neighbor taking a picture of her in the back yard with her dog. This is why they would like a little more privacy. Esthetically it would look great and hopefully it would stop things like that.

Chairman Kimble stated his heart goes out to her regarding things like that but unfortunately, as terrible as this may be, this particular piece of evidence is nothing this Board can act on.

Member Thibodeaux stated for clarity purposes, if their fence in the yard gets extended 24 feet then it will really just going be going to the corner of the neighbor's house. So if he is having visibility problems, his house would be giving him just as much visibility problems as that fence on the one side.

Council Liaison Hung stated she thought the Board reserved that conversation for applications that had two front yards and that isn't the situation here.

Chairman Kimble stated this isn't a corner lot but anyone can put a fence in their front yard if it goes by what the ordinance states.

Council Liaison Hung stated her concern is that there is a lot of traffic on Chestnut Ridge.

Chairman Kimble stated the point that Neil just made is that the 24 feet essentially goes to the front building line of the house that is to the west. It isn't extending passed that and he was making the point that there could be a potential for visible obstruction in his driveway but the point that Neil just made proves that to be incorrect as the neighbor's house would be just as much a visible obstruction. Anyone that is backing away from his house can see both ways past

that fence or his home.

Council Liaison Hung stated she understands the point.

Dale Hickle stated that the 24 feet he didn't believe will go to the front of his neighbor's house.

Chairman Kimble clarified that the application will be amended to read three and a half feet in height with the variance of 100 percent closed. He asked if there were any other comments from the audience. Hearing none, he asked if there were any questions or comments from the Administration.

Assistant Law Director Morgan addressed the applicant and stated that the Board will look at the application based on the usual standards that they do, but it is unlikely that this will solve the issue. This is not the Board's concern. The Board just votes on the variance.

Denise Hickle stated that she knows it may not end it, but it will help.

Council Liaison Hung stated the way she is looking at this from Council's point of view, is we have a front facing yard with no corner issues to worry about and if she is looking at this, the applicant is pretty far away from his property line so you're not looking that way unless you are trying to. She asked if they couldn't just enclose the whole yard.

Denise Hickle stated that they don't want to cut the front to the back of their yard. They don't want to fence the rest of their yard so that they can't even enjoy.

Council Liaison Hung restated the code section 1026. She stated that it appears to be a safety detriment for the folks traveling along Chestnut Ridge to grant this variance. She is recommending a denial. She also read the code section 1026 regarding the height of a fence being six feet. She drove by and observed the situation and has taken into account the feedback provided by Mrs. Hickle on her application and she recommends denying the height variance. She also noticed in our code that the eight foot high fences are reserved for businesses and industrial districts.

Chairman Kimble stated not to dispute what has been said because he very much appreciates her comments and what she brings to these meetings. Like he mentioned here tonight, every application is different. There is no way to set precedence but to just make a note for future reference there are eight foot fences in residential districts have happened before for many other reasons. He knows that she is a newer member of Council, but wanted to make sure she knew that it has happened in the past. Completely different scenarios than neighbors arguing and that has absolutely nothing to do with how he is going to make his determination here tonight. If there are no other comments or questions from the Board members, he entertained a motion for the first portion of the request on the variance of the eight feet in height.

It was moved by Masterson and seconded by Thibodeaux to approve the two foot height variance from rear property line to front line of building.

Chairman Kimble asked the Clerk to call the roll.

Yes, 3 No, 1 (Smolik)

Chairman Kimble stated moving on to the second portion, which we have amended to be three and a half feet in height but still 100 percent closed 24 feet passed the front building line.

It was moved by Masterson and seconded by Smolik to approve a three and a half foot height fence 24 feet beyond the front building line at 100 percent closed.

Chairman Kimble asked the Clerk to call the roll.

Yes, 4 No, 0

Deputy Clerk Tjotjos announced the motion passed with a vote of four yes and zero no.

Chairman Kimble stated that the application for Thomas and Vicki Spicer has been postponed until next month and so we will skip reading the formalities of that and it will be taken care of next month.

APPLICANT: Thomas and Vicki Spicer, 37401 Sugar Ridge Road
OWNER: Same
REQUEST: A .1% lot coverage variance to construct a 10 by 20 shed
LOCATION: 37401 Sugar Ridge Road in an R-1 District.
Permanent Parcel No. 07-00-035-102-019

Chairman Kimble asked the Clerk to read the next application.

APPLICANT: Jacob Patton, Jacob Patton, LLC, 29680 Lorain Road
OWNER: Mitico Limited, 31684 Cook Road
REQUEST: The following in order to operate a towing & impound lot in a B-3 District:
1. Determination of a like use to those that are permitted in a B-3 District
2. A variance in surface type to install a gravel parking lot
LOCATION: 31684 Cook Road in a B-3 District.
Permanent Parcel No. 07-00-004-110-037

Application was read along with comments from Chief Building Official.

Chairman Kimble asked if there was a representative and if so, could they step to the mic and give their name and address and he would swear them in.

Jacob Patton, 29680 Lorain Road was sworn in.

Chairman Kimble asked if he had anything to add to his request.

Jacob Patton stated that he has a few recommendation letters from the Chief of Police and Fire and asked to pass them out. He stated that they currently tow for the City of North Ridgeville. They are the only towing provider along with other municipalities surrounding the area. Currently they have to have a facility in North Ridgeville to do the towing. They rent both their locations in North Olmsted and North Ridgeville and they are trying to bring a permanent facility into North Ridgeville. Along with Police and Fire, they are first responders as well. The roads don't get opened up until they get there and clear the cars and open up the highway. Cook Road is very close to Route 10 and I 480. They can respond quickly and get to these accidents and provide tows as needed. They are trying to put a storage facility in there. When the cars are brought in, they are stored as a holding facility for insurance companies and until the Police Departments are done with investigations. By no means is this a junk yard or salvage yard. They are not a parts dealer. They don't sell cars. They are strictly a towing and transport company and they bring impounded vehicles into their facility. They have a lot on Maddock Road that is a rental and North Olmsted. They are trying to move about 18 employees in their whole operation to run out of North Ridgeville. They may have a North Olmsted lot for storage because like Ridgeville, if you are going to tow for North Olmsted, you have to have a location in North Olmsted and that is what they are trying to bring in to North Ridgeville.

Chairman Kimble stated he has been by the property every day as he takes his son to and from school. One thing that he wanted to point out to the Board is that this is a like use and it is not a typical form of variance. It is going through the permitted uses to see if whether or not this use is similar to those that are permitted. Overall he thinks the plan is very well thought out. One question he had was why they wanted to do the gravel in the back.

Jacob Patton stated for that amount of space for storage, the budget that they are looking at to pave something like that would be getting out of their budget to enclose that. That is two of the three acres that will be used for storage. They plan on keeping the buffer of trees that are already there in the back against 480 and it will be a chain link privacy fence.

Chairman Kimble stated he didn't know being a towing business if it would be more advantageous to do it that way.

Jacob Patton stated no, just cost. They have a purchase agreement depending upon approval today, but budget is number one for the storage part. The building and surrounding the building will be concrete or asphalt. The gated-in storage area toward the back of the property would all

be gravel or stone.

Chairman Kimble spent time looking through the permitted uses in a B-3 to what could potentially be a like use. He was thinking about the towing business with large trucks coming and going. He looked at similar businesses in the B-3 that would have similar traffic. He noted an automotive service station or automotive repair. There is obviously tow trucks going in and out and he has personally seen tow trucks going in and out of service stations. Also he noted a lumber yard and supplies. Lumber yards have flatbed trucks going in and out all day long. Lumber gets delivered on a flat bed and these guys tow many vehicles on a flatbed. There are some similarities there. He noted a parking lot, which is also on the permitted use. There are some that are close and some that are a bit more of a stretch but, it isn't completely out of the realm of being a like use. That whole area is turning into more and more business. The tide has clearly shifted on that particular section of Cook Road where it is more and more business than it is residential. This property is zoned B-3 which is a business district. That is what is becoming. It has great access to the highway and from a towing company stand point; you have I480 and the turnpike right there. He didn't think they could come up with a better spot for it. He stated he is sure not everyone in the audience agrees with that but from a towing stand point, that area is centrally located.

Jacob Patton asked if he could add a couple of things. They are a 24 hour business. Their office hours are 9 to 5 Monday through Friday. After rush hour, this isn't all hours of the night. Yes, they do bring cars in all throughout the night but it's not a loud racket all night long, if people have that impression. A car may come in every couple of hours throughout the night. They do their own repairs on their own vehicles. They are not a repair shop, automotive particularly. They are not selling cars nor are they a salvage dealer by any means. The impression and things that are out on TV and things that you may have seen, they are a professional high end company. They have recommendation letters from the Chiefs and other companies and there is a reason they tow for all of them. It is because they keep a professional outfit and business running. He also looked at the permitted uses and a similar one was a bus station. It is not technically a truck route, but a bus station was approved and a greyhound bus weighs essentially the same as his heaviest tow truck. Also an ambulance facility, which runs 24 hours, was another operation that was permitted.

Chairman Kimble stated that it is possible to get creative without a doubt. He asked if there were any questions or comments from the Board members.

Member Masterson stated that she stopped on Monday night completely unannounced and everyone offered to walk her through the property. She walked it herself from the very front of the building all the way to the very back. It looked exactly like what he was saying. It looks like vehicles parked waiting to come back out. She asked if the mechanic he has just works on their vehicles.

Jacob Patton stated that is correct. The brown building is a mechanics shop next door that they rent.

Member Masterson stated that she knew that was separate and the house was separate. She was talking about where the two gentlemen were with the two trucks and asked if that is where their mechanics work.

Jacob Patton stated those were only their vehicles that they work on at this point. Maybe in the future they may be a truck repair shop. He doesn't know but right now they only work on their own vehicles and that is what they are asking for.

Member Thibodeaux asked if the Maddock Road shop will stay there.

Jacob Patton stated that one for sure would be gone because they rent that. All the Ridgeville cars will go to the new facility. All of our employees will also come to North Ridgeville, but places like North Olmsted; we may have to keep because we will have to have a place there for storing.

Member Thibodeaux stated that is more residential than more commercial district and it actually makes sense.

Jacob Patton stated that Maddock, they don't run anything out of there. They take the Ridgeville cars there. It is hard to respond and get back over there even from North Olmsted. They are constantly going almost to Elyria to get back. They don't keep anyone over there to man that operation because not a lot goes on over there.

Member Smolik provided the different districts in that area. Light industrial is across the street and like the Chairman said this is all interchange commercial and he didn't see any residential anywhere nearby that is zoned residential. He asked the applicant if they had the facility in North Olmsted and if that was sort of intermixed with residential now. He stated he believes there is a single family home right next door.

Jacob Patton stated in front of their parcel is a house and then another house and then on the back end is the business property. Their landlord owns those two houses and all that property back in the back. They tried to purchase that property and it didn't happen. There is a lot of commercial on Lorain Road there but it is residential. He has never had any complaints from any of the neighbors at either of the locations that they operate out of.

Member Smolik stated that the gravel parking lot will be all enclosed with a fence and so from Cook Road you would never even know that it is a gravel parking lot.

Jacob Patton stated correct. He did put a picture in the application packet. He said the fence will

definitely be private and you won't be able to see through it. Yes, they do bring in wrecked cars, but it will all be enclosed. They won't see the gravel lot or the storage of cars unless the gate is open.

Member Smolik stated that the insurance companies like to see that gate closed to protect their assets.

Jacob Patton stated in their contract it has to be a secure facility with cameras and things like that and so, it has to be secure.

Chairman Kimble asked if there were any other comments from the Board. Hearing none, he opened the floor up to the audience for questions and comments.

Martin Austin asked how close is the nearest resident to this facility because after hours, late at night and in the summer time, people are going to have their windows open and these big trucks have decibel backing alarms. He asked if there was a way they can be shut off after a certain time when they are in the lot backing up because he doesn't know if there are complaints, but he has been around those before and they do pierce the sound at night and if the windows are open, you would be able to hear them.

Jacob Patton stated that they could shut those off but by DOT compliance and safety they can't. Also, if he has a couple of guys that were working, he wouldn't want them shut off, particularly. Right next door he explained is a dog kennel and when he walked that property the first time that was a loud noise in itself, but could it be done, but he wouldn't do it just because of safety. He does understand that could be a noise concern, but he wouldn't shut them off.

Martin Austin asked how close is the closest resident to that property.

Chairman Kimble stated off the top of his head he doesn't know that answer.

Jacob Patton stated that he believes there is one that is across the street and that property butts up against the township. There is residential there, he doesn't think he has to do anything on that side of it because it is a different city. It is residential and they may complain but it is in a different city.

Chairman Kimble stated that they try to care about everyone. This isn't so much from the Boards determination stand point if they like or don't like or if they feel it is a good fit to the neighborhood or not, they are basing the decision on whether or not it is a like use of the listed B-3 permitted uses. He could see why people in the area wouldn't want this but there are many things on the permitted list that he knows people wouldn't want as well; heavy equipment sales being one. He would love to consider the factors in regard to sound and things like that, but the Zoning Board is looking at it as a like use. There are potential issues on the permitted uses from

sound aspect and as important as that is and if he lived next door, they aren't going to be happy hearing a backup alarm on a truck. He gets that but he also understands that once he turns that off he is no longer DOT compliant and the driver forgets to turn it back on and then, they back up and hit someone, he is now liable. It is definitely not a perfect situation and definitely not a win/win but to reiterate the Board has to concentrate on whether or not it is a like use in the B-3.

Member Masterson stated that two of the other uses are an ambulance service and a hospital. Those are both 24 hour operations.

Chairman Kimble stated that the very last permitted use states any permitted use in a B-2 and so, if you look under the B-2 permitted uses, there is an automotive truck and trailer, display, hire and repair. It is similar. Trucks and trailers on display and they have trucks and trailers out front essentially on display.

Member Masterson stated that all the Board is doing is determining like use and it is kind of like the chicken and the egg thing. He also has to go to Planning Commission. Planning Commission is going to require him to do all the requirements that Planning Commission does need to do. He is going to have to have the setbacks. He is going to have to have the buffering that is required. He is going to have to address the parking lot. All they are looking at is like use. He doesn't have to tell them anything about his application.

Jacob Patton asked if this was approved and it has to go to Planning Commission, does the city allow a gravel lot like that or does the ordinance state it has to be paved.

Chairman Kimble stated that the applicant is requesting a variance to allow a gravel parking and the ordinance requires the parking lot to be dust free bituminous. If that is approved this evening, then that is handled for you. Planning Commission may or may not like that but at that point it is out of their hands. He asked if there was anyone in the audience that would like to speak on behalf of this matter.

Richard Kennedy of 31615 Cook Road was sworn in. He stated that next November will mark 30 years for him at his current location. In those 30 years he didn't see any business except for Chuck's facility. You couldn't tell it was a business except for the sign in the front yard. He stated that when the Chairman spoke of Cook Road gradually becoming business like, he asked what he is referring to.

Chairman Kimble stated he is referring to Chuck's property, the building that is being built in front of the lake, which is an office building; there is also the College that comes out onto Cook Road.

Richard Kennedy stated he never thought of a College as being a business.

Chairman Kimble stated it isn't a residence. Those are the points he was making. There is also the car lot, there is BP, there is the smoke shop, and Victory Park has an exit that comes onto Cook Road. Those are the points he was making.

Richard Kennedy stated in his particular area it is residential in character and as he understands why they would grant a variance it would be for a practical difficulty or an unnecessary hardship. All he has heard so far is the unnecessary hardship of a financial concern of a company that has three locations and sixteen trucks. He has heard an advantage of the Cook Road location being close to everything. How close is the North Olmsted location compared to Cook Road; not too far away and so, if this hardship is strictly financial, he asked if that is the Board's consideration.

Chairman Kimble stated it is not.

Richard Kennedy stated that the Chairman stated they are an independent Board. He asked what impact does the Police or Fire recommendations have on their decision.

Chairman Kimble stated it doesn't. He can't speak for the Board; he can only speak for himself.

Richard Kennedy asked then when the Chairman mentioned it is an independent Board, the Chairman was speaking for himself and not the other members.

Assistant Law Director Morgan stated as the Chairman indicated, the written letters from the Police and Fire have no impact on the Board because the Board only takes sworn testimony. It is the sworn testimony that will have the impact. Not the letters that were received.

Chairman Kimble stated what is important to point out is that in this particular case, there are several different types of applications and variances that come in front of this Board. This particular one.....

Richard Kennedy stated that this matter at hand is an approval of a gravel driveway parking lot to kick off the purchase. Granting the variance is based on a practical difficulty or unnecessary hardship. He asked if he had that right.

Chairman Kimble stated he did not. He stated he was trying to explain that before he interrupted him. He stated that this particular case is a like use. We have to go by a like use.

Richard Kennedy stated he was talking about the variance for the gravel.

Chairman Kimble stated that the Board is going by a like use. The Board does not, in this particular case, have to find an unnecessary burden or hardship on this case.

Richard Kennedy asked for the like use or the gravel variance as he is speaking about the gravel

variance. From what he understands the approval of the gravel variance will then make the sale go forward. Buffers were mentioned, lot size was mentioned and all of that will be mentioned later specified by the Planning Commission. He asked what would come next for the front yard lots or a buffer zone. He asked if this was a map of the proposed lot. He then showed that there is a Columbia gas line easement on the property and he showed the area on the drawing. He also spoke about a water easement in the back of the property where the city claims there is a 50 foot right of way to maintain the water way as they see fit. He stated that no one is allowed to disrupt that. This gravel lot will be disrupting it and the parking lot will be within the easement. He stated that if the financial thing is a hardship, the Chairman has already said that is not a matter for their consideration.

Chairman Kimble asked if there was anyone else that would like to speak on behalf of this matter.

Charles A. Stella of 31740 Cook Road was sworn in. He explained he is a business man in North Ridgeville and has been here for 36 years. He has been in business most of that time. He doesn't have a problem with anyone having a business. He is certainly pro small business, but he does have a problem with an impound lot being right next door to him. He does live there. He lives on the premises. It is not something he wants to listen to 24 hours a day and every hour on the hour with trucks coming and going. He does have dogs and he does operate a superior dog kennel. It is fairly quiet and it is very well done. He does have dogs that bark and does understand that. Initially when he came in front of this Board many years ago to open a dog training and a rescue facility, his neighbors were all very gracious and approving and he had conditions for that. He had to close down at night and he had to make sure the doors were locked down and dogs were not barking all night. He thinks they have done a really good job at that with the exception of a few occasions when he fell asleep and waking up at 11:00 at night realizing he didn't close his kennels down, but that happens maybe once a year. His dogs don't typically bark at the activities surrounding him. His fear is that when trucks come and go every hour on the hour, dogs are going to wake up and bark which is now going to cause him a problem with his neighbors because he has been pretty good up until this potential problem of keeping the dogs quiet. That is going to cause him to lock the dogs down for longer periods of time, which will cause him more increased cleaning if the dogs are eliminating in their kennels instead of outside like they are supposed to. That will be more work and hardship in his case if this was there. He is more concerned to the noise. He explained that a dog will get used to a noise and settle in and not bark at a particular noise, that is wonderful for the dog that lives on premise, but it is not wonderful for him because he does boarding and he has dogs that come and go daily or weekly. Those dogs will not get used to cars and trucks backing up and bringing vehicles in right next to the kennels. They are not going to get used to that. They are going to bark every single time which is going to drive him crazy and drive his neighbors crazy. There are other hardships that will apply, however, he doesn't really know if his cases would be relevant here other than to say that this business will directly impact his business and not to mention his residence will be living next to a junk yard. He stated that the applicant isn't calling

it a junk yard, but it is a place where junk cars or damaged cars are laid. He is also concerned about people trying to gain access to their cars. He understands that part of this business is DUI's, criminal activity, and repos. If he puts up an eight foot fence, that is wonderful. He has a six foot fence and people will jump his fence to try gain access to his property and now he has liability of people on his property directly accessing dogs that do not belong to him that are in his care and custody. He has a concern for his safety of his property, which he has had no problems with ever in the fourteen years of being there. He has a concern about security and safety. His cameras might do really well for his property but it isn't going to do him any good if somebody comes wondering into his property and ends up in his kennel with his dogs.

Chairman Kimble stated that he has very valid concerns that he agrees with and he will say speaking first hand that he runs an outstanding business. He has been a customer of his and he has nothing but amazing things to say about his operation. He was on the Board when he first came years ago. He has seen it progress all along the way and he would hate to be part of something that could potentially harm a terrific business that he has built and is continuing to expand on. The unfortunate and difficult part in being a member of this Board is that part of the responsibility that is placed in their laps is they have to go by a very set group of guidelines and all the points that he and Mr. Kennedy made are phenomenal. If this goes to Planning Commission that is the avenue in which they can address those concerns because this Board can honestly take no action on potential lighting or sound obstructions that may have on his kennel. Which he agrees and every time a truck backs in and it's beeping, those dogs will bark. Even though this Board may know that there are things that are very probable that could present to neighbors, the Board has to look at what is purely right here. He does believe that they have a neighbor that is willing to work with the surrounding areas. What can happen in this situation, he has no clue. For right now, they purely have to look at whether it is a like use or not.

Chief Building Official Fursdon stated that the Board also needs to keep in mind that there is no other use in these zoning districts that will have wrecked vehicles on their property for a prolonged period of time. This is more akin to a junk yard than anything mentioned in our ordinances as permitted uses in these zoning districts. He asked the Board to keep that in mind when they make their decision.

Council Liaison Hung stated her question was related to the variance on the gravel. She asked why we are asking for the variance. She asked if it was just because of money.

Chairman Kimble stated that was pretty much the answer.

Jacob Patton stated initially yes. It was brought to his attention that permeation for water run-off and things like that. That is always what they have had is gravel lots. They do have a location in Avon Lake but it is very small, but everything they have ever dealt with has been gravel. He stated certainly concreting that amount of area is out of the question for him, but trucks in and out, pivoting back and forth the way they have to will tear up asphalt without a doubt.

Surrounding the building is where he will lay the concrete. However, maneuvering a truck three or four times on asphalt alone will tear it up in no time. In North Olmsted, his landlord put in patches of asphalt and within two years they were chewed up. He stated what will hold up the best in the back would be gravel for longevity.

Chief Building Official addressed the Chairman and asked that the Board keep in mind that if it is approved the gravel will be a pervious surface and anything that is going to leak out of these vehicles if stored, will end up in the ground and cause contamination, which will be a concern down the road for EPA especially with the waterway back there and so, these are some serious issues they need to consider.

Chairman Kimble stated that there is a pond next door.

Jacob Patton stated in North Olmsted, they have a retention pond. If that is something they have to do, then they will. They have one in the back of their North Olmsted location. It isn't a pond, it is a retention basin. He isn't going to limit himself and state that sometimes a car may sit there for a year under investigation if it is held up in court, but cars are moved within 90 days typically. He doesn't want them there; he doesn't want to keep them there. He is not parting these cars out. So, the faster he can get a car in and out benefits him. They don't withhold these cars for parts or anything like that like a junk yard may do. He is a holding facility that moves cars in and out.

Chairman Kimble announced that the Board needs to do some zoning administration before we can continue with the application.

It was moved by Kimble and seconded by to suspend the by-laws and extend the meeting passed 10:00 P.M. to continue the meeting and finish.

Chairman Kimble asked the Clerk to call the roll.

Yes, 4 No, 0

Deputy Clerk Tjotjos announced the motion passed by a vote of four yes and zero no.

Chairman Kimble asked if there was anyone in the audience that would like to speak on this matter.

Tim Freeman of 6517 Hersey Circle was sworn in. He stated he owns 50 percent share of Mitico, the company that owns the property that Patton's Towing wants to buy. He wanted to share some light on the waterway or if this is a junk yard or any of this that he is proposing. Junk yards salvage cars, scrap them and sell them. They bring cars in that are full of fluids. This is not what is being proposed here. It is his understanding that the Board is just looking at like

use. That is the crux of the meeting tonight; not neighbors that may be upset because they want to buy the property and that can't work out and come up with all kinds of noise things. The permitted uses are noisy businesses. That is the area and he knows some people across the street in the I-4 District, which is an industrial area and it is inevitable that part of Cook Road is going to evolve. When he bought the property seventeen years ago, he came before the BZA and Planning Commission planning to develop the property himself. He had some health related issues and he couldn't do that. He was going to do the repair facility. It was going to be noisy. When you go through Planning Commission, they make you plan on contamination and leaks. That will be addressed, but for tonight, it is the like use issue. He explained that the waterway as he disclosed, the Columbia Gas transmission line is right on the edge of the property. Olmsted Commons Condominiums that are just over the county line has a big privacy fence there already. Regarding the transmission line, he won't be on that as there is a setback from the side that already has an easement there. What they are calling a waterway is an open ditch that goes across the property and up to the neighbor's property. It goes onto his property too, but it heads north. The holding part of this land is in the back and that ditch is only approximately 160 feet off the road. The lot goes 600 feet back and backs up to the on ramp of the highway. It is pretty deep and there is a lot of room there.

Chairman Kimble asked if the Board members had any questions.

Member Masterson stated she had a question for Mr. Stella and asked him to approach the mic. She stated she is actually one of Chuck's clients who did not successfully complete their training program. However, she does send her dogs to be boarded there. She stated that he has a phenomenal facility. She asked if he had a pond at the rear of his property. She asked what feeds into that pond.

Charles A. Stella stated all that area. His property and the neighbor's property do the same thing. The back of the lot goes all the way down to the creek and the front of the lot goes all the way down to the creek. Everything goes to that creek which feeds into his pond which then feeds into wherever the creek goes from there.

Member Masterson asked if that creek goes across the street.

Charles A. Stella stated no, he didn't believe so.

Chairman Kimble explained that what the Board will be doing is breaking this application up into two parts. The Board clearly has the like use and a variance for parking lot. He asked if there were any other questions or comments from the audience. Hearing none, he asked if there were any questions or comments from the Administration. Hearing none, he asked if the Board members had any additional comments. Hearing none, he entertained a motion on the like use.

It was moved by Smolik and seconded by Thibodeaux that the towing and impound

business is a like use in the B-3 Zoning district.

Chairman Kimble asked the Clerk to call the roll.

Yes, 4 No, 0

Deputy Clerk Tjotjos announced the motion passed by a vote of four yes and zero no.

Chairman Kimble moved the meeting onto the second portion of the application where the request is to install a gravel parking lot varying from the required dust-free surface.

It was moved by Smolik and seconded by Thibodeaux to approve the variance to install a gravel parking lot.

Chairman Kimble asked the Clerk to call the roll.

Yes, 2 No, 2 (Masterson, Kimble)

Deputy Clerk Tjotjos announced the motion fails because there is a tie vote.

Chairman Kimble asked the Clerk to read the next application.

APPLICANT: Paul Kowalsick, 4187 W. 222 Street, Fairview Park, OH 44126
OWNER: Paul Kowalsick, Canine Properties LLC, Mills Road
REQUEST: The following in order to construct a building and to operate a landscaping business in an I-2 District:
1. A 10 foot side yard variance on west side of property
2. A 15 foot side yard variance on the east side of property
3. Determination of a like use to those that are permitted in an I-2 District
LOCATION: Mills Road southeast of Jaycox and west of Mills Industrial Parkway in an I-2 District.
Permanent Parcel No. 07-00-018-101-017

Application was read along with comments from Chief Building Official.

Chairman Kimble asked if there was a representative and if so, could they step to the mic and give their name and address and he would swear them in.

Paul Kowalsick, 4187 W. 222 Street, Fairview Park, OH 44126 was sworn in.

Chairman Kimble asked if he could tell the Board a little bit about their application.

Paul Kowalsick stated the reason for their application is their property is only 107 feet wide. His son runs a landscaping business and so, getting off of Mills Road, which they have discovered is

busier than what they anticipated. They prefer to pull off the street with pick-up trucks and dump trailers. They have the building that sits sideways and their setback is based off that, which was found when they finally received the survey. The people to their west have a chain link fence. It was unclear at that time where the actual boundary line was and so when they received the survey, their fence is actually eight feet from the boundary line and it kind of puts their building in the middle when they come off 25 feet; in order to pull off the street safely and back a trailer into the building. This is a proposed building. They do plan to build once they get through all the red tape. If they were able to move the building over ten feet, which would still allow a 15 foot set back and would still allow a 25 foot distance to the brick building, it would give them a little bit more maneuverability room in order to get vehicles in and out. The east side of the property has a swale that is in there which may be eight to ten feet from their property line. Some of that area is unusable to go up to the property line to back in. They plan to slide the building sideways approximately ten feet to facilitate getting vehicles in and out.

Chairman Kimble stated that the applicant has a unique parcel of land which one may even nickname it a bowling lane. It isn't very wide and goes back acres. From the standpoint of hardship, this is a unique lot in an I-2 District. It is very narrow and it is developed for the most part, on both sides. He stated that there is truly very little you could do with this lot other than what is being proposed. From the like use aspect, the applicant is looking to store landscape equipment, trailers, open trailers. They are planning a barn that would enclose most of that. It seems reasonable. In the I-2, one of the permitted uses is a road building storage yard with large equipment. Clearly not the same equipment but it is equipment being stored. Another permitted use is a warehouse and storage facility. The applicant is building a warehouse to store items. It makes sense. There are quite a few permitted uses that are nowhere close to this operation. He stated that he does see a like use in what the applicant is proposing. He also agrees that he has a difficult piece of property that could not have been imagined when the I-2 was designed. That width is typically not an industrial parcel. He asked if there were any comments from the Board. Hearing none, he asked if there was anyone in the audience that would like to speak on behalf of this matter.

Nathan Kowalsick of 5418 Manning Circle was sworn in. He stated he is the owner of the landscaping company in question, Western Reserve Landcare. They have been in business since January 2010. They are a fully licensed and insured company. They are members of the Ohio Landscape Association and he sat on the board for the Ohio Landscape Association for three years. They try to be above board in everything that they do. They are licensed in the State of Ohio for pesticide applications. They do try and work above and beyond. They have a code of ethics with the Ohio Landscape Association to ensure that they aren't paying people under the table. They do pay income tax to the city. The business is growing where he would like to hire several full time people to help work and develop. They are looking to bring business into the city. He is aware that there are several landscapers in the area down Mills Industrial Parkway. Schill is down there which is one of the big outfits. Also the storage lot that is next door, there are several landscapers that work out of that storage lot Monday through Friday. They store their

equipment there and they come and go multiple times throughout the day. They use that as kind of their home base.

Chairman Kimble asked if there was anyone else in the audience that would like to speak on behalf of this matter.

Dennis Boose of 6405 Denise Drive stated that this is in his Ward as City Councilman. He thinks it is great that a business wants to move into our town and take advantage of a very strange lot. They have lots of uniqueness to it and the Chairman spoke very eloquently about all three. The side yard variances don't bother him in an industrial area. If we were talking about a residential area, he would have a concern. They are right up against other industries and other businesses that are doing all types of business and they aren't going to care. He doesn't know how far back, south toward Highland Drive, but again, they have been in business for eight years now and have a lot of recommendations as far as the different types of organizations they have been involved with along with the certifications that they have and he believes there are lots of like uses that we can point to that would suggest that something like this could go there. He didn't see any negative issues of this and he would recommend that the Board consider it.

Chairman Kimble asked if there was anyone else in the audience that would like to speak on behalf of this matter. Hearing none, he asked if there were any questions or comments from the Administration. Hearing none, he stated that if there are no other questions or comments from the Board he would entertain a motion.

Member Smolik asked if the Board was moving on both the side variances and the like use. He asked if he wanted to split these up or take action all at once.

Chairman Kimble stated he was inclined to include it all in one.

It was moved by Masterson and seconded by Smolik to approve the 10 foot side yard variance on the west side of the property, a 15 foot side yard variance on the east side of the property and determined that this business is a like use in the I-2 District.

Chairman Kimble asked the Clerk to call the roll.

Yes, 4 No, 0

Deputy Clerk Tjotjos announced the motion passed with a vote of four yes and zero no.

ADJOURNMENT:

Chairman Kimble asked if there was any other business to bring before the Board this evening. Hearing none he made a motion to adjourn.

MOTION CARRIED

The meeting adjourned at 10:26 p.m.

Chairman

Secretary Donna Tjotjos

October 25, 2018