



CITY OF OLMSTED FALLS
PLANNING AND ZONING COMMISSION
MINUTES
NOVEMBER 20, 2019
7:30 PM
COUNCIL CHAMBERS

Commission Members Present: Brett lafigliola, Gary Pehanic, Garry Thompson, Peter Carpenter, Michelle Hawkins Cornel Munteanu and Dave Fenderbosch. Audience: 10

Chairman Brett lafigliola called the meeting to order at 7:32 p.m.

1. **Planning & Zoning Case # 34-2019** - A request made by Joseph & Karina Robinson, owner of 24619 Scott Blvd, PP# 291-15-037 for a variance of 11 feet to Section 1470.10(b)(1) to permit an inground pool, fence, and retaining wall to be installed at a riparian setback of 89 feet in lieu of the required 100 feet.

Mr. lafigliola administered the oath. Ms. Robinson stated that she would like to install an inground pool. Her backyard is on a slope that runs down to a small creek. She moved into the home two years ago and has always wanted to install a pool and will completely renovate the backyard. Currently her backyard is unusable. The pool will be gunite and concrete with a retaining wall and she will fully landscape the backyard.

Mr. Smerigan indicated that this is a minor encroachment into a riparian setback and that encroachment is only one corner of the property. The pool and retaining wall will encroach approximately two to three feet, the bigger encroachment is the fence, which obviously does not have much riparian setback impact. He believes the scope of this variance is minor and does not see that there would be any harm to the riparian setback and he raises no objection to granting this variance. Mr. lafigliola asked if Mr. Smerigan was aware of any comments from the City Engineer. Mr. Smerigan stated that he indicated that he had no issues.

Mr. lafigliola asked how tall the retaining wall would be. Ms. Robinson indicated that she believes it will be four feet tall. Mr. lafigliola stated that the pool will be 28 x 14 feet and the drawings indicate a 14-inch retaining wall 40 linear feet and he asked if this would be more of a seating wall or retaining wall. Ms. Robinson indicated that since there is a slope in the backyard this will be a retaining wall to secure the entire pool. Mr. Smerigan replied that the wall will vary from 3 ½ to six feet. Since the pool varies in depth the retaining wall depth also varies. In other words, they are putting the wall down far enough to contain the pool.

Mr. lafigliola moved to **grant** the request in Case #34-2019 made by Joseph & Karina Robinson owner of 24619 Scott Blvd, PP# 291-15-037 for a variance of 11 feet pursuant to Section 1470.10(b)(1) to permit an inground pool, fence, and retaining wall to be installed at the riparian setback of 89 feet in lieu of the required 100 feet; Mr. Pehanic **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

2. **Planning & Zoning Case # 33-2019** - A request made by Matthew Bak, owner of 8728 Columbia Road, PP# 291-12-006 for a variance of 32 square feet to Section 1240.09(a)(3)(A) to permit a 36 ft. x 30 ft. detached garage making a total garage floor area of 912 square feet in lieu of the Code permitted maximum of 880 square feet.

Mr. Iafigliola administered the oath.

Diane Bija of New Creations Builders representing 8728 Columbia Road. She stated that Mr. Bak is interested in building a 38 ft. x 24 ft garage to replace one. The total square footage will be 912 but the maximum size is 880 square feet. She finds this request non-substantial due to the large amount of property Mr. Bak owns.

Mr. Iafigliola stated that there are multiple buildings on the property. Ms. Bija indicated that the new garage will replace one of the buildings. There are several structures on the property but two of them will be removed. In order to accommodate parking and replace the storage that he will be removing we are requesting a larger structure. She believes that one bigger structure is better than a lot of little structures.

Mr. Smerigan indicated that there is a typo on the agenda, it should read 24 ft x 38 ft, it is 912 square feet that is being requested and the code permits 880 square feet. Due to the size of the property Mr. Bak is permitted to have up to 3,000 square feet of accessory structures but he can only have two structures and currently there is an old garage, back garage and two old sheds. His understanding is that one garage and the two sheds will be demolished so there will be only two structures on the property. Even though the building itself is over the 880 square feet his combined total accessory is substantially less than what he is permitted by code. He believes that eliminating three buildings and replacing them with only one is an improvement to the property and he has no objections to granting this variance.

Mr. Bemer stated that any motion should depict that the structures in the photo's will be removed.

Mr. Iafigliola asked if Mr. Bak was in agreement to remove the two sheds. Mr. Bak replied yes.

Mr. Iafigliola moved to **approve** Case #33-2019 a request made by Matthew Bak, owner of 8728 Columbia Road, PP# 291-12-006 for a variance of 32 square feet to pursuant to Section 1240.09(a)(3)(A) to permit a 24 ft. x 38 ft. detached garage making a total garage floor area of 912 square feet in lieu of the code permitted maximum of 880 square feet; Mr. Thompson **seconded**. Mr. Iafigliola **added the condition** that this approval is contingent upon the timely removal of the front garage and the two sheds currently located on the property and disposed of properly offsite; Mr. Thompson **seconded**.

Mr. Bija asked if there was a timeline of the removals, for example, the City of Cleveland gives one year to demolish. Mr. Iafigliola asked what she would deem reasonable. Ms. Bija indicated the spring. Mr. Iafigliola indicated that she would be given four months. Poll: 7 ayes; 0 nays. **Motion carried.**

3. Planning & Zoning Case # 35-2019 - A request made by Anthony Giancaterino, owner of 8119 Columbia Road, PP# 291-20-002 pursuant to Section 1232.06 for preliminary development plan approval

Mr. Giancaterino indicated that he would like to build a 5,000 square foot building on the back of his property. He owns Ameriprint and outgrew the space approximately three to four years ago. The rent in this particular area is getting ridiculous and it does not justify paying rent when he can build his own building on his property for a lot less. Hopefully down the road he can build a few more buildings and would make a nice little development for the city. His property is bowling alley shaped so it is long and his neighbor is Yard Smart which is landscaping supplies.

Mr. Iafigliola indicated that the City Engineer has presented a few questions. He then read Mr. Sheehy's email dated November 4, 2019 (see attached).

Mr. Smerigan indicated that the property in question is located in the MUTND district, retail and service establishments are permitted uses in this district, so the proposed use of a printing operation and proposed commercial site adjacent to it would be permitted. There are some issues regarding whether or not we are lot splitting. As the Commission is aware, we have certain minimum open space requirements in an MUTND and we will need to know whether we are dealing with a portion of the lot or the entire lot. Again, we need to figure out what we are doing to meet the open space requirement since it would change the percentage of residential and non-residential use. As far as building setbacks, the building would comply with the setbacks in terms of the north and south property lines; in other words what would be the side lot lines. If there is a future roadway in the back the code states that the building setback from the street has to be between 5 and 25 feet and the proposed building would be 50 feet off that new right of way so that would need to be adjusted or given a variance by the Commission. As he indicated three stories is permitted in the district and the proposed building is 17 feet; parking complies with all the required setbacks in the district. This district has some architectural treatment requirements including a certain amount of masonry on the front façade and assuming there is a street in the back and the lot is split that would be the front, in other words the east side would be the side you are looking at for that compliance. There are some questions that need to get resolved and issues that the Commission needs to sort out in order to move forward. Again, we are dealing with preliminary site plan approval. While the plat indicates a future right-of-way the city does not actually have title to the property so it is not a dedicated street. He knows there was an email from the adjacent property owner indicating that they would give him authorization to use that property but the City would need that in a formal easement. The other problem would be that the driveway as shown is gravel and the code requires pavement, so anything other than hard surface would require a variance. As you know in the past, he has not personally supported anything other than hard surface, so there are some issues to resolve. Again, things such as signage and final landscaping would be addressed as part of a final development plan, if and when we get approval for a preliminary development plan.

Mr. Bemer stated that Mr. Smerigan described the number of issues that still need to be addressed. It seems like this plan is pre-mature, accessibility is a big issue, once that is

addressed, he believes the applicant would be in a much better position to move forward with preliminary approval.

Mr. Iafigliola stated that the 2002 plat shows an easement to the city for a future north/south access road. Mr. Caterino indicated that it is a 60-foot easement that was dedicated when the nursing home was built. Mr. Iafigliola asked who owned the easement. Mr. Caterino replied that the easement is owned by the nursing home and directly abuts his back property. He indicated that this is a dedicated easement as it was dedicated with the street. He cannot put an easement on top of a dedicated easement.

Mr. Iafigliola asked about the lot issue. Mr. Smerigan indicated that the question is whether or not the applicant intends to split the back portion of the property from the front where his home is located. He is proposing to build commercial property on the back portion and access that property from the end of Eastern Star Lane. He understands that Mr. Caterino is anticipating that eventually there will be a connection from Eastern Star Lane north to Metropolitan Blvd and if you look at the long-range plans for the city there was a desire to make that connection. The issue is that this connection does not exist today so there is no frontage in the back. As you know, we have instances in the city where there are paper street but those are streets are dedicated and in the ownership of the city, in this case, the ownership of that land is with the nursing home and the only authority the city has is the reference to future right-of-way that is located on the plat drawing. Mr. Iafigliola stated that he is assuming that the applicant must have some indication from the property owner that they will allow this. Mr. Smerigan indicated that the applicant provided an email from the nursing home that they would not object to him utilizing the property. If they are going to give him an easement to use the property it would have to be a recorded easement in order for the city to move forward. Currently if the back piece is split there is no frontage on a public street.

Mr. Smerigan indicated that the applicant is ahead of the city from the standpoint that he is anticipating using a street that the city has not yet constructed. If the property is split, the applicant would also require a variance because the code requires that in order to split property it has to have frontage on a dedicated public street and that easement is not a dedicated street at this point. We could grant a variance but the variance would have to be based on a permanent easement in order to get access to Eastern Star Lane.

Mr. Iafigliola stated that the city engineer indicated that the applicant does not address how a road will be installed on the adjacent property. Currently there is no road from Eastern Star Lane to the applicant's back property. Mr. Caterino indicated that this would not be a road but a driveway. The plan is to put in a driveway based upon, and the way the plans are marked, a sub-base, the base for a road, in other words all the gravel, the width of 25 feet that is required. Mr. Iafigliola replied that the applicant does not want to pave the area. Mr. Caterino replied he does not want to pave the area. The idea is to get a variance to make this a driveway. He will put in the sub-base for a road and down the road if a road develops then the base is ready for the concrete. Mr. Iafigliola stated that the applicant is willing to install the city's standard sub-base at the full width but not pave it. Mr. Caterino replied yes. Mr. Iafigliola stated that if the applicant were to request a driveway the city

would require pavement. Mr. Caterino indicated that the city has allowed two driveways on Metropolitan.

Mr. Iafigliola stated that the proposed sub-base will be as long as the applicant needs it will not be provided to the end of the northern property line. Mr. Caterino replied that he will install it to the middle of his property. The mound will only be dirt mounded for landscaping and if the road is installed you would remove the dirt.

Mr. Iafigliola indicated that the city engineer's memo indicates that information is needed regarding services, electric, telecom, water, gas, storm, sanitary etc. Mr. Caterino indicated that he did not get that far in his plans. His architect is the individual that built the nursing home and completed the work on the easement. Within that easement there is sanitary, storm, water and gas and runs all the way down to Metropolitan. Mr. Iafigliola indicated that all of these details would be needed on the final plans. Mr. Caterino indicated that he is aware of where all the tap in's are located.

Mr. Iafigliola stated that the city engineer comments that the road would need to be paved and meet the appropriate design standards for a commercial roadway and asked if the applicant agrees or objects. Mr. Caterino replied that he objects.

Mr. Iafigliola asked if this rear property would be split from the front. Mr. Caterino replied no, it is not necessary, it is zoned that he can have both. Down the road maybe but would depend on whether or not he builds other buildings on the property. Mr. Iafigliola stated that the buildings the applicant anticipates would be built further west. Mr. Caterino replied correct.

Mr. Iafigliola read a memo from George Smerigan dated November 20, 2019 (see attached).

Mr. Smerigan indicated that if the applicant is not splitting the parcel then we have to treat the whole parcel. In this district he can have both commercial and residential; obviously the open space percentage he also meets.

Mr. Iafigliola indicated that according to Mr. Smerigan's memo if the future street is constructed the eastern elevation of the building would face the new street and would need to comply with the architectural requirements. Mr. Caterino replied that you are looking at the future easement section being the front of the building but it is actually the side of the building, the building will face the south. Mr. Iafigliola indicated that the east elevation would be a blank wall. Mr. Caterino indicated that is correct the bottom four feet is a brick façade. He is 50 feet off the easement as he wants to leave the wooded area that is currently located in this area.

Mr. Iafigliola indicated that there is also a parking lot variance that will be needed as the proposed lot is gravel. Mr. Caterino indicated that the driveway and parking lot would be gravel except for the handicapped spots. Mr. Iafigliola asked why? Mr. Caterino replied the cost of concrete. It would cost him more to concrete the parking lot than it would to build the building.

Mr. Iafigliola stated that we have identified 14 issues, some of which can be worked out. The biggest issue he sees is that applicant is proposing to install the sub-base of a road and gravel the parking lot for financial reasons but that is in direct opposition to recommendations. He also has some concerns, if we are going to call this a future access road that other developers may build off of to the north or the south the applicant has indicated about precedent particularly on the northern side, he is not familiar with those offhand, and every case is a new case of precedent so he is going to say that he is concerned. Mr. Smerigan stated that Mr. Iafigliola raises a good point, if the property owner to the north wants to do the same thing you can't treat people differently so how far are we going to extend the gravel driveway. At some point its either going to be a street or not a street and he knows that the city is not in a position to put in a new public street we don't have the demand so that is a concern and believes that is the concerns that Mr. Sheehy also has and is why he brought up the issue of doing building this to city standards because if not, in the future, the city will have to remove what is built and bring it up to city standards which will become additional costs to the city. We want to encourage business and encourage development but he thinks doing it in this manner has the potential to be problematic. If you read through the architectural treatment the whole idea of this district is to do things close to the street in the old traditional neighborhood style, with a lot of façade requirements, for example, the front façade needs to be a percentage of glass, etc., which Mr. Caterino will not meet. So, you are starting this street off with waivers to the requirements. The code has quite a bit of requirements, and as you move forward if developers are not meeting those requirements then you are essentially establishing a new set of standards and he wants the Commission to keep that in mind. He stated that Mr. Caterino has a good argument from the stand point that he is the first lot, but he is also not the only lot that has frontage on that future right-of-way so he is not the only one that could come in and make this request.

Mr. Caterino indicated that the city cannot afford to put a street in and he cannot afford to put a street in, but is willing to pay for 300 ton of gravel to put the base in and use as a driveway. Down the road north of him is 31 acres all belonging to the same person so that is quite a long way before you get to another piece of property. For anything to be done past his house there is 31 acres that something has to be done with before a road can be put in and until that is done there is no need for a road. He needs access and is willing to install the base for a street and then down the road if the city does need a street the base is already installed. The code as it relates to glass, this isn't Crocker Park and this area will never be that type of retail because it is hidden. We have a landscaping supply company on the south side of his property and he will never be able to build homes to sell because of the mess next door. There is 21 acres to the left of him and has been for sale for the last 20 years. He is looking to develop what he has been paying taxes on for the past 20 years. Mr. Smerigan indicated that the city may want to enter into an agreement with the applicant which indicates that he can partially build a street but that is a Council determination and he does not believe the Commission can take that position on behalf of the City. Mr. Bemer asked if Mr. Caterino discussed with Mr. Smart regarding purchasing an easement at the eastern end of his property for a driveway. Mr. Caterino indicated that he has not and would prefer not to. Mr. Bemer asked if the commercial building could be moved closer to the residence so there is easier access to Columbia Road. Mr. Caterino stated that he does not have the width in the front of the property to install a 25-foot driveway which is

needed per the code for fire trucks to access. Mr. Bemer indicated that this is an area in need of redevelopment that may or may not happen, and believes that the precedent of allowing access to the nursing homes easement is very problematic because development will occur because everyone will have access. He has a problem giving an easement that is not on any type of dedicated road. Mr. Caterino stated that the dedication plat states "hereby dedicate to public use forever the streets easement and other public sites and all improvements therein shown on this plat" which makes this plat and that easement available to be used for public use and the only stipulation right now is whether it will be concrete or gravel street. Not to mention that he paid a \$12,000 assessment when the street right-of-way was built for sewers. Mr. Bemer indicated that clear understanding is if it going to be public it will be operated by the city. Mr. Caterino replied when in his lifetime will the city put a street in that he paid a \$12,000 assessment for. It is a dedicated easement its not just a straight easement it's a dedicated easement the same as the street and it states on the plat that it is dedicated which means the city has control of that and what they can do with it. Mr. Bemer asked if an easement was recorded with the county. Mr. Caterino replied no. He stated that Mr. Smerigan could not find an easement until Mr. Caterino found the 2002 plat because the street and easement are one dedication. Mr. Smerigan replied that there is no other easement recorded, the only recording is the plat in front of the Commission. Mr. Bemer indicated that he would offer the option of tabling this issue as he has to figure out access accessibility. Mr. Caterino replied it has to come through the back as there is no other way. He asked what the problem is to having this access when it is a dedicated easement and the city has the right to allow it. He got permission from Eastern Star to use the easement but he cannot get an easement on top of a dedicated street easement. Mr. Bemer indicated that the question of the easement is whether it is clearly for public use and that indicates that it the easement is granted to the city to make public improvements, streets, sewers, utility lines, that is the intent of the dedication to public use. He indicated that if the property owners want to install the street the city would be in agreement. Mr. Caterino replied that he will not install the concrete. The City has, on Metropolitan Blvd, allowed two or three homeowners to install a gravel driveway on the street right-of-way and not pave it and it still a gravel driveway today. Mr. Bemer indicated that he suggests that Mr. Caterino sit down with Mr. Smerigan and he is encouraging the Commission to table this issue. Mr. Caterino replied that if he cannot get use of the easement to build on his property, he will build a building someplace else in a different city and over his business out of the city. He paid money for the easement on an assessment and he is getting to the point where the city has previously allowed what he is attempting to and he will put the sub-base in for a street. There is no need for a street, someone buys the 21 acres then there might be a need for a street and it does not make sense for him to spend \$150,000 to build a city street. Mr. Bemer replied that the city has consulted experts in this field, Mr. Smerigan who is the City Planner and Don Sheehy as the engineer and we are willing to put our heads together to see if there is an alternative resolution but at this point it is premature to give the applicant a thumbs up or thumbs down and again encouraged the Commission to table the matter at this point. Mr. Caterino replied that all the issues, other than the street access, are not a problem. If the mound has to be moved or removed he does not have a problem, if the frontage has to be changed he does not have a problem with; the problem he has is the easement and use of an easement that money has been charged to him to have that easement.

Mr. Iafigliola stated that before any decisions are made that we will regret later and indicated that more information is needed on how the easement works, what is allowed and who does what. What Mr. Bemer suggested is that the Commission table the issue, which is basically an action that allows the Commission to simply not vote yes or no. This will give the applicant time to return to the Commission with answers to put the Commission in a better footing to understand what is allowed and what is not allowed within the easement. Mr. Caterino indicated that he has a deadline and needs to have a building up by a certain point because he has a lease that will run out next year and he would like to have a building built that he can move into before that. The only problem here is that easement. Mr. Iafigliola indicated that the Commission needs information on the easement. He does encourage Mr. Caterino to speak with Mr. Bemer, Mr. Smerigan and Mr. Sheehy in order to make this easement as clear as it can possibly be.

Mr. Iafigliola **moved** to table Planning and Zoning Case #35-2019 a request made by Mr. Anthony Giancaterino, owner of 8119 Columbia Road, PPN #291-20-002 for the purpose of the applicant returning with additional satisfactory information at the time he sees fit; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

4. Planning & Zoning Case # 32-2019 - A request made by Joseph Woehrman, owner of 24277 Lantern Drive, PP# 291-30-049 for a variance of 3 feet to Section 1240.07(b) to permit a side wall height of 12 feet for a detached garage in lieu of the Code permitted maximum side wall height of 9 feet, and to revise the approved site plan to reduce the rear yard setback from 10 feet to 5 feet.

Mr. Iafigliola administered the oath.

Mr. Woehrman stated that he originally appeared before the Commission to build a garage in his backyard and was granted the variances he requested. No neighbors were present to contest or discuss any concerns. He then went and applied for his building permit, he dealt with Mr. Thomas from the building department and the original plan indicates a 12-foot side wall but Mr. Thomas indicated that the wall should be 9 feet. He indicated that he planned for a 12-foot side wall and was included in his original application. He contacted Mr. Thomas to discuss moving the garage back on his property and Mr. Thomas called him back and said as long as he does not encroach on the five feet and he made sure that the building was five feet off the property line; someone came to measure and both sides are five feet off the property line and his neighbor has an issue with the building.

Mr. Iafigliola stated that Mr. Woehrman has an existing garage and once the new garage is built the old garage would be converted into a family room, which was the need for the original variance. He asked if the structure was built. Mr. Woehrman replied yes. Mr. Iafigliola asked if the structure was completed. Mr. Woehrman replied yes. Mr. Iafigliola asked about the residential conversion. Mr. Woehrman replied that has not been started as of yet.

Zachary and Angie Stokes, 24300 Briarpatch, Mr. Stokes indicated that he is directly behind Mr. Woehrman and does agree with Mr. Woehrman and originally did not have any issues with the structure. We received the notice indicating that he was building a garage

and being good neighbor's, they did not pay attention to it. A couple of months later Mr. Woehrman began pouring cement and at that time he noticed that it looked bigger than he imagined. We built a fence a year or two ago and had to have our neighbor's sign off on the fence. We missed the 30 days and are not here to contest that but he does have a couple of questions. There are questions regarding the granting of a variance, the first is: Is the granting of the variance in harmony with the general purpose and intent of the zoning code or will it substantially alter the character of the neighborhood. He stated Mr. Woehrman answered no. He brought pictures for the Commission and after seeing the pictures does not believe that anyone could deny that it does not substantially alter the character of our neighborhood because it does alter the character of our neighborhood. He does not know faces to names and is reading off materials that he collected, he has an issue with Mr. Smerigan who stated that the proposed garage meets the maximum garage size requirement and realizes that while Mr. Woehrman has both garages he will exceed the requirement but it is our understanding that he will convert the existing garage into living space which then brings him back into compliance. Mr. Stokes stated that if the variance is granted there is no guarantee that he will convert the existing garage. Why have a building code at all if we are not going to enforce it? He spoke with Mr. Braden Thomas quite a bit and he was pretty decent at getting back to him but he also expressed his concern the Commission did not put any kind of follow up date or that they said there really was no guarantee that he would convert the existing garage, which was a surprise. Again, if there is no guarantee that he is going to convert that then he is not in compliance with the building code so why do we have a code in the first place it seems a little silly. Mr. Stokes stated that in the minutes Mr. Iafigliola stated that on the site plans submitted there is a distance from the property line of five feet and 10 feet which would not be a variance request as he is in compliance and Mr. Smerigan replied that he is in compliance with the setbacks. Mr. Stokes' question is if that were the case then why is it listed on the letter for tonight's meeting as a variance to be approved so there is a little confusion there. Furthermore, as shown in the original drawing for this project the structure was drawn 10 feet from our property line as opposed to the five feet it is now today. Keep in mind this is the only drawing that was submitted that was for the public to see and have access to, again that drawing shows it clearly at 10 feet behind our property line. He then went to the building department and got copies of all the pertinent information; he also emailed his ward council person and fast forward; he spoke with the Mayor who was pretty sympathetic to his situation and said he would look into it. At that time, he also spoke with the law director to see if there was anything they could do. Eventually he received a call from Mr. Thomas alerting him that he made a mistake and that the owner would have to stop building and we would get a public notice when we could come and talk about the discrepancies. Again, he does not have the date but construction started again after that. He came to city hall and spoke directly to the Mayor, the law director and someone in the service department gave Mr. Woehrman the okay to continue the building without giving us any notice. This individual was very adamant about the fact that Mr. Woehrman would be building the structure no matter; it was a pretty interesting phone call; after some discussion a stop order was put in once again. Again, he does not have the exact date but construction started a few days later or maybe a week and he called and found out that he was approved to finish the roof on the building to protect it from weather damage for structural security. He stated that he was also told that Mr. Woehrman would complete the roof with the understanding that he may have to change or take down the structure if he

were to continue building the structure after the second or third stop order was put in. He has pictures that he would like to share. In closing this has been a taxing situation for both his family and he is sure for Mr. Woehrman. He does not actually blame Mr. Woehrman for most of this; we were not best friends but before this we were normal cordial neighbors. He still does not have an issue with Mr. Woehrman, his issue is more with the Commission and Council. He read that people walked the property and after looking at the pictures he can't see how anyone in their right mind would say that this would be acceptable or that it wouldn't affect the community. When he wakes up and looks out his bedroom window we see the garage; when he goes out his back door to let the dogs out and when he is walking towards his back door he can't even see the outside because his back door is completely blocked by this structure. You can see if from the street, from the sidewalk, from every area in his backyard from both sides of his yard. He stated that if he was Mr. Woehrman he would be upset as well. He believes that Mr. Woehrman did the best he could to follow what he was instructed and his main issue is that this was approved at all. At the same time there seems to be some variables and the side walls and setbacks were overlooked while approving this project. This garage will have a lasting effect on our enjoyment in our back yard as well as a huge implication in our ability to ever sell our home because our back yard is small as it is, its wide but small, and was the last thing that the realtor showed us even though it was the first thing we wanted to see. We paid a lot of money for our home and we take a lot of our pride in our back yard and it is a big enjoyment to our family. This will also have a big implication on the resale value of our home. He is here asking that the Commission decline the variances. As you can obviously see in these pictures there really is no way that this structure is reasonable and doesn't affect or alter the character of the neighborhood.

Mrs. Stokes stated that she thinks the pictures speak. The 12 feet, in reality, is based off of the five-foot line and this is definitely not exactly how she thinks anyone may have envisioned it so the pictures hopefully will speak to that. Again, its about the structure being as big as it is and as close to our property line. This does block our entire visual in our back yard.

Mr. Stokes stated that we try to come to meetings on and off but this is his first Planning and Zoning meeting that he and his wife have been and we try to go to Council meetings and stay involved. Unfortunately, he was at the meeting regarding the Dollar General store which got out of control and he definitely sided with the residents. He sided with the Council a little more than the residents and believes they approached it the wrong way. We all moved to Olmsted Falls for the same reasons, good neighborhoods, the schools, the small sleepy neighborhood and to quote someone from that meeting he would have never imagined in a million years that someone would build a garage like that nor would there be a panel of people that would approve such a structure in a small neighborhood. He knew that Mr. Woehrman wanted to build a garage and he was not going to fight him on that but there were no pictures or indication of the location of the garage; there was not a lot of information in the original notice and we didn't go to the meeting.

Mark Strohmenger, 24101 Briarpatch, stated that he lives on the opposite side of the street as his neighbor Mr. Stokes so he does not see the structure on a daily basis outside of his home. However, he does walk through the neighborhood regularly and he did see

the construction starting and was appalled that this type of structure would be in our neighborhood it is completely out of character. It is a residential neighborhood and the size of the structure is appropriate to a warehouse, it appears to him to be corrugated steel, he may be incorrect. However, the size and the architecture is just not appropriate for the neighborhood. He would agree that the view from the people that live directly behind it it completely obliterates your view. His concern is if this type of structure is allowed within the neighborhood there could very well be one built next to him or across the street from him that he would be viewing. He stated that when he saw the structure being built, he was surprised that it received approval from Planning Commission it was very much out of character with the neighborhood.

Lori Jones, 24225 Briarpatch, stated that she lives on the side of the street that has the woods. The other side have yards that are wide but not very deep and to see a structure that tall like maybe makes you feel kind of confined and crowded. She is not proposing that it be torn down nor is she making any decisions she just wanted to say that she does not know what the resolution is but when the yards are that close together it pretty much becomes your whole scenery.

Mr. Stokes indicated that it was also stated that the structure would be sided to match the home and again he does not know if Mr. Woehrman has completed the structure but there is no siding, no gutters, and nothing about the structure matches the home. Again, this was stated in his application that it would match his home, it would have gutters and siding, it looks like a metal Walmart.

Mr. Iafigliola indicated that there was a question to the effect of why was it approved and why the Commission would approve that and Mr. Stokes indicated that the "other meeting" was out of hand which he does not think was the case. He indicated that this was approved, to some extent, because the accessory structure is allowed in the neighborhood. So to be very clear today is a little bit of a reprieve of "a request made by Mr. Woehrman for a variance of three feet pursuant to Section 1240.07(b), that's vertical height, and is a variance; then there is a second issue which is a rear yard setback from 10 feet to five feet. He would like to note that the rear yard setback is not a variance so had Mr. Woehrman made that request in his original application it would not even be a topic of discussion. What the mistake was, if we want to call it that, is it is too tall. The real variance request was that the applicant wanted to build a garage while he still had a garage in use. Mr. Smerigan replied that the request that was previously before the Commission was a request for garage area, square footage, and it was because he has an attached garage and the applicant wants to convert his attached garage into living space. So, he either had to convert the garage to living space first, which then placed him in violation for not having a garage, which is required by the code, or he creates the new garage space first but then he has too much garage space than the code permits. Clearly, he chose to do the later which was build a new garage first then convert the old garage into living space. This was a temporary variance to permit the applicant to have more square footage of garage space than the code allows. As part of that approval the applicant presented the Commission with a site plan which showed the garage being located five feet off the sideline and ten feet off the rear line, which was part of the Commission's review and approval. Those setbacks were discussed at the meeting at which time he indicated that these setbacks did not

require a variance and were in fact the plan that was approved, which the applicant is locked into once approved. The garage should have been built five feet from the side line and ten feet from the rear line, the building department granted a permit to place the garage five feet off the rear line which they cannot do due to the fact that the Commission approved the site plan at 10 feet off the property line. During the meeting there was testimony that the garage would be a maximum of 15 feet high, which is what the code requirement is, which was discussed at that time. We do not typically perform building plan review and there was no request, at the time, to change the side wall height from nine feet to 12 feet. There was no variance for height or side wall height, so these issues were never addressed. When the Commission granted a variance for the square footage with the 10-foot setback it was with the understanding and assumption that the garage would otherwise conform with the code. The permit for a garage with 12-foot sidewalls should not have been issued because the code requirement is for nine feet and there was no variance granted to go from nine to 12. The garage should not have been built at five feet when the site plan approved as part of the variance request was at 10 feet. So, there are two issues, the applicant has now requested a variance to allow the higher side wall height and that is in fact a variance, the change from five feet to 10 feet, if the Commission is predisposed to grant that request it is not a variance but an amendment to the site plan because five feet is a permissible setback for an accessory building. That is the circumstance that we have and the obvious concern of the neighbor's is that with the higher sidewalls the garage appears to be even larger than one would think with the 15-foot height.

Mr. Bemer indicated that he was involved in the meeting when Mr. Stokes came into City Hall. He stated that through Mr. Borczuch's office he contacted Mr. Woehrman and did speak with him via telephone and acknowledged the discrepancy that the back wall was constructed five feet from the property line, which is appropriate according to the code, but the site plan indicated that it would be ten feet. The issue that was missed by everyone was the fact that our code provides for nine-foot sidewalls and this structure was 12 feet, which is the reason for the three-foot variance Mr. Woehrman is currently requesting. He understands that the Stokes family were on vacation at the time and were unable to attend the meeting in June. The packet that was submitted is quite clear and identifies all the dimensions and frankly aesthetically without much of a pitch the structure looks more like a warehouse garage rather than something that conforms to a residential structure. There was nothing hidden by Mr. Woehrman, as a matter of fact, he is the only one who has no fault in this. He would venture a guess that in this residential area there is no garage that is 880 square feet which is code compliant and does not believe there is any garage that is greater than 600 square feet because that tends to be the maximum in any kind of a development. This is not a property on Columbia Road that is two acres, like we discussed earlier, these are basically small buildable lots in a development so is there a problem that should be corrected going forward because the massiveness and square footage of the garages needs to be reduced and that is a councilmanic action. So, we have a major representation of an act of either forgiveness or equity by this Commission.

Mr. Bemer indicated that Mr. Woehrman was granted a temporary permit to enclose the garage to secure it from the weather with an understanding that he must return to this board for approval in order to keep the garage. So, its understandable that the garage has not been completed.

Mr. lafigliola indicated that in the June 5, 2019 minutes state that the new garage would be 29x30, which is 870 square feet, and is a metal pre-fab building that comes in a kit, after the new garage is built the exterior will look like his home rather than look like a metal building, it will have siding and gables in order to match his home. He then again asked Mr. Woehrman is that was his intend. Mr. Woehrman replied yes.

Mr. lafigliola indicated that the June minutes also state that the garage would have gutters to which Mr. Woehrman replied yes and he asked if that was still their intent. Mr. Woehrman replied yes. Mr. lafigliola stated that the minutes also state that the gutters and downspouts will be tied into the existing drain system of the house and asked if that was still the intent. Mr. Woehrman replied yes. Mr. lafigliola stated that in the minutes Mr. Pehanic asked if all the neighbors were notified to which the Clerk responded yes and Mr. Stokes has indicated that he was notified but was out of town. He indicated that Mr. Pehanic did state in the minutes that his concern was the size of the garage.

Mr. lafigliola stated that we have the difficult situation of an applicant who did everything that he could possibly do, he showed up talked to people; submitted everything and then we have a neighbor who has indicated that this garage is detracting from the value of his home in a way that they find obtrusive, to say the least. We have another neighbor who is concerned about precedent and there is really no great solution. The one idea that comes to mind which might not make anyone thoroughly happy would be is there any way we could do some sort of landscaping that could be a relatively tall and green type of tree. He is sure this will not solve the problem but it may help soften a relatively large structure. Mr. Woehrman indicated that he already has a tree there but could add some more. Mr. lafigliola stated that there is no way to see, except to personally inspect the building, to verify how to shorten without significant expense.

Mr. Munteanu indicated that the building does not match the house. Mr. Pehanic stated that when he received notice of this meeting, Lantern rang a bell, and he drove down the street and did not have to look for 24711 as this building sticks out like a "sore thumb." There has been talk about devaluation not only their property but all the property on their street. He agrees with the comment the law director made about the code, there is something wrong with the code that allows that type of structure on that plot of land which is why he raised the question at the first meeting. To be honest, we had no comprehension as to the size of that building until you look at it and then you get the comprehension as to the size of that building. There is no easy fix to this situation.

Mr. lafigliola asked if there was anything that the applicant could do to this building. Mr. Woehrman indicated that the outside of the building is finished with what came in the kit but it has not been sided the way his house is and he will match the house. Mr. lafigliola stated that from the pictures it looks as if the structure has finished siding. Mr. Woehrman indicated what is on the structure came with the kit but he is putting siding on it so that it does match house. Mr. lafigliola stated that Mr. Woehrman does plan on putting up an additional façade on the structure but that will not reduce the mass of the building, but it will not look like a retail establishment.

Mr. Pehanic asked what will happen if the variance is not granted. Mr. Thompson stated that the tallest the building could be was 15 feet, which the code allows for. Mr. Smerigan confirmed that the code does allow 15 feet and to the peak of this structure it is 15'3". Mr. Thompson stated that the peak conforms to the code, but the side walls do not conform. Mr. Smerigan stated that the height of the sidewalls is the problem and we did not discuss or approve taller sidewall heights. That variance was not requested and was presented to the Commission. The issue of the total height of the building was discussed and it was our understanding based on the testimony that was given at the time that it would be 15 feet. It does create a difference because an 880 square foot garage with nine foot sidewalls has a certain massing but an 880 square foot garage with 12 foot sidewalls has significantly more massing and it's the building massing that everyone is reacting to, its not necessarily the 880 square feet or the 15 feet at the peak but rather the height of the sidewalls that changes the massing of the building. He stated that this is further exasperated by the fact that it is five feet off the back-property line rather than 10 feet, which is what was approved.

Mr. Iafigliola asked with whom does the burden lie when requesting variances. The applicant did everything that he thought he should do; he pulled a permit and assumes that it was inspected and then after the fact the city informs him that he is out of compliance. Mr. Bemmer indicated that from his understanding the way the process works is an applicant goes into the building department with plans and asks what he needs to do. The building department then performs a preliminary review and the City Planner and Chief building Official gets involved. Throughout that process the sidewall height was missed and now it is before the Commission and the variances were approved. As Mr. Smerigan indicated the massing becomes an issue because the additional three feet times 870 feet makes a lot of massing. Can this be cosmetically corrected, he does not know that answer but usually you can do something with vegetation. The only other way is cutting off three feet from the sidewall.

Mr. Iafigliola stated that there are two issues; one is the variance requested of three feet, which is vertical feet, and the second to revise the approve site plan to permit five feet from the back-property line from 10 feet. The property line issue is code complaint, but the three-foot variance is not. He can see a scenario where the Commission is within its right to approve the second request, but deny the first request. He is not sure what would then happen next if this scenario were to happen. Mr. Smerigan indicated that if the Commission denies the height variance the applicant would then have to bring the building into compliance with the code that is the obligation he has. As Mr. Iafigliola pointed out the benefit would be that the applicant would not have to move the foundation that was constructed.

Mr. Woehrman indicated that when he originally submitted the prints and plans, they show a 12-foot sidewall, so he was correct in the first place and does not see why it would have to change if somebody missed it. Mr. Smerigan indicated that Mr. Woehrman is missing the fact that this was never a legal structure to begin with. The fact that the building official did not catch the sidewall height does not suddenly make the building legal. It was legal from the stand point of square footage but not sidewalls. Mr. Iafigliola stated that the drawing Mr. Woehrman included in his packet indicates that the structure is 30 feet wide, 29 feet long, 12 feet tall. Mr. Smerigan indicated that if the Commission did not advertise or

grant a variance there is no variance so the code still controls. Mr. Woehrman indicated that he did not understand why he had to file for a height variance at this meeting when he had it in the original plans. Mr. Smerigan indicated that there have been other applicants before the Commission that have had their variances advertised but during the course of review another issue comes up where they need an additional variance but since it was not advertised the Commission cannot grant it and the applicant has to return for approval. So, the fact that it was or was not in his drawings does not automatically grant the variance for it. Mr. Iafigliola replied that he believes that is the key statement here.

Mr. Pehanic stated that a comment was made that there stop orders were issue three times to the applicant and asked what the reasons were for those orders. Mr. Woehrman replied that he started the project and a call was placed from his neighbor; the building department came out and told him that he had to stop building; he waited a week and the building department spoke to the law director and he was informed that he could get the roof on and get it dried in so everything didn't get ruined, which is what he did; now he has stopped again because he was instructed to return to the Commission. Mr. Pehanic replied that none of these three times had anything to do with addressing the height of the building. Mr. Woehrman replied that he was told it looked massive. It is a garage and may have a taller side height but it's a garage.

Mr. Iafigliola moved to **approve** Planning and Zoning Case #32-2019, a request made by Joe Woehrman, owner of 24277 Lantern Drive, PPN #291-30-049 for a variance of three feet to Section 1240.07(b) to permit a sidewall height of 12 feet for a detached garage in lieu of the code permitted maximum side wall height of nine feet; Mr. Munteanu **seconded**.

Mr. Stokes stated that a question was asked regarding the last stop order was actually over the side wall height so Mr. Woehrman was incorrect, the last stoppage was over the sidewall height.

Mr. Fenderbosch indicated that one of the reasons he voted in the positive last time was because there was no opposition, 30 days went passed, but he does understand the dilemma.

Ms. Hawkins stated that there was a stoppage because it was too tall, and asked why that was not reviewed before building. She understands the roof to protect from inside damage but she does not understand why this wasn't looked at. Mr. Iafigliola stated that at that point the applicant already started construction.

Mr. Iafigliola stated that he will be voting no on the variance request; by voting no it will allow the applicant and the neighbor time to come up with some sort of solution. He believes the applicant could always request a slight variation to the variance, if there was a need to do so. By voting yes it allows the construction to proceed and he is not comfortable with that.

Mr. Munteanu asked if this issue could be tabled in order to give the applicant and the neighbor time to determine another solution. Mr. Iafigliola indicated that the Commission

could but believes everyone is looking for an external decision maker to move them in that direction.

Mr. Thompson replied that he does not like these cases and dealt with them when he was on City Council. The hard part is everything met the code, with the exception of the height, but the height did not exceed the height but the Commission never looked at the sidewall height. Mr. Woehrman did everything he was supposed to do and somehow it was missed. He feels for the neighbors because he has seen the pictures and Mr. Fenrich appealed to him and reviewed the case. Once the structure is built you notice how large it is, but at the same point he feels for the applicant as he did just what any other applicant would have done if they wanted to build the same structure and does not feel that the applicant should be penalized. He indicated that the original plans do indicate 12-foot sidewalls so the applicant was not hiding any information from the Commission or attempt to construct this building illegally. He stated that he does feel that Council needs to review this portion of the code because if it does allow this type of building in these neighborhoods something is wrong. As a board, we do not have the legal authority to stop it, same as the Dollar General, when they meet the code, we cannot deny the request. If the applicant had nine-foot sidewalls the Commission would not be able to do anything to stop the request.

Ms. Jones stated that maybe the applicant and the neighbor could work on some sort of aesthetics to the building instead of siding. She stated that Mr. Woehrman gave everything to the building department but the building department messed up as no one noticed the site. She asked if the city had any liability insurance that could help put some nice wood on it or bricks and vines. Mr. Bemmer replied no, this is into the moral claims and suggested that not be proposed. Ms. Jones replied that she is trying to not cost the applicant more money. She indicated that this is her neighborhood and it doesn't look better from her side of the street either. Mr. Bemmer replied that Mr. Woehrman has indicated that he has not finished the siding. Mr. Woehrman replied that the garage will have vinyl siding and will be totally different than what it looks like at this moment.

Poll: 5 ayes; 2 nays (Pehanic, lafigliola). **Motion carried.**

Mr. lafigliola moved to **approve** pursuant to Planning and Zoning Case #32-2019 a request made by Mr. Joseph Woehrman owner of 24277 Lantern Drive, PPN #291-30-049 a revised site plan to reduce the rear yard setback from 10 feet to five feet, and would like it noted that this is not a variance request; Mr. Thompson **seconded**.

Ms. Jones stated that she has nothing against Mr. Woehrman but when you put that monstrosity behind someone's house it could impact their ability to sell. She purchased her home on the other side of the street because there were woods behind it. She didn't even like the neighbor's being as close as they are. She is not stating that Mr. Woehrman did not do everything like he should have this is just a very unfortunate situation and she doesn't have the answer. As Mr. Thompson stated, she also feels bad for both parties and she doesn't even want to look at it that is why she was thinking aesthetically. She feels that someone is liable. Mr. Bemmer indicated that this would not be an insurance matter.

Mr. Pehanic stated that if this is not a variance request why does the Commission have to vote. Mr. Iafigliola replied that this is a vote to revise the site plan. Mr. Smerigan indicated that there was an approved site plan when the Commission granted the variances showing the garage 10 feet off the back property line and the garage is five feet off the back property line so this would avoid an issue down the road.

Poll: 6 ayes; 1 nay (Pehanic). **Motion carried.**

COUNCIL LIAISON REPORT – *No Report*

OTHER BUSINESS – *None*

APPROVAL OF MINUTES – Mr. Thompson moved to **approve** the minutes of November 6, 2019; Ms. Hawkins **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

ADJOURNMENT: Mr. Iafigliola moved to **adjourn**; Mr. Pehanic **seconded**. Voice Vote: 7 ayes; 0 nays. **Motion carried.** Meeting adjourned at 10:17 p.m.

Planning & Zoning Commission Clerk

Date

Planning & Zoning Chairman

Date