



CITY OF OLMSTED FALLS  
PLANNING AND ZONING COMMISSION  
MINUTES  
SEPTEMBER 2, 2020  
7:30 PM  
COUNCIL CHAMBERS/VIRTUAL

Commission Members Present: Brett Iafigliola, Gary Pehanic, Garry Thompson, Peter Carpenter, Cornel Munteanu, Dave Fenderbosch, and Michelle Hawkins. Others Present: Andy Bemer, Law Director, George Smerigan, City Planner. Audience: 5

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

1. **Planning & Zoning Case #18-2020** - A request made by Scott Powell, owner of 7711 Chestnut Grove Drive, PP# 281-13-007, for two variances to Section 1240.09(a)(3) to permit two (2) detached accessory garages in lieu of the one (1) detached garage permitted and to permit a total garage floor area of 1,000 square feet in lieu of the permitted maximum garage floor area of 880 square feet.

Mr. Iafigliola administered the oath.

Mr. Iafigliola stated that Mr. Powell is replacing a garage that was damaged when a tree fell. Mr. Powell indicated that Mr. Iafigliola is correct, the previous garage was greatly damaged when the tree fell.

Mr. Iafigliola stated that one variance is for a second detached garage and the second variance is due to the fact that the sum of the two garages are greater than 880 square feet. The floor to ceiling exterior is 11'9". Mr. Powell replied yes. Mr. Iafigliola asked if this complied with the code. Mr. Smerigan replied yes.

Mr. Iafigliola moved to **approve** the variances as requested as follows: to permit two (2) detached accessory garages in lieu of one (1) detached garage; and to permit a total garage floor area of 1,000 square feet in lieu of the permitted maximum garage floor area of 880 square feet; Mr. Thompson **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

2. **Planning & Zoning Case # 19-2020** – A request made by Jeff Hawkins, owner of Uncle John's Plant Farm located at 8579 Columbia Road, PP#291-22-016 for site plan approval for an addition.

Mr. Hawkins stated he would like to add onto his front barn which is where the business does the production of planting plant and shipping. He stated that during the busy months of March and April it gets difficult to do both in the same area so we are trying to get a bigger barn and move the production area to one area and shipping to another area. We showed some other conceptual drawings of what we could be looking at down the road just to give the Commission a future view. The business is only capable of

doing one phase at a time. We began thinking when we were told to go ahead and put some thoughts on paper so we did. He indicated that the Commission does not need to consider Phases II, III or IV. Mr. Iafigliola asked what the barn would look like. Mr. Hawkins indicated that it be turned and run 90 degrees from the other barn. He stated that he does not know if the Commission noticed but the business does store a little bit of stuff outside and we are trying to get it all back inside to cover it up and we also need the room basically for production.

Mr. Iafigliola asked Mr. Smerigan if he had any comments. Mr. Smerigan stated that this is a simple site plan approval. This is an existing business that wants to do an expansion. Since the building is a plant building this does not increase his requirements for parking as there is no change to the parking lot as part of this site plan. The building will comply with the setback requirements for the district so there are no zoning issues involved. He sees no concerns or issues with this request and is recommending that the Commission grant the site plan approval.

Mr. Bemer asked if the applicant needed a conditional use. Mr. Smerigan replied that since this is an existing business and this is just an expansion of that business, we have taken the position that they already have the use approval. We will simply grant site plan approval for the change in the square footage. Mr. Bemer asked if there was any limitation on doing all these four phases within any particular period of time. Mr. Smerigan stated that the Commission will grant approval for this first phase. What Mr. Hawkins did, which was not his suggestion, was to indicate where he is headed in the future to give the Commission some understanding of how this fits into future plans.

Mr. Iafigliola moved to **approve** the proposed site plan for Phase One only for Planning & Zoning Case #19-2020, PPN#291-22-016 for Uncle John's Plant Farm located at 8579 Columbia Road; Mr. Carpenter **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

**3. Planning & Zoning Case #20-2020** – A request made by Ernest Peto, owner of 25389 Tyndall Falls Drive, PP# 291-18-032, for a front setback variance of 15 feet to Section 1240.05(b) to permit the dwelling to be located 25 feet from the street right-of-way in lieu of the required 40 feet to permit the construction of a new single family.

Mr. Iafigliola administered the oath.

Mr. Fischbach stated that once the house was staked, we noticed how close we were to the fallen cliff on the southeast corner. We took a second look at the construction and it became apparent that it could be very concerning to have the originally proposed slab five and seven feet out of the ground that close to the cliff. Basically, we are out of green space on the lot and it immediately starts to drop and then there is a cliff. His concern, as the contractor, was basically, if we were to do a slab not only are we going to be that close to that embankment with the home we are also going to have a lot of downward pressure weight and outward pressure weight based on the fact that it is so high out of the ground. Another concern is what type of ground were we going to find when we start to dig and what is it really going to be able to withstand without having

any problems moving forward. One of the biggest concerns is that if we do or did encounter problems that could create a huge expense in the overall cost of the construction just across that back wall. Not only do we have the footings we would have a couple hundred thousand tons of stone and the whole back wall would need to be poured solid with concrete so it's very stable and sturdy. When we took a look at this we thought if we could bring the house forward that would definitely give us a lot more room and take away the concern of constructing this house that close to the edge where it does start to fall off because that is the biggest concern and the reason we swapped out the house. The house was originally off set with only 10 feet on the west side and 20 feet on the east side and that was also due to the fact that we were balancing it on both sides. If we were to go forward with what we are requesting today, 15 and 15 feet, it would have pushed it even further into that embankment. So, we tried to center the house and bring it forward and since we were coming here for that, we looked at the home itself and realized that the two patio's of the two neighboring homes were going to be almost on top of each other being only 10 feet from the property line we thought if we could switch the house it would increase the viewing of the site lines and everything to the house to the west and also give them and the neighbor to the west more privacy having the deck on the opposite side of the home. These were all the things taken into consideration. Mainly, it is the concern and cost of the construction being that far setback against. Because there is no more green space the home would be right on the edge of that cliff on the east side. There will be green space on the west side but the east side is a big big concern especially doing a slab because of the stone, the weight and the concrete on top of that he would probably have to put pillars in as well and definitely across the back to support everything. We thought the crawl also would eliminate some of that weight and bringing it forward would help us to maintain and feel confident that the house and the foundation will not move. Also, without understanding the ground conditions down there that's also a concern because there is a big unknown.

Mr. Iafigliola administered the oath to the residents requesting to speak.

**Jim and Pat Halloran**, stated that they have lived next door to this property since 1985. They build their house and is a inline split home. We originally decided that we wanted an "L" shaped split but because it is built on the cliff, we were told that our home had to be an inline split to keep the site line consistent across the neighborhood. We were also told that we needed to build a basement for the very reasons of stability for building on the cliff and our house has been very stable the past 30 plus years that we have lived here. We have a concern about the property being built next door. The stakes that have been placed have indicated that we would be looking at the side of the garage and he understands that they are talking about building it over but essentially right now the stakes are 20 feet from our home and go 15 feet out which is essentially the middle of our lawn. This is something that is inconsistent with the entire neighborhood and would be a change. Also, when we moved to the area, we understood that the two properties next door were not buildable because it was the site of the former greenhouse that was there and it was land fill and there are rumors of a tank being buried but no one can substantiate that. At this point, we have no problem with the property being reclassified and someone building there, we do have a problem with the

15 foot or so variance where we would be staring every day at the side of a garage. As we look at the stakes it is unacceptable as far as they are concerned.

**Tim Portman, 25381 Tyndall Falls** and he is due east of the property. He stated that he took a couple of measurements because he was curious and figured he could weigh in. He indicated that he is also the property owner of the other vacant lot. He stated that his garage is 32 feet from the sidewalk itself and if he recalls correctly, the Halloran's house he believes is 50 feet from the sidewalk. He stated that to put it 25 feet, which would be another 10 feet, he can barely park a work van in his driveway and feels that it would be tough to park in the driveway as you would be hanging over the sidewalk. He stated that it seems like it would be an awfully short driveway and likely to be impeding the sidewalk.

**Leanne LaPinta, 25357 Tyndall Falls**, and stated that she is seven houses due east of the property being discussed. She has lived in her home for over 20 years. Again, this was a park area that the Mayor recently sold and it was deemed unbuildable for 20 years and she is unsure how things have changed. It is not a very wide piece of property. Essentially our neighborhood is 70 homes with two cul-de-sac's and that side of the street probably has a total of 20 homes so it will look incredibly awkward that there is a home that is that much closer to the road than the others. As people are walking up the street you will be looking at the side of someone's house, which is aesthetically not correct and truly if there was a homeowner's association this would not be happening and she has a problem with that. She agrees with Mr. Portman in regards to the driveway as there is not even going to be room for one car and that is going to look incredibly strange as well. Her bigger problem is, and Mr. Portman also owns a piece of property, and there is a family across the street where there is a vacant piece of property that is probably going to be sold and she thinks if you change any sort of code you will set a precedent in the future if there is any sort of building going on and believes that could potentially be a big problem. We have a very small neighborhood and it would have to look very uniform for it to fit in.

**Mike Allan, 25354 Tyndall Falls** stated that he lives down the hill from the properties. He would emphasize two things; one is the inconsistency with the character of the neighborhood which is one of the things that was cited earlier. It would look vastly out of place, the driveway would be too short, the house would be too close to the street, the Halloran's next door would have to put up with an eyesore and it would be out of character with the rest of the neighborhood as he mentioned. The second thing is the irresponsibility and recklessness of the city to even sell that lot. When he built his home and he was one of the original owners on Tyndall Falls and built in 1986 and 1987 and it was understood that this lot was not buildable and the city made it clear that it was not buildable and now the city goes and sells the lot and puts the responsibility on to the homeowner's and takes the responsibility of the zoning commission out of their hands to enforce the regulations. He believes, if anything, there should be a recommendation to either have the city buy back the property or there should be at the very least some sort of a ground and soil analysis so that the builder's concerns can be addressed by looking at what type of soil construction is underneath the house.

Mr. Iafigliola stated that as he understands it what is before the Commission this evening is there is a property PPN 291-18-032 that is being proposed for a single-family home. The fact that it is "unbuildable or buildable" is only relative to what the zoning says which doesn't necessarily mean what is or isn't buried and he certainly cannot speak to that as to whether it was a greenhouse or otherwise. So, what is essentially being proposed and what is being proposed to change is basically a simple math equation. Basically, what is proposed is allowable by code, you are allowed to have a 35-foot setback and allowed to be within 10 feet of the neighboring property. Mr. Smerigan replied that is not exactly correct, there is no problem with the side setbacks and there is nothing that makes this property unbuildable so it is a buildable property. If you recall the Commission granted this property a riparian setback variance to allow it to encroach slightly into the riparian setback requirement; what they are now asking for is a front setback variance. The typical code requirement in this district is a 50-foot setback, but a bunch of this was built before that requirement was in place, the old site plans for the development had 30-foot setbacks and some houses were built at 50 feet and some houses were built at 30 feet. What the code provides is where you have a built up neighborhood you take the average of the houses on the same side of the street within 300 feet of the property; what we have within 300 feet to one side the houses are all at 50 feet; within 300 feet to the other side the houses were all at 30 feet so the code requirement for this lot would be 40 feet and the applicant is asking to build at 25 so he is asking for a 15 foot variance to go from the 40 feet that would be required by code, to 25 feet and that is what everyone is commenting on. Mr. Iafigliola stated that is what the 15-foot variance request is for. Mr. Smerigan replied correct. Mr. Iafigliola stated to be clear and eliminate a couple of things that maybe questionable is, as he understands it the site plan shows a side lot distance of 15 feet on each side so there is no problem with that, and there is no issue with the rear lot line, other than being in the riparian setback which we have already addressed. The only question is the front yard setback which is being requested at 25 feet for the reasons Mr. Fischbach indicated. Mr. Smerigan replied that is correct, the only issue in front of the Commission is the front setback.

Mr. Peto stated that he is sure Mr. Fischbach will address the concerns of the Halloran's but wanted to state that the garage will be moved to the left side of the house. There are a variety of driveways on the street, some long and some short but his will probably shorter.

Mr. Bemmer stated that a couple points of clarification, buildable lots are 12,000 square feet and this lot complies with that size, if not it would need another variance so any of the anecdotal information that may have been bounced around is not accurate. It is a gorgeous property overlooking the river and with that being said your not going to be able to build the same kind of house you would on some plain lot where there is a lot of open area. A basic fact is that it is going to cost you more money to either, at the very least do casings, or as Mr. Halloran mentioned having a full basement in order to divert some of the load and that certainly costs more. Again, you have the beauty of looking for a structure on the cliff so your house is going to have to conform to your particular land mass and if it cost more than it costs more. He believes that Mr. Allan made a very cogent point which is, has there been any geotechnical testing done to determine the

stability of this area and he would think that would absolutely be critical before you but a shed on the property. Everybody is sensitive when a new building comes in and unfortunately the issue of the view, and again this is something that the builder and the neighbor should be able to work together to determine what their visibility is going to be out of a particular a window that is in effect their essence of their viewing, but there is another saying if you want to preserve your view you better buy it. That is all in line with the potential compromise of figuring out what kind of house can be built here in order to accommodate the zoning code and accommodate the substantial compliance and character of this particular neighborhood and assuring that some of these issues that any driveway with two vehicles being into the right-of-way could be problematic. Is there a way of turning the garage or some other way of accommodating the situation? This is a very unique situation but that in of itself is not a basis for a variance but again you are looking to maximize a property that is limited in its ability to handle a particular structure.

Mr. Peto stated to Mr. Bemmer that for 20 years he lived three doors down from this lot, on a slab, and at his age he does not need a basement and does not want a basement and it costs extra money. He does not need a basement and is not going up and down basement steps. He stated again that for 20 years he lived three doors down on a slab and this house will be closer to the street and will fit in and will be pretty on the street.

Mr. Iafigliola recapped what the residents stated. He stated that he was at the site today and saw the stakes and some silt sock and block was delivered. The house as it is staked today, paired with the drawing in front of him, but when he contacted Mr. Fischbach to clarify he indicated that the way it is staked today has been changed relative to the drawing and will now be a mirror image. Mr. Fischbach replied that was correct the drawing in front of you show the house was pulled forward. Mr. Iafigliola stated that as it is staked, the applicant is suggesting that they mirror basically one for one with two exceptions. The first exception is that its going to be moved five feet further to the east away from the Halloran's property which will center it on the lot 15 feet each way, and the second relative to what they are asking, which is what we are talking about today, to move an additional 10 feet closer to the street than it is currently shown now. Mr. Fischbach replied that is correct.

There was a discussion regarding what was previously approved. Mr. Fischbach stated that the plans he submitted showed 35-foot front setback and the deck was in the riparian setback.

Mr. Iafigliola asked how wide the house was front to back. Mr. Fischbach replied 50 feet across the back. Mr. Iafigliola stated that the problem is when you make the house 50 feet wide even a 35-foot setback the back corner is dangerously close to the back edge. As he indicated he is a professional engineer and a contractor that builds retaining walls for people who build houses to close to cliffs, among other projects, so he understands why the builder is concerned.

Mr. Iafigliola stated that Mr. Peto has indicated that he is not in interested in the basement solution and for the record he believes that the Halloran's property from the sidewalk to the closest point of their house, which is the garage, is about 50 feet and

Mr. Portman's is 32 feet. Mr. Portman replied yes. Mr. Iafigliola stated that it would seem that the Commission has some ability to cite the immediate neighbor's on either side and guesses one could argue that one of the lots is an empty lot but the two structures on either side are between 50 and 32 feet off of the property line from there its up to the Commission to determine if they want to enforce 40, 50 or allow 32.

Mr. Thompson replied that the Commission cannot enforce 50 but could enforce 40, which is the code. Mr. Smerigan replied that was correct.

Mr. Pehanic stated that after the last meeting the home was to be built as submitted but now, we are faced with this situation. He agrees with Mr. Bemmer that some soil samples need to be taken because some of the issues the builder has, based on the original site plan, may not be legitimate concerns unless he takes soil samples. Again, when we talk about feet the first thing you see when you come down that street will be this house sticking out further than any of the residences on the street. At the last meeting the riparian was the major issue, we never discussed the front setback. Based on Mr. Bemmer's suggestion maybe some soil samples are necessary to really confirm whether that particular residence can be built as originally submitted. He does not live on the street but would agree with the residents. He has concerns with the house being so close the right-of-way.

Mr. Iafigliola asked if his concern regarding the home being close to the right-of-way is relative to what is being requested tonight or the original submittal of 35 feet, which was approved at the previous meeting. Mr. Pehanic replied that was correct. Mr. Smerigan replied that the Commission never approved 35 feet. Mr. Pehanic stated that as previously stated the front setback was not discussed. Mr. Iafigliola asked what number Mr. Pehanic believes would be more appropriate. Mr. Pehanic stated that his original statement was may be given the proper soil sample maybe this residence could be built on the same spot that it was originally approved to be built on. He is not a builder and as Mr. Iafigliola indicated he is in the business of building retainer walls on areas that would probably fall into this particular issue. Again, his concern is that the front of the house and garage is just too much further out than the rest of the residences. Mr. Iafigliola replied right. He believes what Mr. Pehanic is trying to say is that the 25 feet as proposed is to close but as previously submitted was a 35-foot setback, he knows that wasn't approved, as Mr. Smerigan stated, and asked if Mr. Pehanic was comfortable with 35 feet. Mr. Pehanic stated that there was not a lot of discussion about the front setback if 35 feet was approved, he would be comfortable.

Mr. Portman stated that Mr. Iafigliola stated that half the houses on the street have a 50 foot setback and half of the homes have a 30 foot setback and he is closest to the 30 foot setback so if we are trying to find something that is consistent with the rest of the street 30 or 35 feet seems acceptable to him as that would be consistent with what the rest of the homes are. Again, he just wanted to weigh in that this would be consistent and he would be happy with that but he does not know how the other residents would feel.

Mr. Smerigan stated that he understands Mr. Portman's statement and has indicated that his home is 32 feet from the sidewalk, his house maybe 32 feet from the sidewalk but he is 30 feet from the edge of the right-of-way, which is what we measure. As he previously indicated there are several houses at 30 feet to one side of this property and several houses that are 50 feet and that is how the code requirement ends up at 40. He believes it is necessary to understand that 40 feet is going to be further than what Mr. Portman has and closer than the Halloran's, even if there was no variance granted the house is going to sit forward of the Halloran's house because it is permitted to by code.

Mr. Halloran replied that he does understand. The way it is staked out now and he understands it is different and is totally unacceptable. We would be open to a compromise closer to the 40 feet. We are looking at how this is going to impact our resale, when someone comes up and sees these two houses distinctly different from each other then that reflects poorly on what we can get for our house or can we even sell it at this point. He stated that his wife still has the original plans for the Cape Cod and the Ranches that are built along the street and that would certainly fit within the configuration of what we are looking at here. We are not proposing that we do it but he is saying that there are configurations that would be consistent with the rest of the neighborhood and would be set back far enough. Now, one other thing that he wants to point out is that he would invite folks to go behind this property and you will see concrete blocks and a large metal box that is down there that is evident that this was a landfill that this was pushed forward and he would agree that a soil sample needs to be done no matter what. As far as he understands, he would not dig a basement here because of what we assume is underneath the ground. Mr. Iafigliola stated that Mr. Halloran has stated "as it is stakes today, I understand its being flipped is totally unacceptable" and asked if he could clarify what he means by totally unacceptable. Mr. Halloran replied the way it is staked now it is 20 feet from the edge of our house and 15 feet forward, as we look out our front window we are looking at the garage the way it is staked right now, we walk into our house everyday we would be starring at it, its going to look way to odd within the neighborhood and as far as his house is concerned it is completely disregarding the impact that this has on him. He would like to point out no one has ever approached me about this, no one has come over and tried to influence me. We heard on a previous one when a neighbor was in favor, he was obviously talked to about this we have never. Its been staked out and caveat "the code says you can build it there so tough luck for you Jim" he has been in the neighborhood since 1985. We built a different structure because it was consistent with what was acceptable in the neighborhood, we wanted the "L" shaped and we were told that we had to build the in-line, which we did. We were told that we had to build a basement, which we did. What he is saying is we were okay with making concessions in 1985 and now to see what was formally told to us is an unbuildable property, which we had no idea it became buildable, and that it was up for sale, there were no signs placed out here. He questions the ethics of how this even happened, we only found out from someone that was cutting grass over there that the property had been sold and they were building a house on it, we as neighbor's knew nothing about this. There should have been a sign there and we should have been approached, nothing has been done and it was rather shady as far as he is concerned. He will mute himself before he gets a little more emotional. Mr. Iafigliola stated that he is still looking for an answer to his original

question, which again, he was trying to determine what Mr. Halloran means by “totally unacceptable” and it sounds like you would like to see the same setback as his own home. Mr. Halloran replied it needs to be consistent with the rest of the houses along the line in the neighborhood. This is going to stand out and will directly impact him. He does not understand how the current staking out there it is still 15 feet in front of our house which makes it 25 feet from the street and he does not understand how that is consistent with the code. If the code needs to be 40 feet those stakes are not 40 feet from the street. Mr. Smerigan stated that he did not look at the staking as that is not what we are discussing here. If nothing is granted, this house can be 10 feet closer to the street than Mr. Halloran’s and can be 10 feet off the line, that is what he is permitted to do by code. Even if this is denied the house does not have to go in line with Mr. Halloran’s house, he does not want there to be any misunderstanding. Mr. Halloran asked Mr. Portman what the measurement was when he measured his home. Mr. Portman replied that we measured what the width was because there was a question as to where our lines actually stopped and started, he did not measure it but does know that Mr. Iafigliola did today, and if he recalls correctly, he said it was 50 feet from the sidewalk to the garage. Mr. Iafigliola replied roughly as unfortunately he had a 25-foot measuring tape. He stated that the only distinction he is making is as Mr. Smerigan has stated, by code, the applicant could build the house 10 feet closer than his and your assertion that it would totally ruin the neighborhood, he is not going to challenge him. He stated that Mr. Portman is 20 feet closer than Mr. Halloran’s home. Mr. Halloran stated that he is two lots down the street. If you see look on the other side of his home you will see lines, including the Peto’s former house, completely inline with his home. Mr. Iafigliola stated that Mr. Halloran is correct. When he stood and look west his home and every house to the west were virtually in the same north/south orientation. However, when he looked to the east all those houses were also in line and they were in line with essential the front stake, as it stands today, that says garage so it seems to him that the only difference is that those two lots were unbuilt for all this time.

Mr. Iafigliola stated that he received a message from Laura Lapohn who lives at 25378 Tyndall Falls which states “I have not spoken up but as a Tyndall Falls resident I do agree with the other neighbor’s this variance is unacceptable and agree that a soil analysis needs to be determined before a home is built, I think a floor plan to keep within the current variance is a better option.

Mr. Smerigan stated that he would like to clarify the issue of a soil analysis is a building permit not the front setback issue. If we were discussing a setback into the riparian area and down the slope that would be a reasonable request, but, its not an issue for the Commission with a front setback variance. While he understands the thought process behind that its not a relevant issue to what the Commission has in front of them this evening. Mr. Iafigliola agrees.

Mr. Iafigliola stated that it might not be a bad idea if this could be resolved by some other means. It sounds like Mr. Fischbach’s professional experience indicates that building this close to the slope is unwise and he is probably correct. However, what he thinks some other neighbors and engineers are suggesting is maybe it would be wise to research taking some soil borings and provide some sort of slope analysis to see if

maybe by chance his first assumption was incorrect and maybe there is a way to put the house right where it is proposed which would solve the problem for the Peto's faster than some of these other options which unfortunately is not seeming to be palatable to many people. Mr. Fischbach replied that he would be okay with that and is definitely on the to do list. Mr. lafigliola stated that Mr. Fischbach, on behalf of his client, has made an application and is asking the Commission to rule on that. He is not sure what the Commission feels but it does seem that there is a lot of concern about pulling the house as close as you would like and he thinks that some of those concerns are valid. His opinion it that it seems wise for Mr. Fischbach to basically check every box he possibly can to show why we cannot. He stated that he does not want the applicant to do all this effort and work and then return and say we can't build the house the way we thought and its going to cost a lot of money to put it in piles or shaft and we have to move the house up because, as Mr. Bemer correctly indicated, you could build the house for extremely cheap or expensive and unfortunately the commission cannot take costs into account. We have four options available and he will defer to the applicant, the Commission can accept the application as proposed, which seems unlikely at this point, but he can't speak for everyone, we could deny it and then you are backed into a corner, we could table it until you return with additional information or a counter proposal, or we could modify tonight and find some other way to make it work. He asked if any of these options were acceptable. Mr. Peto stated that the original plan was okay for building. Mr. Fischbach stated that everything with the original plan was okay except for the deck. Mr. Peto stated to Mr. Halloran who remarked on the steel box down below, he can't climb down to see it but he saw pictures of it and that steel box could have possibly been washed up there in a flood downstream. Mr. Halloran replied that it has been there since 1985 and cannot say where it came from.

Mr. Fischbach stated that if this case gets tabled and he does some soil samples and those come back positive in his favor then he can proceed with the original drawings that were submitted, and keep the house exactly the way it was since it was approved. So, after the soil boring is confirmed that he can build the house he should be able to start the project as soon as possible after checking with the building department. Mr. lafigliola indicated that he cannot speak on behalf of the building department. If the issue is tabled and a soil boring is taken and the report comes back indicating that he can build what he wants to build, as submitted back on July 1st, then there would no issue before the Commission but he believes that Mr. Smerigan would take exception to that because he has stated that a five foot variance was not technically approved. Mr. Smerigan replied, yes if he wants to be able to build at 35 feet the Commission will have to grant a five-foot variance. The Commission can grant that variance this evening because they have advertised a request for a 15 feet variance and since it's been advertised the Commission can approve a variance that is less than 15 feet. Mr. Bemer stated that there seems to be a circular argument going on, Mr. Smerigan is correct that a five-foot variance is needed. One of the key elements of the practical difficulty test, under our code and under the judicial decisions, is can the situation or predicament be obviated through some other means other than granting a variance, that is a critical element and is exactly why you need to do a soil boring. Like Mr. Fischbach stated if it comes back that the area is stable then he doesn't have to do all the necessary referment work and he can build the house at 35 feet if he gets his five-foot variance,

so, that proposition does come into play into this Commission's decision making. He stated that maybe Mr. Fischbach and Peto's can collaborate and make a determination on that particular point because there is a lot of money at stake either way.

Mr. Iafigliola stated that his thoughts on the matter are there are six different issues that he reads that need to be answered by the applicant the most critical ones are as Mr. Bemmer correctly cited is could it be resolved by other means other than a variance. He will not go on record and say that the variance would be granted but he thinks the applicant would be wise to take the borings and find out what he really needs to do and if it comes back in his favor then they are well on their way to do what they want; if for some reason it does not come back in their favor, you may find that even what you propose may not be acceptable. If you return and show that you have done all this work the setback is 40 feet, and he understands that the neighbor's are not happy with that number, but requesting a five feet and there have been many cases where the Commission has allowed five feet on the basis that it is not considered substantial, but its hard for us to argue that 15 feet is not substantial.

Mr. Peto asked if this was a street or city-wide variance. Mr. Iafigliola replied city wide. Mr. Peto asked why is Falls Glen Lane, which is where he lives now, and is a 13-year development are the houses set back from 25 to 80 feet approximately. Mr. Iafigliola replied he would have to say the zoning is different; the ordinance is city wide but there are different zonings in the city.

Mr. Iafigliola moved to **table** Planning and Zoning Case #20-2020 for 25389 Tyndall Falls Drive, PPN #291-18-032 until such time that the applicant feels that they wish to return; Mr. Thompson **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

Mr. Thompson stated that after reviewing the minutes from that meeting it was stated that Mr. Thompson asked if the 35-foot setback complies with the requirements and Mr. Smerigan replied but never answered that question. So, the question was raised but he does not know if it was ever answered.

**4. Planning & Zoning Case #13-2019** – A request made by Pamella Briggs, owner of 25401 Tyndall Falls Drive for approval of a riparian setback variance of 108 feet to Section 1470.10(b)(2) to permit installation of a deck and railing extending to within 12 feet in lieu of the required 120 feet. This request was tabled at an earlier hearing for additional information.

Ms. Briggs indicated that she submitted a drawing from Elyria Fence showing a large reduction to her request and believes that the reduction will make the bullet points moot and were not answered. She also has with her a professional, his name is Mitch Brittain and is the Director of Operations at University Hospitals, she also has a neighbor to answer any questions she can't. She does believe that all the bullet points can be addressed at this meeting that have not previously been addressed. She would ask the Commission to look at the document from Elyria Fence dated February 22, 2019 along with Page 10 of the newest packet. She would ask that the extension of the stairs be

deleted from the Page 10 document past the deck, so she will not go near as far into the riparian setback. She stated that the Elyria Fence document shows the stairs on one side but she is actually going with the stairs on the side of the deck as shown on Page 10 and not down into the riparian setback or the hill. She has addressed the fact that she will not be removing any foliage or trees, nothing will be removed, she is simply adding a 10 x 12 foot deck therefore she does not need a geological survey as the deck and stairs will not be supported by the hill but rather the base of the house.

Mr. Iafigliola administered the oath to Ms. Briggs and the others present with her.

Mr. Brittain stated that in reality from what he has gathered from the information the house is eight feet into the riparian, the existing deck is 17 feet additional to that, so the variance would be an additional 10 feet into the riparian which puts a total of 35 feet counting the house inclusive. This will be basically be three 4x6 piers three feet down on the back side of the additional 10 foot deck and the upper side of the deck will tie into the existing 4x6 piers off the original deck; so the only thing attached to the area below is the two additional pieces of wood, shall we say, sticking out of the ground to hold and help control erosion. He does not see any environmental affects, from his opinion, from the three penetrations into the ground as Ms. Briggs has stated she does not want to take the stairs any further than down to the lower deck.

Mr. Iafigliola asked if she had a neighbor that wanted to speak tonight. Ms. Briggs replied yes Carol Goodnough.

**Carol Goodnough, 25397 Tyndall Falls**, stated that she is neighbor to the east. She stated that she is supporting Ms. Briggs as she is making her back yard more beautiful than it already is and does not see an issue.

Mr. Iafigliola stated that a lot of what Ms. Briggs originally proposed has been removed and the only thing she is asking for is relative to her existing deck. Ms. Briggs replied yes. Mr. Iafigliola stated that the upper deck has no changes and then immediately south will be a new 10 foot x 12 foot deck, same width, basically the same dimensions as the upper deck just 10 feet closer to the creek and a little bit lower. Ms. Briggs replied correct. Mr. Iafigliola stated that the stairs are being built because there is no way to get from the upper deck to the lower deck. He stated that the dates on the documents are not making sense to him and asked if she could explain. Ms. Briggs stated that the Elyria Fence document dated 2/22 is the original one and the one she wants to keep except changing the location of the stairs. She stated that because the fence needs to be replaced, she originally requested the replacement which will affect the riparian setback because it is 10 feet into the setback. Mr. Iafigliola asked if this was the fence along the west side of her home. Ms. Briggs replied correct. Mr. Iafigliola stated the existing fence that she thinks needs to be replaced. Ms. Briggs replied that part of it has already blown down.

Mr. Iafigliola stated that the applicant is withdrawing the majority of her application and only proposing to build a 10 x 12 foot deck lower in elevation located immediately south of the existing deck, with the stairs still be closer to the creek. He stated that in an email

from Ms. Briggs dated 7/26/2019 she talked about the slope and Mr. Brittain talked about how there would be three hand dug foundation holes with a timber tie back to the upper deck and that no trees would be removed. Ms. Briggs replied correct. Mr. Brittain stated that the reason the stairs are being moved to the left side is because it would encroach on a tree on the right hand side.

Mr. Iafigliola stated that he received a comment from Laura Lapohn who stated that this is the Peto property three doors down from what we have been talking about.

Mr. Smerigan stated that for clarification, as he understands it, the application has been revised so we are talking about a 35-foot variance instead of the 108-foot variance and would incorporate where the house sits and the upper deck and lower decks. Mr. Brittain replied yes, the addition of a 10-foot variance to what is existing. Mr. Smerigan replied correct, the total variance. The reason he is stating it this way is so in the future there is no issue about this variance being granted for 10 feet as they may come to the conclusion that everything isn't within the variance and therefore it encroaches, so by saying it is an additional 10 feet for a total variance of 35 feet makes the record accurate. Mr. Brittain replied correct.

Mr. Iafigliola stated that Mr. Smerigan and Mr. Sheehy previously sent emails and asked for Mr. Smerigan's opinion now that the application has been revised. Mr. Smerigan stated that the revised application is a substantial reduction in the amount of the variance and the impact. One of the criteria for a variance, as you are aware, is the minimum necessary to obviate the practical difficulty and he thinks the applicant has gone along way by pulling back on what she requested and minimized what she is trying to do. He believes this more appropriate than what was originally requested. His difficulty was going all the way down to the foot of this slope and down to the water's edge, he believed it was too much and the city engineer agreed, he will defer to the city engineer for the design issues. He believes Ms. Briggs has minimized the amount of the variance particularly when you take into consideration that the house and the existing deck already encroach and if she adds any deck at all there is going to be an encroachment by moving to only an additional 10 feet he thinks she is making a more reasonable request and does not have any difficulty with it.

Mr. Iafigliola stated that the deck is 10 x 12, which is a fairly small size and there certainly could have been a larger deck proposed but she would have had a much harder time saying it was reasonable and acceptable. Mr. Smerigan stated that he thinks she has come a long way to meet the Commission's requests and what she has now makes sense in terms of the variance that the Commission would grant. Mr. Bemer indicated that he concurs with Mr. Smerigan's comments.

Mr. Pehanic asked if the stairs are going down to the waters edge. Ms. Briggs replied no where near. Mr. Brittain indicated that the deck is extending an additional 10 feet and the stairs will stop at that point. Mr. Pehanic stated that he is reviewing page 10. Ms. Briggs stated that the stairs that extend past the deck are being deleted. Mr. Brittain stated that the stairs shown diagonally to the left to the water side will be deleted; the

stairs will go no further than the base of the 10-foot extension. Mr. Pehanic replied that he understands.

Mr. Iafigliola stated that the 14-foot stair extension will be deleted. Mr. Brittain stated that the 14 foot, the 4 foot and the landing all is deleted. If you look at the 12 foot width line of the deck it stops right there.

Mr. Thompson asked if the stair were inside the 12 feet or outside. Mr. Iafigliola stated that the deck is 12 feet wide but the stairs are probably 4 feet wide. Mr. Brittain stated that the width of the stairs are 3 to 4 feet he would ask for 4 feet and if we build it less than that it would be a 3 feet but indicated that the maximum would be a 4 foot wide stair and would ask for direction from the Commission. Mr. Iafigliola stated that he would indicate 5 feet.

Mr. Iafigliola moved to **approve** as modified Planning and Zoning Case #13-2019 for 25401 Tyndall Falls Drive for a riparian setback variance of 35 feet to section 1470.10(b)(2) to permit installation of a deck, stairs and railing; this includes a 10 foot x 12 foot new deck at a lower elevation than the existing deck and stairs to the lower deck up to 5 feet wide; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

#### **COUNCIL LIAISON REPORT – *No Report***

**OTHER BUSINESS** – Mr. Iafigliola stated that he knows Council has been holding virtual meetings and would say we need to probably think of some more formal policy for how we want to handle these meetings going forward. When all this happened in March it was scattered and do the best we can to keep city business moving. He is sitting here with 3 Commission members and we are all 6 feet apart; all the applicants were plenty spaced out and he understands the Governor’s order, to our interpretation, is a maximum of 10 people in the room. He also knows there are some technology problems as he himself cuts out half the time but he thinks we should find a way to do this as best we can. He is using his personal computer and hopes that it works. He is not sure even who to ask or what he is even asking, but thinks we ought to come up with some way to say is this really how we want to do it for the foreseeable future and is there a better way. Everyone can think about that. He is not upset or disappointed just saying maybe we should think a little harder about how we should do this.

**APPROVAL OF MINUTES** – Mr. Thompson moved to **approve** the minutes of July 15, 2020, as written; Mr. Pehanic **seconded**. Poll: 6 ayes; 0 nays; 1 abstain (Iafigliola). **Motion carried**.

**ADJOURNMENT:** Mr. Iafigliola moved to **adjourn**; Mr. Pehanic **seconded**. Voice vote: 7 ayes; 0 nays. **Motion carried**. Meeting adjourned at 9:51 p.m.

\_\_\_\_\_  
Planning & Zoning Commission Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Planning & Zoning Chairman

\_\_\_\_\_  
Date