



Building and Zoning Appeals Minutes

Meeting held in Boards and Commissions Room, Monday, April 10, 2023, at 6:00 p.m.

Members Present: Mike Svasta, Greg Seifert, Edward Franks, Randall Roberts, and Peggy Sykora

Members Absent: None

Also Present: Carl & Tammy Lybrook, Paul Zuravel, Jen & Scott DiGiammarino, Hanne-Lore Gambrell, Simeon Mgbenka, Angel Mgbenka, Jeff Usner, Kimberly Pytel, Christopher Van Note, Law Director Jaime Syx, Assistant Law Director Drew Reilly, Planning Director Nate Leppo, Chief Building Official Anthony Catalano, Zack Cowan, and Mary Botts

Meeting called to order by Chairman Edward Franks at 6:00 p.m.

Approval of Minutes: Minutes of the March 13, 2023, meeting; motion to approve by Greg Seifert, seconded by Mike Svasta, motion passed.

Attendees were sworn in.

Case #23-003

Request:

This is a request by Scott DiGiammarino, applicant, to allow an accessory building at 1444 Mockingbird Cir. to exceed the allowable size of a single building of 500 sq. ft. and of the combined floor area of all accessory buildings of 500 sq. ft.

The property (Parcel #56-00878) has an approximate area of 0.40 acres and is zoned R-1 - Residential. The applicant proposes to construct a 750 sq. ft. building at 10 feet from the rear and side property lines.

The applicant is requesting the following variances:

1. Variance (250 sq. ft.) from the maximum floor area of 500 sq. ft. for a single accessory building on a parcel with an area less than 1/2 acre - C.O.S. Section 1143.07(b).
2. Variance (250 sq. ft.) from the maximum combined floor area of 500 sq. ft. for a combined floor area of all accessory buildings on a parcel with an area less than 1 acre. - C.O.S. Section 1143.07(b).

Mr. Cowan stated this application is for 1445 Mockingbird Circle. It is .4 acres and zoned R-1 residential. We were here last month for a few variances and it was tabled until today so the applicant could make some adjustments. Today there are two variances, both are for the size

of the structure to exceeding the allowable 500 s.f. for a single accessory building, and for the combined floor area of all the accessory buildings. The property is on a cul de sac surrounded by single family zoning and he is looking at the existing conditions. The accessory structure will be in the back yard here. The original proposal they were requesting was a 20 x 40 ft. accessory building and they were over by 1,100 s.f. and it was going to be 25 ft. from the side property line, 10 ft. from the rear, 110 ft. from the right of way and the height within 12' from the peak. What they are proposing today, they have reduced it to 750 s.f. and moved it back to be closer to the side property line of 10' and it will remain 10' from the rear property line and will be pushed back a little bit further from the right of way so it will be 135' from there and increase the height slightly to 14', the maximum is 15' so there is no variance requested for that. Mr. Cowan showed the revised site plan. They rotated it and pushed it back 10' to the rear and 10' from the side property line. This is the provided building elevation, it is 30' x 25' and this is the red lined list of variances, so again, still outstanding is the variances for the size, instead of requesting 620 s.f. variances, that is being reduced to 250 s.f. variance. The first variance is for the single accessory structure and the second is for combined area of all accessory structures, the third variance was for the setback which they no longer need, structures under 800 s.f. only need to be 10' from the property line as what they originally had, they had to be 25 ft. so that no longer applies. The fourth variance, the setback from the right of way, if you have a structure over 800 s.f., you have to be 150 ft. from the right of way, there is no requirement for that when you are under that threshold so no variance is needed for that either.

Mrs. Giammarino said we will be building a garage for storage and my husband collects cars so we will leave cars in there and electric to then work on his cars when he feels the need to. One of the neighbors had addressed drainage. We looked into that and it will be gutters and downspouts and have a dry well off to the side that it will drain into it. Mr. Franks said I appreciate the fact that you amended your application and cut down the size of the building quite a bit. That makes it easier to approve. Mr. Roberts said I was going to say Mr. Franks and I were not here last month so perhaps tabling this was a good idea but the reduction in size is beneficial. I see that we did have, looking at the notes, did have at least one person, a neighbor was concerned about the physical size of the building and I have to admit that I would have been too for the size of the lot and location. I too appreciate the reduction in size. Is this going to be a post frame pole barn design or it is going to be a footing with standard 2" x 4" or 2" x 6" walls? Mr. Giammarino said it will be a metal building anchored to the concrete slab. Mr. Roberts said just a side note you will need to talk to the building department at that time because of the size building may dictate frost protected foundations and those metal buildings often come with a page or pages that define the required foundations by their engineers so bolting to the slab may go beyond that, just for your knowledge. Mr. Franks asked, on the picture you presented, it says the Everest Building is 30' x 26' x 14'. Mr. Giammarino said that was just a typo by them, everything else says 25'. Mrs. Giammarino showed Mr. Franks where it says 25'. Mr. Franks asked what the finish to this was? Would it match the house? Mrs. Giammarino said so we are up in the air right now, the house is sided in white and we considered going to a dark navy so we think we are going to put the building up with a dark navy so it will then match the house once we change the siding of our house. Mr. Franks asked if this was a metal roof or shingled? Mr. Giammarino said it will be a steel roof, an all steel building.

Ms. Lybrook (4204 Meadowlark Trail) said she had concerns because the yard is so small and oddly shaped, we have concerns for just having to look at it and having it be unappealing to look at. They have a 6' fence, they want to put up a 14' building and we are also concerned that it will affect the resale of our property. Mr. Svasta asked Mr. Giammarino if he was going to keep the pines that are in the back? Mr. Giammarino said I am going to keep some of them but some are going to have to come down because they will be right up against the building. Mrs. Giammarino said there are two in front but then there are four behind and the four behind will stay. Mr. Svasta said if they can keep those 4 pines it is going to be a screen. Ms. Lybrook said the four pines are in my neighbor's back yard and we are next to them so we have a direct viewing of the good majority of their back yard. Mr. Svasta said you aren't directly behind them. Ms. Lybrook said we are but since they are running in a cul de sac, the majority of their backyard is butting up to our back yard. We feel like the size of the property is less than half an acre to have that size of a building is just going to be very outstanding. Mr. Svasta said I was totally against the one you were building last month. I can see where they have tried to build something that is big enough to accommodate what they want to do and also not be too obtrusive. I think even the way it is located now, the way it is sighted on the property is an improvement over the way it was proposed last month. Ms. Lybrook said I could agree with that but it is still a concern, we have concern for noise, what is going to be going on in that garage. Mr. Svasta said there are noise ordinances. They are allowed 500 s.f. and they are asking for an additional 250 s.f. to build this structure. Ms. Lybrook said it is also going to be taller than the original structure so we are against this variance.

Ms. Pytel said she lives next door, it will be 10' away from the property line which I know is approved but it will be very close. I live in a split level house where my top is my main living floor so unfortunately, a fence would not cover my living room, family room, kitchen, dining room is all overseeing this directly and unfortunately, there isn't enough tree coverage because the trees had to be cut down to build this structure so there won't be enough privacy. My other main concern is safety. The driveway to get in and out of the garage would be directly meeting our property line where we are now so I worry about anything about blind spots coming up or I am not sure if cars are going to frequently be coming and going or maybe they won't, but I want to make sure that I don't have to worry about my child, my future children, my dog who is coming in and out of the garage, will we have to have a mirror or something to look through to make sure that our car is not hurrying out of the garage or anything like that and I want to make sure it is not changing the aesthetic of the neighborhood. We do have small yards, we do have some trees but not enough trees to cover a structure like that. Mr. Franks asked if Ms. Pytel was the neighbor to the left and Ms. Pytel said yes.

Mr. Usner asked are they going to drop the trees in front? Mr. Giammarino said the two pine trees in front. Mr. Giammarino said I already had the ones that needed cut down. Mr. Usner said you hit our fence. Mr. Giammarino said I didn't hit your fence. Mr. Usner said somebody hit my fence. Mrs. Giammarino said everything else has been taken down by a professional.

Ms. Sykora had a questions about the dry well (addressing Mr. Seifert). Will the dry well take care of the runoff in your professional opinion? Mr. Seifert said I couldn't tell you unless I was

spending the time out there in a rain storm to see where the water was going but it would help. A dry well is basically a hole in the ground full of rocks to allow the water to go down into as opposed to letting it continue to go across the surface of the property somewhere. Mr. Usner asked what happens when that fills up? Mr. Seifert said well it fills up and then disperses and by Ohio Law, the water is going to go where the water is going to go. Mr. Seifert said what they are doing by putting in a dry well is they are going to slow that water down that will be sped up by the fact that they have more hard surface, more impervious surface as it were so the dry well will help. Will it solve problem, I don't know, that is not my role here on the Board. Mr. Roberts said I am going to asked Tony Catalano, our Chief Building Office, if he knows in that area, do we have storm laterals and storm sewers in there? Mr. Catalano said I believe so. I do know we are having our engineering department look at the size of the building, we will specify dry well, the dry well will be sized to accommodate that size structure. Mr. Roberts said I wanted to make sure that there were storm laterals or storm sewers. Mr. Roberts asked to the owners, this is for your personal use and you have no intention to conduct business in here or doing repairs? Mr. Giammarino said just repairs on my own cars. Mr. Zuravel said one of the things that a lot of communities have done was for storm water was put storage tanks near the buildings so the water can be in storage tanks and then reused and that helps too. Mr. Roberts said for clarity so if this building was 500 s.f. sitting where it is at today with the current peak size, we wouldn't even be sitting here today, this would just be an application and approval, building permit, engineering for dry well and there would certainly would be no discussion on oversize to the point of 250 s.f. greater floor area that is the reason we are here today because of that extension. We do appreciate everyone's opinions and everyone's concerns and we have to take everything into consideration, that is why we are here.

Motion to approve Case #23-003, Variance #1, by Randall Roberts with the condition to be used for owners use only and not for any business or commercial purpose, seconded by Edward Franks, Motion passed 3-0 (Nay's Edward Franks and Peggy Sykora).

Motion to approve Case #23-003, Variance #2, by Randall Roberts, seconded by Edward Franks, Motion passed 3-0 (Nay's Edward Franks and Peggy Sykora).

Case #23-005

Appeal:

A Notice of Dangerous Accessory Building and Public Nuisance, declaring the dwelling and accessory structures located at 3564 Sanford Avenue was sent to the property owner on February 23, 2023. The applicant is appealing the order from the Building Official declaring a dangerous building at 3564 Sanford Ave. per Chapter 1311.

Mr. Cowan stated the location is 3564 Sanford Avenue, zoned R-3 residential. We are here because the applicant is appealing the order from the Building Official declaring a "Dangerous Building." I don't have much to this except for the location. Property is shown here in a street view shot from 2019 showing the condition of the house from the front of the street, the board has all of the pictures and documents showing the inside and outside, and a copy of the letter and the pictures. Other than that the Building Official is here so if there are any questions, I recommend addressing them to him.

Mr. Franks asked who was here representing the applicant. Ms. Hanne-Lore Gambrell said for the record, she just wanted to state that her name was spelled incorrectly. My name is spelled H-a-n-n-e L-o-r-e. I have a couple of documents for the board for review. This is a letter from an engineer that states that the building is, in fact, structurally sound and he also gave us this document with a floor plan and I apologize that the lettering on this is really small but we can send a copy of this. This is a detailed plan of how he would plan to correct the issues that are affecting the structures in the home. I would also like to give you all a little background on this property and ownership of this property. In 2019, we had nothing to do with this, they did not purchase the property until 2022. They purchased this property in February, 2022 and there was a tenant on this property until May, 2022, so a lot of the damage that came to that property was a result of that tenant that was on the property. Since May, 2022, my clients have been steadfastly working to repair the property so the first step was to clear the trash and clear some of the shrubs and rubble from the property which they did first. In addition to that, in February of this year, 2023, my clients spent over \$10,000 to replace the roof on the property. My clients have every intention to correct all of these structural issues to this property. Apparently, there have been many complaints by neighbors in the process of them trying to clear the property and trying to get work done on the property and so we are here today because of a lot of complaints from the neighbors and they have the right to do so, apparently there was some trash and some things of that nature but my clients have been steadfastly working to remediate those issues. So we are here today to repeal that decision to condemn the property and give my clients the opportunity to repair some things that they are already working on before this occurred.

Mr. Catalano said he issued a "Stop Work" order. This has been on my radar for a while for severe blight. We were called out there. The "Stop Work" order was dated 1/16/23 but I think that is incorrect. I mismarked that and it should be 2/16/23. There were contractors out there putting a roof on there without a permit and in addition to that, the electric service, the neutral on the electric service where it was attached to the mast that served the meter there on the front of the house, the neutral was broken. We have a dangerous situation there, the guys were working on the house without a permit. We put a stop work order on it and then a few days later on the 22nd or 23rd of February, myself and Richard Hickman, our Architect Plans Examiner, went out and met with Simeon and his contractor and we walked through the house and it was in deplorable condition. All the services, all the utilities, the plumbing system, the electric system, heating, they are all in a state of serious disrepair. You can see from the photographs how bad it is. The foundation is compromised, there is structural issues, the roof is sagging pretty bad, and you can see in some of the pictures, somebody attempted to prop stuff under the porch to kind of hold it up. When we declare a building dangerous, it is a serious situation and don't misunderstand me, you can fix anything if you throw enough money at it and that is where we are at with this.

Mr. Svasta said I was wondering not only the cost, but how much time it would take to do all of these repairs that are being proposed. Ms. Syx stated to interject real quick, I just want to make sure everybody understands why we are here today. They are appealing the decision that Tony made to condemn the house so that is solely what everybody needs to focus on in

the condition of the house as it was on the day that Tony issued the notice to condemn, does it meet the requirements of the code to condemn the house so that is really all the facts that you need. You can ask all the questions that you want to but that is the decision. Mr. Svasta said I would still like to know how long it would take to make all the repairs? Mr. Mgbenka said after walking around the house, about 3 months. Ms. Gambrell said I would like to point out to the board that the house was sold in this condition to my clients last year in a Sheriff's Sale so if there was an issue with that, then this house should never have been sold to my clients. Why allow them to spend their money to repair a house if you are going to condemn it. Mr. Reilly said Sheriff's Sales are "as is" and they don't undergo inspection and the City does not step in. For the record, the house wasn't condemned at the time of the sale either. Mr. Svasta said could the issue be that you only have 30 days to make all these repairs? Ms. Gambrell said the document technically says 30 days to begin the repairs not to complete the repairs. Ms. Mgbenka said we met with the Mayor and this lady right here (Ms. Syx). I am not from around here but I believe that there should be some kind of inspection before a house should be put up for demolition. When we bought this house we had our address on it so I believe it would have been simple courtesy to reach out to say this house is up for demo. They let us continue working on the house but the thing is I felt it was like not fair to put up a house for demolition without proper inspection and we plan to bring it up to code. Ms. Syx said all the proper procedures were followed in this case. Mr. Roberts said a couple of comments and thoughts, the City does not have a point of sale inspection for any home so you clearly had a buyer beware syndrome of look at the house and determine if it is something you want to obtain, purchase price, valuable and if you have questions, if it was a realtor involved or even Sheriff's Sale, check with the City to see if there are any outstanding orders or anything pending. The second thing I look at it is I study the pictures and the question is the condemnation that was established by the City valid, did the City follow good common practice and being in that type of business, I can state clearly by evidence by the photographs, the City did follow good common practice in condemning the building. I do see here that the letter to you that was a certified letter was delivered by the end of February so we are now less than six weeks from that period of time. I also know that my conversation tonight, that some work had started, like putting a new roof on, however, following the city rules, the building department wasn't contacted and didn't get a permit or plan approval that is all required under Ohio Law, not Stow Law but Ohio Law, to have application, to have plans, scope of work, get it approved and allow the work to start. At that point, then they can take a look, and I know the City will be happy to guide anyone, no matter who you are, on the process and will help you in any possible way they can, not providing direct guidance financially but to take a look at things so that looking at the house as it sits today, it hasn't changed in a few weeks. This has been an ongoing process. My personal opinion which we will vote on at some point, but for discussion is, the house meets the criteria, from what we see. Now, is there something the building department does incorrectly? I would say no, they didn't, but working with the City, maybe we can come up with a timeframe and plans because this information should be in the hands of the City so they can make plan review, get a phased program of how it is going to be done, what is first, what is second, how are you going to accomplish the tasks and timelines. Ms. Syx said so we did meet with the residents, the Mayor and I both met with them, and I wasn't aware that the letter had been mailed and they had not received the letter letting them know that the house was condemned. We did point them in the direction of Mary Botts who scheduled them to be on

for the appeals agenda tonight. So far the City has helped to guide them in the direction to do whatever is best for them. I do want to let you guys know that if your decision is to confirm that the condemnation was valid, they will have 30 days from the date of your decision, not the date of the letter, so with this process, gave them an extension to get that started. Mr. Catalano said, Randy, to your point, I did advise Simeon and his contractor to put together a plan if they were going to bring this to the appeals and present a plan for restoration of that dwelling to this appeals board. I don't know if that has happened yet. Mr. Seifert asked Ms. Syx, your comment, if we vote tonight, it will be 30 days until what happens? Ms. Syx said so the notice says you have 30 days to bring it up to whatever standards Tony is okay with by our language and so it is 30 days from today to bring it up to whatever he is okay with allowing that to bring it up to compliance. Ms. Syx said so I think you have 30 days to begin. What I know of Tony, he works with everyone so a 30 days deadline is not a hard 30 day deadline. It is 30 days to begin, not to complete, to come into compliance, compliance is not completion. Completely in compliance is covering open electrical boxes or any open dangers to the public. Mr. Roberts said so life safety issues. Mr. Reilly said the building doesn't have to be fully restored in 30 days just brought above the standards of a dangerous building. Ms. Gambrell said why we are here is my clients are nervous that they are going to sink money into this and the property is going to be demolished. There are nine things, there is a whole long list on the list in front of you of things that need to be completed and we are not going to be able to complete that in 30 days and they are going to need some additional time, more than 30 days. They want to restore their property but they are going to need more than 30 days to do that and that is why we are here. They have already spent \$10,000, they want to continue to restore the property but 30 days is just not reasonable to do all this work that needs to be done. Mr. Roberts said what we are looking at here so you can help your clients also understand that, even if we agree tonight that the City did the correct things, that they filed the correct paperwork, there was a reason behind it, that there is nothing less than done properly here, that will still give you 30 days to correct and working with the building department, they will help guide you to what those correct actions are or immediate compliance for life safety, serious hazards, things of that nature and then with detailed plans, these are not detailed plans of what is going to be done for corrective action in all of the areas of the house. The foundation repairs, the flooring, roof, ceiling, furnace, electric will take a lot, there is a lot that needs to be replaced in this house as I see it. HVAC, roofing structure repairs, electric, there is a lot to be done here. Working with them, I know they will work with you. That is not for us to decide but I want to share that so if you talk about this, that is where our direction sort of comes from. We have several people at this table who are here because not only do we live in the City who represent our wards, but we understand construction and building codes, the zoning codes so we take this very seriously. Mr. Svasta said the appellant is appealing the order from the building official declaring a dangerous building at 3564 Sanford Ave. per Chapter 1311. That is the appeal. It doesn't have anything to do with making corrections or nine months of construction or putting a new roof on the house. That is the thing that we really need to focus on because that structure fits the description of a dangerous building perfectly and if this board considers changing the ruling by the Building Official, I think we would be in violation of the law. I don't see how we could change, as much as we would like to help you, I don't see how we can change the ruling of the building official because all the evidence is there. It is obvious this is a dangerous structure and maybe it can be repaired and restored but that would be a separate issue. We are just looking

at what the law says with the building official declared, you appealed his decision. I don't see where we have many options here. Ms. Gambrell said she is here at the suggestion of the Law Department, they are not here at my suggestion. They were told that they should appeal from what I am hearing so here we are, we are putting all of our concerns on the record as we are entitled to do for you guys to decide. Obviously, we are going to continue to work with the City to get this remediated. Mr. Mgbenka said Tony told me to write down what we are going to do and print it here and possibly I can go ahead and I am ready to walk with him through the house to start that. Mr. Svasta said we have a letter here from a professional engineer stating the house is structurally stable, we have a plan with your renovations, it looks like you are doing the right things but the appeal was for the decision the City made declaring this a dangerous structure. Ms. Syx said just for the record, the Law Department did not advise anybody to do anything. We provided them with option that they had, we don't give legal advice to individuals, I just wanted to make sure that was on the record.

Mr. Franks said should we disapprove the variance on the appeal here? Ms. Syx said so you would be denying the request. Mr. Franks said so we would be agreeing with the building department's condemnation of the building. Is it possible to do that with conditions? Proceed with certain repairs? Ms. Syx said no because once it has been deemed a dangerous building, then there is the other conditions that they have to comply with in what a dangerous building is to repair it so the conditions kind of argue this, right Tony? Tony said correct me if I am wrong but if you deny their appeal, they have 30 days to bring that building into compliance or the City will resolve the matter? Ms. Gambrell said she had a question for the Law Department, what kind of notice will my clients get of everything they haven't done there? Ms. Syx said Tony will go out and inspect it again, right Tony? Tony said they would have to apply for specific permits to proceed with work on that dwelling. Mr. Reilly said the question was at the end of 30 days, do you go out Tony and reinspect before? Tony said of course, we would go out and review the circumstances. Ms. Gambrell said so my question was what kind of notice would my clients be entitled if in that 30 days you do not decide the work is sufficient? They are worried about sinking money into this and then their property is being demolished. Ms. Syx said whatever notice that we have to comply with we will give the code, I don't have it in front of me right now. Mr. Franks asked if it was appropriate to ask Tony specifically what repairs will be needed to be completed in that 30 day period? Tony said electrical system is terrible and needs to be replaced, the HVAC needs to be replaced, the plumbing in the house needs to be replaced, the foundation needs to be repaired and restored. The front porch is rotten and you can see it in the pictures. The outside of the house is rotten, there is rotten wood everywhere, it is in awful condition. Now is it realistic that Simeon can rebuild this in 30 days, no, that is the reality. Tony said if we see significant progress, we can continue to work with them. As I mentioned earlier, you can fix anything if you throw enough money at it. Mr. Franks said I asked that of the owner or representative are you prepared to spend that kind of money that is going to be necessary to replace the electrical system, the HVAC, the plumbing, the front porch and so, are they ready to do that? Mr. Mgbenka said if Tony will allow me to walk with him. Mr. Franks said you would need to work quickly to get contractors on board. Mr. Mgbenka said it is hard to get contractors. Mr. Franks said realize all work from here on out requires a building permit. Ms. Gambrell said we did end up getting a permit for the roof, it wasn't that he completed the roof without obtaining the permit. Mr. Franks said and inspections associated with those permits.

The roof has been permitted now. Mr. Van Note said he didn't know these people but I have a question just as a bystander, will the City provide a written list of what is minimally required rather than this gray area of what would be acceptable. Ms. Syx said so I think what everybody is kind of asking, is there a certain amount of things that they can do that the City will guarantee that they will allow him more time and the City is not going to make any guarantees about any of it. Mr. Van Note said it is like a carrot on a stick. There's the carrot and here is what you have to do to get to the carrot and then judge on the basis of that. Ms. Syx said I think nobody is on the side that everybody is on the side where the City is working in bad faith. If Tony can see that they are making substantial progress and for it to not be a danger, then he will work with them. Ms. Gambrell said my client is very concerned that this 30 day deadline is not going to be possible and he doesn't want to sink his money. Ms. Syx said but it has been longer than 30 days. Ms. Gambrell said it has been longer than 30 days because Tony had indicated that he wouldn't suggest that my clients go and submit permits without coming here first. Mr. Roberts said we had a lot of discussion here and I will say this, being the same capacity as Mr. Catalano and this Building Department and the County Building Department is that the key element under the Ohio Residential Building Code which Tony works under as well as the City Zoning Department, get them detailed construction plans, get them a plans how these are going to proceed, you work with them with those plans in front of them, those are what allow him to do a plan review as defined in Chapter 1 of the Residential Code. When he approves the plans, then you will start to get permits and it sounds like from everything I have heard, the City is not going to be objectionable to you doing the work, he is not going to be objectionable, the 30 days is to get something going, a 30 day window to get started and get working with him.

Motion to approve Appeal Case #23-005 by Randall Roberts, seconded by Peggy Sykora, motion denied 5-0

Case #23-006

Appeal:

The applicant proposed to subdivide land at Parcels #56-16142 & #56-05873 into five (5) lots along a private road. The site has a total area of 1.94 acres and is zoned R-3 – Residential. This is an appeal of the enforcement of a zoning code requirement that a minor subdivision is required to be along an existing public road per Section 1117.01(b).

Mr. Cowan said the property is at 2950 Graham Road, two parcels here, one is 1.5 acres and one is .4 acres so the total is just under 2 acres for the properties. It is zoned R-3 residential. We are here because the applicant is appealing the enforcement of the zoning code requirements that a minor subdivision is required to be along an existing public street. Here is the zoning map. It is surrounded by R-3, commercial across the street here but this is just like Graham Road and Fishcreek Road. These are the existing conditions, this is rotated so north is to the right side of the screen where Graham Road is and I want to point out that you have Villas Drive here as a private drive providing access to the property in the back and also providing access to multi-family here. This is the subdivision from the applicant for five lots, he has two along Graham Road and then the rest of the three are towards the rear along Villas Drive.

A brief timeline, the application for the lot split was February 9th, the Planning Department and Engineering Department reviewed it, both came to the same conclusion that the Code reads that you can't have a minor subdivision on an existing public street, therefore, it is classified as a major subdivision. Types of subdivision for the code, number one being minor and the other as major. Minor is defined as proposed division of a parcel plan along an existing public street and does not involve the opening, widening or extending of any street or road and does not involve more than five lots after the original tract has been completely subdivided. This is only five lots so it meets that requirements. There is no extending of additional roads or anything like that. The only issue is that it is not along an existing public street. Classification of a major subdivision is that any subdivision that does meet the requirements of a minor subdivision. Based on that and based on the requirements of Code, it is classified as a major subdivision. I just want to point out that private drive abutting the property to the east and briefly the process for the two, with a minor subdivision, those can be approved administratively, however, the City Engineer has the authority to recommend that it goes to Planning Commission for larger lot splits. It requires a survey and legal descriptions. It meets all the zoning requirements for lot size and access so they can be approved. For major subdivisions, it requires more involvement. It requires submittal of the preliminary plan, a very involved plan that has to be approved by Planning Commission. If it is approved by Planning Commission, then they can submit the engineering plans and the final plat and that is recommended by Planning Commission and has to be approved by City Council to be finalized. I just want to mention the powers and duties of the Board of Zoning Appeals to hear and decide the appeals whereas there is an error and any order requiring the decision, interpretation or determination made by administrative official or enforcement. We are not interpreting anything. The Code will not be making the determination or interpreting anything, it is just the code requirement. I just wanted to touch base on that.

Mr. Franks said to clarify that if we agree with the appeal, we will be allowing a minor subdivision on a private street? Mr. Cowan said yes. Mr. Franks said the difference between a public and private street, obviously, is private is owned by someone and to have access on that, there must be some kind of legal agreements for access, there must be utilities accessed for the individual lots, storm sewer, sanitary sewer, water, electric, gas, are all those utilities in that private street? Mr. Cowan said I don't know but you are correct that there would have to be access agreements and things of that nature. Mr. Zuravel said all the access agreements are in place, the privately funded water was here, privately funded sewer, storm sewer, everything was put in because originally, I don't want to get ahead of myself, but originally this was approved by Planning Commission and City Council. This is my building (showed the Board a drawing). They originally approved 20 units here plus these four buildings that were similar to this one. Well when AMHA bought the property, they already subdivided this originally five acre tract and put this lot by itself on this public road with frontage on a private road, so this was subdivided from this after they built this because they intended to this and then they decided to put that 45 unit senior living facility back here so you have a road that was literally built to public standards and I would say 99% of the people in the City, if you ask them if it was a public road, they would say yes because it is curb, gutters and everything you need for a public road. The reason it is not a public road is because the City doesn't want to take public

roads, they don't want the maintenance and everything of it but I asked Zack if this was a corner lot and your response was it is a corner lot, right? So corner lots have to have frontage on two roads. I guess that is the thinking. Mr. Cowan said there is a difference between public and private so a definition of a corner lot is frontage on.....Mr. Zuravel said right, the definition by state law, the definition of private road is anybody's driveway. Now there is also a private road that is publically used and I think this road falls under that because this road is used by everybody, otherwise I could have anybody arrested for trespassing once they were warned, right? That could be something we could argue. Who is the owner of that lot? Mr. Zuravel said this lot is actually 50' and AMHA owns it. They made that lot after they built this building. When they built this building it was one lot. When they decided to go to 45 units, they split the lot, giving this lot frontage on a private road which I am told is illegal now. I agree with the Code the way it is stated but I also disagree, in the Charter, the Zoning Appeals Board, and I have section 1103. This is under jurisdiction in the Code, the *"Board of Building and Zoning Appeals shall have the power to hear and decide appeals for exceptions to variances in the application of resolutions, ordinances, regulations, measures and orders of administrative officials or agencies governing zoning and building in municipality as may be required to afford justice"* and I think this is what we are after, right? Everybody is after justice and avoid unreasonable hardship. I could put lots on this road if they were flag lots and then I would have 3-4 curb cuts on Graham Road and the City hates flag lots, this doesn't make sense. This is a common sense issue to take a piece of property that actually with the 2 acres there under the multi family zoning affords a 25 bed senior living facility, conditional use, but it was already approved back here, they have 45 beds back here on 2.5 acres. Mr. Leppo said real quick, that was from the 1980's right? Mr. Zuravel said that is recent history. Mr. Leppo said that was a half century away and our zoning code has changed and you fall under the current zoning code. Can I explain why we do minor versus major? We do minor versus major for a couple of reasons. Access, so there are access agreements if we were to put a minor subdivision here, we don't even know if the access agreement would allow that. Mr. Zuravel said I have that. Mr. Leppo said the more important reason why we do major versus minor the larger autonomy is scaling. We don't neighborhoods anymore. Essentially it is turned over to an HOA or some group big enough usually that will take over the maintenance in fixing other areas. There is concerns about access and maintenance which just backs up the reasoning why we have the code the way that it is.

Mr. Zuravel said I have the access agreements here. I can provide them to anybody which gives me the easement right over that land. The water, sewer, the storm sewer, they are all taken over by the county. The City will not take the pavement over. The thing that Nate isn't telling you, no offense, but when you are along a private road, you know that you pay the same property tax as everyone who gets full city services that is on a public road? Everybody when they create a major subdivision all those people, they don't get snow plowing, they don't get anything but they are charged the same millage as everybody else in the City who is provided those services and there are a couple of people who are looking into filing a lawsuit on that because it is not fair, it is an injustice. Ms. Syx said property taxes, real quick, don't have anything to do with leaf pickup or snowplowing or any of that. Property taxes go to the schools, library and EMS services which they are all entitled to on that road because EMS and police respond to that. Mr. Zuravel said they are entitled to that but the property taxes and

property value, the property is not given any discount any value when it is on a private road, you know that. Ms. Sykora said she had a question, the private road, is the private road owned by Alpha Homes and you have a written agreement with Alpha Homes? Mr. Zuravel said yes, it is an easement agreement. Ms. Sykora said for use of the road and maintenance of the road? Mr. Zuravel said for use of the road yes and the maintenance of the road, the Villas has an easement agreement. This was put in before the Villas were put in so when Alpha owned it, they gave an easement agreement to the Villas for up to the back of their driveway which is on the back, the back of their driveway that goes in there, the Villas is supposed to maintain that per the easement agreement. Mine is from there back to the end of my property according to the number of vehicles that use it so in other words, to maintain it, which I already put a few thousand dollars into maintaining the road because nobody else would and I didn't go after the money because I had to pay an attorney and it cost a lot of money, so I have put maintenance into it already because the people at the Villas they say we don't have any money, well sooner or later it is going to come to a head and these easement agreements that I have, they are going to have to pay up but it is going to be fight. I asked the City to take it over and they don't want to, they want to build a natatorium, they don't want to take care of the roads. I do have an easement agreement with them for that because it was put in place when Alpha built their property back here and they sold it to Stow, it used to be Stow Glen property so when they sold this, they made an easement agreement and they created a lot that has frontage on the private road. Mr. Leppo said he can always choose to designate this as a major subdivision and go to Planning Commission. Mr. Zuravel said this is the thing, like he said, this can be approved administratively, it makes sense. There are two lots that have the required frontage on public road, Graham Road, there is only three other lots that are on the private road. These were all going to be on the private road, it doesn't make sense and it is an injustice to allow somebody who can do a major subdivision that has 100 acres, like Pulte or whoever and they put in a subdivision, they are allowed to go public or private, right? Mr. Leppo said but they have someone to maintain that private road. Mr. Zuravel said I did that, they are an HOA just like us. Mr. Leppo said I would like to remind the board that you are basing this off the codes so the question is, is the code the code or does it become not the code? Mr. Zuravel said I am saying the code is the code, it doesn't allow, I am asking for an exception that's causing me a hardship and that is what you (the board) have the power to do. Ms Syx said you can appeal....Mr. Zuravel said it's an appeal yes. The Board of Zoning Appeals shall have the power to hear and decide appeals for exceptions to variances in the application of resolutions, ordinances, regulations, measures and orders of administrative official which that is what this was or agencies governing zoning and building in a municipality as may be required to afford justice and afford unreasonable hardship. For me to do a major subdivision for basically three lots, that is an unreasonable hardship. Honestly, I mean would you do it? The alternative is to come off Graham Road with flag lots and put three more curb cuts on Graham Road, that is an unreasonable hardship too. This makes sense, we called it a private road, we call it that but what does it look like? You have been by it Mike, what does it look like? Mr. Svasta said it looks like a normal road. Mr. Zuravel said it looks like a public road, if you didn't know it was a private road, you would think it was public, wouldn't you? This is what I am saying. This road was built to the standards although when I did my public records request, I found no evidence that the City inspected it. Ms. Syx said because the City didn't, it isn't built to public standards. Mr. Zuravel said it is built to public standards. I have all the drawings, they were submitted, this

was all done, this was a major project, it was all submitted to the County and the City and I have everything, all the paperwork on it.

Mr. Franks said he had several questions. On your drawing, lot 5 shows the existing building, that is the one (D) on this drawing and that has been there. Mr. Zuravel said that is the first building there since 1988. Mr. Franks said they have been using the private drive and utilities in that private drive and that serviced that building. Now you are going to add four other lots on there, what is going on? What are you building on them? Single family homes? Mr. Zuravel said that is what I want to build but, you know, ya, I want to build single family homes but the next question people ask is what are you going to do, rent them? To me, that is a discriminatory question. Mr. Roberts said that is not the question, the question is what is planned for the lot? Mr. Zuravel said single family homes. I have the ability, like they said, if I was going to go through planning commission or anything else, it is multi-family zoned for 12 units per acre, 25 beds for senior living, right? Mr. Cowan said conditional use. Mr. Zuravel said I don't have a chance with Planning Commission or Council. Council voted against the Law Director when somebody wanted to buy this building and put an opioid treatment center there and she (Ms. Syx) told them they had to by law vote for them and they said we don't care what she says and they told me that on the phone so I don't want to go to Council, I will be honest with you. Anything I've gone to Council for, oh it's Paul again. Mr. Franks said regarding lot 1 and 2 fronting on Graham Road, will receive all utilities off of Graham Road. Mr. Zuravel said yes those are already in, there is a lateral there, I have a drawing. Mr. Franks said so lots 3 and 4 will front off of the private drive and receive utilities off of that private drive. Mr. Zuravel said there is a sewer line and water line and there is actually already laterals in there that are on the drawings. Mr. Franks said do we know if those utilities in the private job have the capacity to serve those other two houses? Mr. Zuravel said we do know. Those utilities were put in to service five buildings that are 6,000 s.f. It is an 8" sewer line, we know that when you put in a sewer line, the 45 unit apartment building, they have one 6" sewer line, just one. It is not a matter of capacity it is a matter of maintenance. 8" is standard for everybody everywhere, they don't make them any bigger unless they are going to extend a main line to service acres and acres. There is plenty of capacity there, it is four homes. I can go right now and put 25 beds. The other thing that I wanted to tell you guys was that I did a minor subdivision on Gilbert Road with a private road with frontage with lots on a private road. Jim McCleary approved it. It was the same thing. It wasn't a cluster. I originally did a cluster development and they cancelled the cluster development because I didn't add on it and they said you have to submit as a minor subdivision, the plat says minor subdivision, Jim McCleary approved it and that is how it went down. I have the texts to prove it. Mr. Cowan said that is a separate project, we are reviewing what is here today. Mr. Zuravel said I am talking about preponderance of evidence. He did it before, he did it before the same type of thing and now he is going to tell me that I can't do it. I had every right to think that when I submitted that drawing, because of what I did on Gilbert Road, that it would be approved. I had every right to think that, wouldn't you agree? He did approve it. Ms. Syx said I am not disputing anything that happened before, I wasn't here for that but let's focus on what we have here. Mr. Zuravel said this is an appeal, it is for an appeal for an exception or variance from the Code. I think it makes sense. Does that make sense? Ms. Syx said this is the jurisdiction of what they are allowed to hear but the law that Zack put up. Mr. Zuravel said but this is under the Charter. Ms. Syx said is 11.17. Mr. Zuravel said that

actually is in the Planning and Zoning Code and this is actually in the Charter though. Ms. Syx said I understand what you are saying. Mr. Zuravel said it gives them the power, don't you agree? Ms. Syx said it gives them power to hear the appeal of the decision that.. Mr. Zuravel said hear and decide don't forget decide. Listen to what I am saying, hear and decide appeals for the exception to and variances in the application of resolutions, ordinances, regulations, measures and orders of administrative officials or agencies governing zoning and building and municipality as may be required to afford justice and avoid unreasonable hardship and I think if you accept this appeal you are avoiding unreasonable hardship. Mr. Roberts said what is your unreasonable hardship, I don't see it written down here anywhere, an actual component of unreasonable hardship. Mr. Zuravel said the unreasonable hardship would be the cost of doing a major subdivision versus the minor subdivision. The cost of doing a major subdivision involves storm water plans, more engineering plans, everything that was already done on this property when Alpha Phi Alpha did it. They did everything. There is storm water from this parking lot, there is storm water put in for this. It was built to accommodate these building and then they quit and put this 45 unit back here.

Mr. Van Note said the part of the discussion held a while ago, where he was talking about an agreement, a road agreement. I am an owner at the Villas Condos as well as a Board Member. This is something that we have actually been searching for and have requested from Alpha Pi Alpha. Our attorneys had done checks, I have looked online and have not found any legal agreement. I would like to see what you have Paul. Mr. Zuravel said if you would like to meet with me I will show it to you, it is all there. Do you know why it is there? Because I am the only one who took the time to investigate and when I bought that property, I had a full title search done and I got a thick title search because at the time Stow Glen was in trouble with the banks. I had a lawsuit over the place on S.R. 59 there. I had to prove to them that they didn't own it anymore. This is the building when they built it and this sewer lateral here, lateral here. I think it is reasonable, don't you agree? We are talking about two lots that are legal and it could be four that were legal if I did the flag lots, I can do a lot more density there and honestly when I had that property on Gilbert Road, I sold the property to the guy who did the condos down there, now they are selling the property. Well, the comprehensive plan at that time looked for more density in that area. I begged City Council to introduce legislation and Rob Kurtz to put more density on that property down there and he wouldn't go it and with the cost of building and the cost of everything we have to increase the density on stuff and this was below the density for 2 acres, you are going to end up with 5 homes on 2 acres. Really it could be a lot more dense, don't you think? It could be another 4 unit building there. Mr. Svasta said he was surprised this was an R-3. Mr. Zuravel said when I bought that property, it has a fire alarm system in this building. The fire inspections haven't been done in 3 years so when I bought it I had to bring everything up to code. They were charging me, they have a fee that they charge for waterlines coming at 6" line, they even charged me \$100.00 and all I had was a 4" line. I had to go back to the City and I could go on and on. Mr. Svasta asked is the hardship the cost involved in complying with the major subdivision? That is the hardship? Cost? Mr. Zuravel said yes. I honestly believe that because they are requiring the roads to be along a public road. I think that they are doing an injustice because if a big developer comes along with 100 acres, he can put lots on a private road because we don't want those roads, we don't want to maintain them, they are going to be private and so yes, you can put smaller lots even, 3,000 or 4,000 s.f.

whatever. Mr. Reilly said but that would still be a major subdivision because it is 100 lots. Mr. Zuravel said it would be a major subdivision but he has the right to put in lots fronting on the private road which I don't because I am a small guy who doesn't have any money. Mr. Reilly said for the reasons that Mr. Leppo said already. Mr. Zuravel said but it doesn't make sense does it? You guys all know what the code was basically and Nathan knows it is contradictory in a lot of ways. Mr. Leppo said you can talk to your legislator. Mr. Zuravel said I have tried for ten years and I have gotten nowhere because these guys aren't interested in planning code, they are interested in whatever they are interested in.

Mr. Franks had a question for Mr. Cowan. This is zoned R-3 residential, does this permit single family homes? Mr. Cowan said yes. Anything other than single family is a conditional use. It would require review and approved by Planning Commission. Mr. Zuravel said if you have any other questions. Honestly, I think it is a good plan and I think to require people to have, you have two acres, you want to create five lots and you are requiring to be on a public road when you have.... Ms. Sykora said she wanted to clarify. You stated that you have a written agreement to use from Alpha Alpha. Mr. Zuravel said an easement agreement, it was filed in 1988. Ms. Sykora said a written agreement between you and them. Mr. Zuravel said yes that's what an easement agreement is. Ms. Sykora said I understand but I wanted to make sure. Mr. Zuravel said I was prepared for this. Mr. Svasta asked if it was recorded and Mr. Zuravel said yes. Ms. Sykora asked if it was between you and Alpha Alpha. Mr. Zuravel said yes, this is Alpha Stow Housing its heirs and assigns. Ms. Sykora asked who maintains it now? Mr. Zuravel said well the agreement spells it out. At the time it was written it was 50/50 then when they put in the Villas they made the Villas take up so far and then it became 50/50 but according to the use but who does the maintenance? Me. They do the plowing and I do the pavement repairs. I honestly think the City should take the road over. I will argue with Jaimie Syx over this but people come back there all the time and even police and if they are not called back there, they shouldn't be back there. That would be like them driving up your driveway Mike. It is a private road. That is another thing, your driveway is not the same as that road is it? But under code it is. It is a private road. Mr. Svasta said that is what you should be trying to achieve is getting that road dedicated as a public right of way. Mr. Zuravel said I tried but they will not listen to me. Nick Wren says no we are not maintaining roads, City Council said we don't want roads, we don't maintenance. I said what about when nobody maintains that road and the EMS or police go up there and they bust up their vehicles? Then everybody has to pay for it. That is why I patched the pot holes once but I am probably going to do it again if these in your facility don't do what is right. That is all we have do is do with what is right then we would all get along. This makes perfect sense and it is within your power to do it. Mr. Seifert said the only thing we are voting on is whether or not we agree with the City's perspective that this is a major subdivision versus a minor subdivision. Mr. Zuravel said I don't think that is what you are voting on. Ms. Syx said that is what the appeal was, that was all we are voting on. Mr. Zuravel said I filled out the application because of the variance. Ms. Syx said is that what is on the agenda for today? Mr. Zuravel said no that was part of my application. Go to the City's website, that was on the application. In order to go to the BZA, you have to fill out that questionnaire and that is what I did. Mr. Cowan said filed an appeal application. Mr. Zuravel said I filled it out, do you want me to open the portal and show you what I filled out? Mr. Cowan said so our applications are geared toward variances so it automatically came up with

and you applied for an appeal. Mr. Zuravel said I filled out everything, the hardship, the this, the that, everything is in there, it was all in the portal, which I don't like the portal. Mr. Cowan said it was also in your description that it was an appeal application. Mr. Zuravel said yes, in my description but then I wrote in the portal after you guys wrote that it was an appeal for a variance because I said it was an appeal because I had already filled out the variance application so what else would it be, an appeal for a variance, that is what you go to the Board of Building and Zoning Appeals for to appeal a variance to what you are trying to do. Mr. Leppo said you can't ask for a variance, there is no option now. Mr. Zuravel said but can you ask for an exception? Ms. Syx said no. Mr. Zuravel said according to the Charter you can. Ms. Syx said no. Didn't Jim McCleary also make this determination we are enforcing the way that the code is written? So the way that we interpreted your application was an appeal of the enforcement of the code. Mr. Zuravel said well you may have interpreted it like that but that is not how I filed it. I filed it with filling it all out. Ms. Syx said what is the description of the variance? Mr. Seifert said this is from the portal and it says briefly describe why the variance is needed. Chapter 1137.05 appeal of a requirement for lots not allowed to have frontage on a private road in a minor subdivision regulations. I would like to create three lots that front on a private road because of the existing conditions. So it sounds to me, please correct me if I am wrong, that the City took exception with the fact that your application says minor subdivision and they don't agree with that. Mr. Zuravel said and I agree with what they said about minor subdivision, I don't agree with it but I agree with the way they written it but I my intent was to come to the board to appeal that decision and ask for an exception according to Chapter 1103. Ms. Syx said so you are asking them from the boards and history by the law as it is written and provide you with an exception. Mr. Zuravel said no I am asking the board to do what is within their powers that were given them by Chapter 1103 in the Charter. Ms. Syx said but they don't have the power to not comply with what the law says. Mr. Zuravel said they won't be disregarding what the law says. Ms. Syx said that is what you are asking them to do. Mr. Zuravel said I can't argue with you because I am not an attorney. It is a private road that is publicly used and there is a classification for that too. If that is not a public road I don't know what is, otherwise you know what? I am going to be calling them guys everyday and I am going to put up a "No Trespassing" sign and say you know what, whoever I see come on that road if they don't live there, if you guys want to call it a private road or whatever, then you can't have it both ways. It makes sense doesn't it? Otherwise go through Planning Commission, and you know what Planning Commission is going to do? They are going to say, Paul, oh man, you are building five houses, you need to put in a storm water pond, you need to do this, you need to do that and all this other stuff that is totally unnecessary. Mr. Franks asked if Mr. Zuravel could pause for a minute, we would like to have a discussion here amongst the board members. We have to determine if his appeal that a minor subdivision is required to be on an existing public street is proper so if we do that, we are going to set a precedence that any subdivision coming up on a public street, it doesn't have to be a major subdivision anymore. Mr. Roberts said we would be setting a precedence and going against the State Code and statutory law under that. Mr. Franks said what is before me and appears to be before our board here is this appeal of Code Section 1117.01(b)(1) that a minor subdivision is required to be along an existing public street so we do we believe that it is required to be on a public street or not? So that is our task. Mr. Seifert said but I think we already heard tonight that a subdivision could go in and have a private drive in it. Mr. Zuravel said right, a subdivision can. Mr. Franks said but then it

would be a major subdivision, right? Mr. Seifert said correct, potentially, we don't know that for a fact. Mr. Cowan said yes, if it is allowed in a private street it would not meet the definition of a minor so it would be classified as a major. Mr. Seifert said so from what I have seen here, and I am just going to say this to the board, and not to you (Mr. Zuravel) because I don't want to get into this discussion, if I were listening to this the applicant, I would take this and submit it to the City as a major subdivision. He has all of the records for all of the access and all of the utilities and that they have been recorded by the County and have been in place for a number of years. He is asking to create five lots, one of which is already got an existing building on it. I don't see why the engineers and the planning commission should have an issue with it just like it is. It is not our place to vote for that variance because that is not what we have been asked to do. We have been asked to do whether it is, a minor or a major subdivision.

Mr. Zuravel said give me my stuff. I see where it is going, it is going the same place that everything else has gone with the City, it is okay. To do a major subdivision on that it would be very expensive, it would not be cost effective at all. It doesn't make sense to do a major subdivision on five lots. There are already two lots there, we are creating three more lots, it doesn't make sense to do a major subdivision. Now if the paperwork wasn't filled out right or whatever, I did say on the portal that this would be clear, I was looking for a variance. If you look further in the portal. Mr. Cowan said all that was filed was an appeal, an appeal to the variance. Ms. Syx said but the variance you are asking for is to make it a major subdivision without it actually following through with all of the steps. Mr. Zuravel said no, I am asking it to be a minor subdivision that doesn't require frontage on a private road, that is what I am asking for. I am asking for a minor subdivision that doesn't require frontage on a major road because you know what? Like I said, I can put three curb cuts out there on Graham Road, and of course I will go to Planning Commission because you have to go to Planning Commission for a flag lot, oh we don't want any curb cuts on Graham Road, we don't want three more curb cuts. They approved this plan, the City did, or whoever it was, they approved 20 units there plus four buildings. It was thirty years ago, granted, but it was approved by people that represented the City of Stow. There is are two existing lots there, I am looking to add three lots there, just three which is the minimal density for that two acres and it is over two acres according to my surveyor. I get where you are coming from, you have to look at exactly what you are looking at but that wasn't the intent. The intent was to appeal the code and ask for an exception that requires frontage on a public road. Now, do I have to rewrite and go through it again? How do I rewrite it so that we all know what I am really asking for? Can I do that and go to BZA? Jaime? Mr. Leppo said what you are asking for is to challenge the Code. Mr. Seifert said there is a code section that would prohibit what he is trying to do here that he could apply for a variance from but that is not what we have in front of us tonight. Mr. Zuravel said that I apply for an exception? Mr. Leppo said what you would have to do basically you are challenging the law itself. Mr. Zuravel said I disagree with that. No matter who comes in here with a variance, they are challenging the code, whether it is a subdivision regulation in the code. Mr. Leppo said they are challenging the hardship on top of the code. Mr. Zuravel said this guy here (pertaining to the first case) he created that hardship on himself with that garage, all he had to do was reduce the size of it. Mr. Leppo said this goes back to if you make the decision to set a precedent and it will change our code and we have to go back and basically rewrite the code to then meet the precedent codes. Mr. Seifert said I am not saying I am in favor or opposed to that variance, I

was asking is there a code section that he is referring to that he could appeal because we didn't see it in our paperwork tonight. All we see in our paperwork is that a minor or a major subdivision. Mr. Leppo said correct, that is the determination, is it yes or no. Code is for engineering, plotted through the County and then we have secondary. Mr. Zuravel said a major subdivision is 40, 50, 60, 100 homes. They used to have it in the code. Mr. Franks said not on two acres. The code used to allow cluster development on major roads with a one acre minimum lot size. I have property on Graham Road with two acres, I went to do a cluster development, Rob Kurtz, right away changed it to three acres so I could no longer do that. I bought the property looking at the Code and he said we changed the Code so now you can't do it and it was made for projects like this one. This is what I would consider an infill project, and a low density infill project at that but to take that cluster development, and not only that, Jim McCleary did it once before on a Gilbert Road, that is what I don't get. Everybody is overlooking the fact that a thing just like this was approved by him. Mr. Leppo said the difference is he is trying to put a minor subdivision on a private road. Mr. Zuravel said that is what I did before and he approved it and I have the plat to prove it. He approved on Gilbert Road, Harrison Lane, private road, with lots fronting on that private road, he did it. I had every reason to expect this would go through because he did it then, and then he tries to come up with this malarkey about well you know, no, Rob said since you already had a cluster home, we could do it, I said no, no Jim, here is the e-mail that Rob sent me that your cluster division is no longer valid, you will have to apply for a minor subdivision and I went to my engineer, put it on the plat, minor subdivision, I had five lots and they approved it. It exists today, Harrison Lane, off of Gilbert Road, behind Walmart, private road with lots fronting on a private road, approved by Jim McCleary, the Engineer. That was the precedent that was sent, we talked about setting precedence, that was the precedent, don't you agree? Ms. Syx said I don't have anything to say about Gilbert Road. Mr. Zuravel said I know but it is a precedent.

Mr. Franks said we are at a point where we are ready to make a motion on your appeal. Is there a motion on this case.

Ms. Sykora wanted clarification of the vote. Mr. Franks said we are voting to approve his appeal. Mr. Roberts we are voting to approve the appeal and we have to vote yes as we agree with the developer and no agrees with the City. Mr. Roberts said under the laws and the statutes and the zoning code, the definition of major subdivision applies and remains. Mr. Svasta asked if we can change the motion to disapprove the appeal just to make clear, to make it clear. Mr. Franks said it is a motion to approve. Mr. Zuravel said you don't have to worry about me suing you. Mr. Franks said it is about the procedure here. Ms. Syx said that I do believe you have to vote in the affirmative. Mr. Franks stated yes to move in the affirmative.

Motion to approve the appeal from Section 1117.01(b) in the City Ordinance for Appeal Case #23-006, no conditions by Randall Roberts, seconded by Edward Franks, (2 Yea's (Greg Seifert, Peggy Sykora) 2 Nay's (Edward Franks, Randall Roberts), 1 Abstain (Mike Svasta)) Motion Denied.

Other Business: None

Adjournment: With no further business to be discussed, motion to adjourn by Randall Roberts, seconded by Peggy Sykora, meeting was adjourned at 7:52 p.m.

Edward Franks, Chairman

Mary Botts, Secretary