



CITY OF OLMSTED FALLS
PLANNING AND ZONING COMMISSION
MINUTES
DECEMBER 16, 2020
7:30 PM
VIRTUAL MEETING

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

Others Present: Andy Bemmer, Law Director, George Smerigan, City Planner. Audience: 11

Chairman Brett lafigliola opened the public hearing at 7:30 p.m.

1. Planning & Zoning Case #26-2020 - A request by Jim Dixon, Gibbs Butcher and Brews, of 8054 Columbia Road, PP# 291-22-009 for a Conditional Use Permit and site plan approval for outdoor seating.

Mr. Martin stated that he sent a copy of a site plan to Mr. lafigliola that he requested regarding the shared entry for the Bistro and Gibbs from Columbia Road. There was another plan that basically addressed the condition of using the original presentation by Mr. Dixon and getting access from Columbia Road to the rear area that is currently being used for booths to be permit for outdoor seating for six months a year. The way that plan was presented to Planning Commission was with a handicap space that was just before the rear yard, and that basically meant that any car including the handicap space that pulled into the access would have to back out onto Columbia Road. This became an important issue at the last Planning Commission and also ironically at the ABR meeting. There was an idea which was to use an existing building in the rear yard, that is historical, for the barbeque shed which would replace the metal shed. The plan was to get outdoor seating for six months of the year and he was able to get approximately 42 seats versus the 48 that is Mr. Dixon wants to use on a permanent basis. There was space for four cars, one of which would be handicapped, and also a trash enclosure which would allow at least four cars to come onto that site and be able to park and also to maneuver on the site to get back onto Columbia Road facing the traffic. That is as good as the plan could get. What happened in the interim is that his client for the Le Bistro said that he was no longer interested in the re-development or purchase of the property until things settle down with both the COVID 19 and also the new president and what that said to him was that the plan before the Commission that was originally presented by Mr. Dixon is the one the Commission should be looking at and deciding upon. Again, it was for the 48 seats for outdoor seating, for the handicap spot where it is, and for the reuse of that building on a permanent basis. He would add that with the addition of 48 seats comes the requirement to look at the number of parking spaces. There are issues with the use of the building from a building code stand point; the shed is too close to the adjacent property to the south and it is of such a use that it would require specific building code requirements to be met. It also has some issues that he and Mr. Dixon spoke about on site and simply needs to be taken into

account. If one were to basically move that use, meaning the cooking and the prep service to the rear building then that would fall into a historic classification and solve many issues in terms of use of the building; and also the re-approval by the ABR for that location. He believes that the original plan that Mr. Dixon presented to the Commission with the outdoor view of the metal shed is truly the one that he is presenting and should be representing tonight. If you have any questions about either of those plans let him know as that is really why he is here tonight to try and make it better.

Mr. Iafigliola wanted to make sure he is looking at the right drawing. The drawing he has in front of him unfortunately has no date and is focused entirely on the Gibbs property with no mention of the property to the north, there are four parking spaces in the back, and re-using the rustic treasures out building for Gibbs. He thinks Mr. Martin sent him a second drawing, which he had requested and appreciates him doing, of a colorized version but believes the information is the same its just slightly easier to read due to the color. Is that correct? Mr. Martin replied yes, they are both dated 12/11/2020 in the lower right-hand corner. Mr. Iafigliola stated that the black and white one does not have a date but the colorized does. Mr. Martin stated that he emailed two plans and they were both in color and both dated 12/11/2020. Mr. Iafigliola stated that the 12/11/2020 one is before the Commission which is identical to the one we saw last time except for the color. Mr. Martin replied no, to be more specific and correct, Jim Dixon provided a plan to the ABR that is dated 11/2/2020 and he believes that is the one that was submitted to the Planning Commission as well. Mr. Smerigan asked if everyone had this drawing.

Mr. Iafigliola re-iterated that there are four parking spots in the back and asked what the proper term for the shed would be. Mr. Dixon stated it is called the Rib Shack. Mr. Iafigliola stated that the rib shack would be removed and be recreated in the rustic treasures. Mr. Martin stated that he thinks the issue is that the existing metal shed is very close to the building to the south, about 18 feet by 20 feet, and it sits closer to the rear of the existing building on the Gibbs restaurant on Columbia Road; the Rustic Treasures building is in the rear corner beyond the Gibbs property and is in the back of the Second Thyme around shop. There is a nice little courtyard back and a walkway from the parking on Orchard Street to the back of Gibbs which is a very nice entry to the rear yard. It may even allow for Mr. Dixon to get more seating in the lower patio area and then of course the front benches that he currently used are aligned with the south property line. It allows people to walk around the parking area during that six-month period and enter the back of the Gibbs restaurant or they also have the opportunity of walking up a ramp or stairs to a side door that enters into the Gibbs restaurant as opposed to the main entry on the front of the building. Mr. Iafigliola stated that what he is trying to say is the current rib shack structure in Mr. Martin's plan as presented will be taken down and its function will be transferred to the reuse of the rustic treasures existing outbuilding. Mr. Martin stated that was correct.

Mr. Bemer stated that he would like to know if all of the board has the 12/11/20 rendering that Mr. Martin is alluding to, if it is in the file and who dropped it off because he wants to make sure it is in the file and identified. Mr. Smerigan replied that he does not have the document. The clerk responded that she does not have the document.

Mr. Bemer replied that no one has it and asked who dropped it off at the building department because we need to know if it truly was received by the building department as nobody seems to have. Ms. Stone replied that she received nothing other than the photographs that she emailed yesterday. Mr. Bemer stated that we do not have that site plan which is something that maybe resolvable but is a critical element. He asked how many parking spaces were lost and how are they being made up. Mr. Martin replied that when the restaurant was originally designed there were six parking spaces in the rear and he does not know how many are currently available on the site because there a trash dumpster has been put in with another recycling item and may reduce it by one or two. That restaurant as original presentation by Clint Williams was going to use the parking on Orchard Street. Mr. Bemer stated that the parking area is located behind the antique store and is a straight shot through the walkway to the back of Gibbs. Mr. Martin stated that there is a walkway that runs down the side of the building and you would cross Orchard to the parking lot which is used for the outdoor wedding space and then further to the south on that side of the street is yet another parking lot that was developed for the use of the Gibbs Restaurant building. Mr. Bemer stated that he was asking how many were lost because two would be considered minimal and he would not encourage the Commission to be set on this particular issue. He made a comment previously that the liquor permit would need to be extended and he wants to make sure Mr. Dixon understands that he needs to go through the liquor commission for that approval, if this permit is granted. Mr. Dixon replied that he understood.

Mr. Martin stated that he believes that you need to take into account that these 48 spaces are new to the whole project. In other words, if you use the rear yard as a use then a determination, he believes, has to be made even on a building code stand point and he believes that use for six months is a permanent use. Mr. Bemer asked if he was agreeing with him that a liquor permit needs to be extended. Mr. Martin replied no, he is basically saying that the Planning Commission and perhaps Mr. Smerigan can address that there are 48 seats that have been added to the rear yard and Planning Commission simply has to say if that's okay or not. Mr. Bemer replied correct planning does not have control over the liquor permit; all he is saying is that there is a process to expand the liquor permit and that needs to be approved. Mr. Iafigiola stated that he is not sure if these gentlemen were answering the same question.

Mr. Smerigan stated that he is slightly confused as to what we are doing. As he understands, this application started with Mr. Dixon wanting to make the outdoor arrangement that he presently has permanent and to operate in this fashion going forward. He has not seen any new drawings, changes or adjustments to that so he is going by the original application that Mr. Dixon filed with us. Based on that the issue in front of the Commission is whether or not they will grant a conditional use permit to allow him to use that rear area as he is proposing on a permanent basis. If that has changed, he needs to know because that is his understanding. Mr. Martin replied that he believes that is Mr. Dixon's proposal that he submitted originally and that should be addressed. One of the problems is that there are 48 seats that weren't there before and they are now and he believes the zoning code says that you are suppose to provide one additional car space for every three seats or one car for every 50 square feet of gross building area, whichever is larger. Mr. Smerigan stated that he thinks the whole issue of

the use of that rear space proceeding as opposed to parking is the very issue that is in front of the Commission this evening so those are the determinations that they have to make. Mr. Iafigliola stated that Mr. Bemer had the same question regarding which drawing the Commission has and it seems that he is the only one that has the drawing dated 12/11/20. However, looking over them the only difference he sees between what was originally submitted and what is dated 12/11/20 is that color was added; he does not see any additional notes; there are still four parking spaces in the back; same number of picnic tables around the side, including two shown as round tables by rustic treasures and using the building on the southwest corner of the property. Mr. Smerigan replied that the latest drawing he has is dated 11/2/20. Mr. Martin replied that was correct and is Mr. Dixon's submission. All he said was that there was going to be a handicapped parking space at the end of the drive where it entered into the rear yard and that was the only written criteria. It was supposed to be on a permanent basis and was going to be 48 seats, if I am correct, at least that is the amount of seating that is out there currently; he wants to keep the shed and improve it a little; and use that for a permanent six month basis for outdoor seating in the nice weather months; then revert back to yet another parking plan that simply would accommodate the winter use where the cars would then move from the handicap spot into the rear yard with the existing shed and that would be the permanent basis of that use. Mr. Smerigan replied that there are not 48 seats referenced in the application there is only a reference to eight picnic tables; if you assume six people at a table you could get to 48 but the only reference in the application is to the eight picnic tables. Mr. Martin stated that he measured the tables and they will handle six people at 2 foot of space which is normal and typical of how you do that so there would be six people seated at the tables. Mr. Smerigan replied that he is attempting to firm up the record because we seem to have some issues in terms of just exactly the matter the Commission is addressing. He believes we need to get clear what is in front of the Commission and what is accurately reflected in the record. So, if the formal request is to permit 48 outdoor seats then that's fine but the Commission needs to be aware of that. Mr. Iafigliola stated he believes the answer is yes, is that correct Mr. Martin. Mr. Martin stated that there are 48 seats on the benches and then another 8 to 12 on the back porch already existing. Mr. Smerigan replied that those are not the matter we are dealing with today; we are talking about the reuse of the parking lot area and he agrees with how Mr. Martin characterized it earlier, the change is 48 additional seats. Mr. Martin replied yes.

Mr. Bemer stated that he believes he mis-spoke earlier and parking is always a concern in the Columbia area. In effect we are looking to accommodate the potential of 48 additional seats so we are looking at 16 additional parking spots. He thinks we need an accounting of how many parking spaces were originally dedicated from Williams to the restaurant and if we are looking at another 16 we have to account for where the additional 16 are coming from.

Bill Henzey, 8162 Columbia Road, he is on the south side of the Gibbs restaurant, the only issue he has at this point with this proposal is the parking issue. This has always been an issue in the downtown area as Mr. Bemer indicated. The issue he has is that, particularly during this COVID 19 crisis, is that we have allowed Mr. Dixon to use our parking lot, primarily for takeout, but what he is concerned about is now we are

eliminating parking spaces. Typically, what happens is tenants of that building park in his parking lot, and not that he is unwilling to share, within reason, but the problem we are going to have now is that we are eliminating more parking spaces where parking is at a premium in the downtown area. It also appears that we keep recounting the same parking spaces over and over again for the downtown area be it in the junction or the gravel lots on Orchard. That is his big concern here; we are now changing the configuration of a property and taking away parking spaces during the summer time particularly when parking is at a premium. He does not know how the tenants at Mill River Plaza feel but he is sure they are concerned that we have people parking in that parking area and walking across the street to the establishments or to the junction area. That is his primary concern - we are now eliminating the parking spaces in the summer time in the prime time.

Ann Reichle, 8155 Columbia Road stated that in May, Gibbs' was granted a 3 month "Temporary Use" permit by the Mayor, in response to COVID, to extend dining into their rear parking area, completely removing their parking lot. The paved Handicapped parking was covered over by what was explained as a "temporary" structure. Mill River tenants took no action despite the fact that our parking lot was not only being used, but "suggested and directed" by the owner, to customers and staff for parking.

Mr. Dixon injected and stated that he has never directed anyone to park in her lot, we tell people not to park there, we have never directed anyone to park there. Ms. Reichle replied that she appreciates that and is sorry for the confusion.

At the end of June, I came before Planning Commission to explain the repercussion of this measure and express my displeasure over the Mill River parking lot use by both staff and patrons of Gibbs' Butcher and Brews. I explained the shared cost I and all other Mill River merchants pay to maintain that lot. I was told that I was out of line and that Planning Commission had nothing to do with this situation, so here we are today.

So, then July 30th, a 3-month extension was again authorized by the Mayor which expired October 31st. As Gibbs' staff and customers increasingly used our lot, we again did nothing to try to help out a struggling fellow business owner but expecting this to cease November 1st.

We are now into the busiest retail season of the year and Winter snow is coming. The plaza will be busy with patrons hurrying in and out of our various businesses in the cold weather with patrons expecting to park in close proximity to their chosen store.

The lot needs to be plowed for our staff and customers. When others are parked there for lengthy periods, the lot cannot be sufficiently plowed to accommodate our short-time patrons. The wear and tear is increasing - everything from striping to paving. We, as business tenants each pay our respective shares of the plaza expenses. In February we will receive the bill for the current year due by March 30th. To reiterate again, my personal cost last year was nearly \$1800.

There are also safety concerns over this. People park in the row next to the street, walk through the bushes or stand in the driveway in between moving cars, and jaywalk across Columbia dodging traffic all day every day, but worse yet, in the dark. Cars come around the blind corner from Bagley Road westbound, turning right onto Columbia on both red and green lights. How long until we have a tragedy at this location?

At the last Planning Commission meeting, Mr. Thompson suggested that maybe the City could reach out to Mill River to trade out paving a portion of the lot for additional parking for other downtown businesses. Attempting once more to resolve this situation with a fellow business owner in mind, I had a conversation with Dan Giorgi, the owner of Mill River Plaza last week when he was out in my plaza. I asked Mr. Giorgi if this was possible. He said it wasn't possible since the CAM charges are written into every store's leases and they are not transferable. He does not wish for anyone other than tenants and customers to be parking in this lot. There are "no parking/towing" signs posted at each entrance that will be enforced if this continues. He stated that he was required by the building department to provide this much parking for the storefronts he rents and that other property owners were required the same.

We sympathize with every business owner's plight in this pandemic. We understand the need to reach out temporarily to help businesses succeed however currently the request from Gibbs' is to make this "temporary" provision permanent thereby permanently removing sorely needed parking space from our downtown area while increasing its patronage. We do not support this effort.

If approval is granted for this permanent alteration, towing will commence at the vehicle owner's expense. This will not be good for our downtown, but neither will the permanent elimination of required parking spaces. Let's find a solution through where all parties' concerns are respected. There are lots assigned to Grand Pacific Junction on Orchard. What is needed is better signage to help customers navigate to them, requiring GPJ businesses' staff to park there as well as possibly increasing police presence to reinforce this continual dangerous jaywalking incidence.

We wish nothing but success to our fellow business owners.

Ms. Reichle stated that she has additional quotes from some other Mill River tenants, who could not be here this evening.

Jeremy Martin from The Rift Shop:

"Grand Pacific Junction is a great Northeast Ohio destination! And how cool to have it right here in Olmsted Falls! However, parking has always been an issue. Please have GPJ and Gibbs' use their own lots which supply enough parking to support their businesses. Mill River Plaza parking is for our customers and staff - not theirs! Every day I watch employees of the restaurants and businesses across the street park right in front of my business in Mill River and walk across the street."

Scott Sedlacek, The Eye Place:

“It’s a safety issue when employees and customers of businesses park in Mill River and then cross the street between moving cars. They come from their parked cars and out between the bushes through the mulch and landscaping and then jaywalk. They never go down to the traffic light or the crosswalk by the grand Pacific Hotel. That’s going to cause a problem eventually. Not if, but when.”

She stated that she also sent a video into the Clerk and Mr. Iafigliola. Mr. Sedlacek states: “As you can see in the video, shot at 5:15 pm today, pedestrians stand right in the driveway entrances to Mill River while cars have to wait behind them until they can run out in between cars and traffic to jaywalk. This is a safety issue because there is no sidewalk there.”

Billy from Keith Jewelers-

“We are not trying to be rude, just to be fair. Imagine if the employees and patrons of Mill River consistently parked up and down the streets in Grand Pacific Junction. My jewelry store and Falls Family restaurant get greatly affected because many of our customers are older and if the front two rows are full in our parking lot, they will just drive back out and not come to our business at all. We love that there are lots of people coming to downtown Olmsted Falls but you must understand that the designated parking areas are not being used properly.”

She stated that she has a list of costs to maintain this parking lot for the last years which has roughly entailed \$50,000; insurance particularly someone could sue Mill River for not enough lighting, lack of maintenance, if they get hurt in the parking lot and then trying to cross the street who are they are going to sue. When all these costs rise our rent goes up not the landlords.

Mr. Dixon stated that the main point Ms. Reichle made is that we are not utilizing the spaces we have. We have 48 spaces on Orchard, in two lots, and maybe if we had signage to better tell people where our parking lots are. He stated that is where he sees his employees parking. He rents the French restaurant’s parking lot and knows that is only a temporary solution but it doesn’t look like there is going to be a sale there anytime soon and that picked up 8 spaces. So, even though he lost four he has a net gain of four because he is renting the lot. We encourage our employees to park in the French lot or on Orchard but he is sure there are some that park across the street and he will address that with them. He thinks we need to utilize the spaces we have and we have 48 spaces on Orchard that we don’t use that are just as close as the Drug Mart parking lot. We are here tonight he thinks to ask for the parking and for the permanent use of the rib shack. He will make any necessary changes that Mr. Martin alluded to, if we have to move the electric to make it permanent or whatever the Commission thinks we need to do but we need to think about how much parking we have and how to utilize it properly.

Mr. Thompson stated that before we make any decision we need to go back and revisit as Mr. Martin stated, the decisions on how many parking spots were allocated from the rear lot because the Orchard lot was also for the wedding chapel and at that time Nationwide Insurance, it was shared lot, which is fine, but he does not remember the

number of parking spots that were designed at that time for the restaurant. He thinks we need to go back and revisit the minutes from those meetings regarding what Mr. Williams was using for the restaurant at that time. He does know that he was using the six spots in the back but does not remember how many were on Orchard. He stated that the Orchard lot is close and most people do not realize how close it really is. He agrees that some additional signage would certainly be advantageous even on Columbia Road to point towards parking in that area or even signs that say Gibbs parking. He believes it can be done but doesn't remember the numbers. Mr. Iafigliola stated that Mr. Thompson's question addresses what Mr. Henzey's comments were about double counting spaces.

Mr. Iafigliola stated that we have heard a lot about signage and parking and this Commission can almost set its clock by similar issues in the downtown area. He asked Mr. Dixon if he would put some thought into ideas on what exactly he could do for additional signage which would benefit his business and knows there would be a cost. He stated that Mr. Thompson alluded to additional signage which could introduce some additional issues or potentially variances that may be required but it may be in his best interest. Mr. Dixon replied absolutely yes.

Mr. Iafigliola asked Mr. Martin to make sure we have the exact site plan and that the date is accurate. Mr. Martin replied that he would be happy to be clearer because he is realizing that the clerk has a different site plan dated 11/2/20 which is truly what Mr. Dixon is proposing and perhaps to make it even more clear he could draw the same drawing in color.

Mr. Bemer stated that we need to make sure we have a sufficient record. To follow up with Mr. Thompson's comments, google earth is a wonderful way to identify parking lots and you can mark out the spaces, it appears that this proposal has some controversy and he thinks we need to have a very complete record. He also heard Scott Williams named mentioned and thinks we need some documentation from Mr. Williams that identifies areas for Gibbs use so that everybody is satisfied going forward where the parking allotment is available, signage, assuming we are going to table this tonight, so we have a complete record for everyone to consider.

Mr. Smerigan suggested that he thinks what Mr. Dixon is asking to do behind the building is fairly clear and we have an understanding of that. He understands the seating capacity and how he wants to use that but obviously we have an issue relative to parking. Based on the research regarding what was provided before he thinks we need an accurate count of how many parking spaces are available to Mr. Dixon and how many he needs because if the Commission is going to grant a conditional use permit and grant any kind of variance to on-stie parking we will need to know that number.

Mr. Iafigliola moved to **table** Planning and Zoning Case #26-2020 for the purposes of gathering additional information that has been requested by the Commission; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

2. Planning & Zoning Case # 20-2020 - A request made by Valore Builders on behalf of Ernest Peto, owner of 25389 Tyndall Falls Drive, PP# 291-18-032, for a front setback variance of 5 feet to Section 1240.05(b) to permit the dwelling to be located 35 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. Iafigliola stated that he would like Mr. Fischbach to speak briefly regarding what was stated at the last meeting and what has changed.

Mr. Fischbach stated that at the last meeting he asked for a variance that would have moved the house into a 25 foot area setback, it was brought up by the Commission that if soil testing was done, and at this point he had not, it was then recommended that he perform the testing, at that meeting the issue was tabled. The process that he used to soil test was digging four test holes and upon seeing the conditions of the soil with those test holes, it was recommended by his engineer to complete borings on the property. There were four to five borings completed in separate locations on the property and we are requesting a 35-foot setback based on the findings, lot dimensions, where the house is located on the property, especially the southeast corner being so close into the cliff area where it starts to slope. We have tried to compromise and are requesting a 35 foot setback, we are aware that codes states 40 but he feels that a 35 foot setback will not recreate as many issues as it would have for the other homeowners on the street with visibility and aesthetically and believes the home will blend in at 35 feet.

Mr. Iafigliola reiterated that Mr. Fischbach is requesting a five foot variance so the home can be built at 35 feet and by code it should be 40 feet. Mr. Fischbach replied that was correct.

Mr. Smerigan stated that this matter originally came before the Commission for a riparian setback variance which was granted and then the applicant came and requested a front setback variance in addition to the riparian setback where he asked to move the home to 25 feet and we felt that was excessive. The code permits the home to be 40 feet from the right-of-way. We have a situation in this subdivision where some homes are at 30 feet and some are at 50 feet; these lots are required to be at 40 feet. So, there is a difference in setbacks as you go down the street which was created many years ago. The applicant is requesting a five-foot variance to go from 40 to 35. The Commission directed that soil analysis be completed before reconsidering the variance request. We are doing a balancing act here, the further back we put the house the further we go into the riparian setback; the further forward we come the more we go into the front setbacks and so we are dealing with variances in both directions. The idea is to find the spot that makes the most sense. Those soil analyses were completed and submitted to the city engineer and building commissioner, he has spoken with both and they have indicated that based on their professional and technical opinions are that the house will cause less issue and damage from a riparian standpoint placed at 35 feet than it will at 40 feet and they are concerned about the impact in the rear if the house is put back an addition five feet. They believe that the five-foot compromise is reasonable

in order to minimize the riparian issues. He stated that the 35 feet represents a reasonable placement of the home. There is a practical difficulty in moving it back on the property because of the potential damage to the hillside. He understands that this is not a popular situation with the neighbors, but the five feet is preferable to the 15 feet that was originally requested and based on the soil analysis going back the additional five is likely to cause more issues in the rear.

Mike Allan, 25354 Tyndall Falls, stated that he would like to know if the structure as proposed if we might have access to that knowledge whether it is a slab or a full basement, half basement and how that might affect the structure and the setback. Mr. Fischbach stated that the proposed plan is for a crawl space but in doing so we are not changing the elevation of the house in anyway so anything that was submitted from typo's or blueprints with any elevation grades will remain the same. Mr. Allan stated that he would defer to the Halloran's if they have any other questions about the site lines but this answers his question.

Susan Starkey, 9544 Charney Circle, stated that she is present tonight to support the Peto's. This has been going on for so long and she agrees that the five feet sounds much better as it won't stick out. She believes in general it will stick out because it is a brand new home in our development, we are all use to seeing the kids play over there. The Peto's lived on Tyndall Falls prior to that so their grandkids played in the same lot that they just purchased. She does not think it is going to be an eyesore and thinks that a five foot variance is pretty reasonable and we all will get use to the idea of there being a new home there and welcoming the Peto's back.

Tim Portman, 25381 Tyndall Falls, stated that he also wants to support the neighbors. He feels like this will be an interesting mix of being able to keep the Peto's happy and the Halloran's happy. He wanted to see what the Halloran's feelings are on this request. He wants to basically support both neighbor's and knows that is challenging because the Halloran's are setback 50 feet and he believes that his home is setback 35 feet and his garage is 32 feet and feels that both of these numbers are important for everyone to have an idea of where his house sits versus the Halloran's. If he recalls correctly, the Halloran's sit back 50 feet from the sidewalk so it gives perspective as to where exactly this home will sit.

Mr. Iafigliola stated that from the property in question Mr. Portman is two lots to the west. Mr. Portman replied correct.

Mr. and Mrs. Halloran, 25393 Tyndall Falls, stated that when we spoke last, we did talk about the distance between us and the adjacent house. The right side of his home is 20 feet from where the home will be built. The garage proposed at that time was going to be on the other side of the home and now it has been moved back so where this is going to be located is 20 feet to the right of us and 12 feet if its at 40 feet or 17 feet if its at 35 feet, which is a very large discrepancy in the site line along our houses. We feel that this would detract from the view that we have in his house and impact the property value. He stated that he did drew a diagram which is a right triangle from the side of his home down to Mr. Portman's house and at that point it looked like the Peto

property should be 46 feet and he understands that they are allowed 40 feet, but in order to be a good site line from his house down to the Portman residence it should be 46 feet down to 37 feet down to 32 feet that's just from his perspective what would be a reasonable site line. He understands that they are allowed 40 feet. He has a picture that he would be happy to send everyone of the backhoe that was sitting out on the property where the driveway will be and it is a very obstructive view and its very intrusive. Our prospect is that we are planning on moving out hopefully within six months and we are very concerned that this will detract from our property value and that is our main concern.

Laura Lapohn, 25378 Tyndall Falls, Mr. Iafigliola administered the oath. Ms. Lapohn stated that she lives catacorner from the property and would like to know if the garage is going to be in front of the house will it be flat in the front. What is the structure and would it make more sense to have the garage on one side or the other to kind of help with the site line between the two houses and to make it look nicer.

Mr. Smerigan indicated that the difference in the front setback between the garage and the rest of the front of the house is only about three feet. So, you are not gaining much by flipping the garage to the other side. Ms. Lapohn replied that again five feet doesn't seem like much either but it seems to be a big deal here so three feet or five feet it just might be an option just for the view of the street as you are going down. Mr. Fischbach stated that we looked at this both ways to try to get the best fit on the lot and with the garage on the west side at 35 feet was the best fit for the property. Mr. Iafigliola stated that if you were to flip the garage from west to east it would put the deck even more over the slopped area and introduce other issues. Mr. Fischbach replied that it would definitely be further out into the slopped area and right now we are trying to take advantage of the five to ten feet of green space before we get to the slopped area on a 12-foot deep deck so we will only be into the slope a couple of feet. If we flipped the house we will be way out into the slope.

Mr. Thompson stated that initially the current drawing is what was proposed; then the next drawing we received the house was flipped so the garage was on the east side; this drawing is back to the original plan. When the house was flipped it was moved over five feet. He knows the code permits the home to be 10 feet, which is where it is, and asked if it could be moved over five feet which would give the Halloran's a little bigger buffer than what is currently proposed. Mr. Fischbach stated that based on what he has seen through engineering reports, if Mr. Thompson is asking if we can go to the east another five feet to basically center the house on the property to give the neighbor's extra space he thinks that can happen.

Mr. Pehanic stated that Mr. Smerigan discussed that if the house was moved back one corner of the house would create other issues. Now, we are talking about moving it maybe five feet the other way and asked what happens if you move it five feet back more into the riparian. Mr. Fischbach replied that if the home is moved five feet back it would put the home more into the riparian and will take the southeast corner of the home into the hillside, where right now it is not into the hillside and that changes quite a bit on the back of that property. Mr. Smerigan stated that there is an area of concern on

the back of this lot and it is not a straight line across the lot so, as you go across the lot the area of difficulty comes closer. If he shifts the house five feet over the rear corner will be very close to where it becomes difficult. To move it over and back he would be over the bad area, so he can't do it. Mr. Pehanic stated that moving it five feet in the other direction just compounds the problem. Mr. Smerigan replied correct. The engineers are concerned about getting into the poor soil area because once you disrupt that we could lose more of that flow so the idea here is to minimize the impact so we can get close to it but we don't want to go into it.

Mr. Iafigliola asked if a crawl space would be added. Mr. Fischbach replied that there will be a crawl space under everything but the garage. Mr. Iafigliola asked how deep the crawl space would be. Mr. Fischbach replied that the house, sidelines, and grade would mimic the house to the west and that crawl space will be about four to five feet. Mr. Iafigliola stated that all those dimensions also help with the stability of the backside. Mr. Fischbach replied yes. The reason that we proposed to install a crawl space from the line of construction was because if he built a slab and he is that far out of the ground, five feet, he is not only going to have downward pressure but outward pressure as well because he would probably have to put about 350 tons of stone in this property. So, the crawl space elevates that and we will have downward pressure but not the outward pressure.

Mr. Iafigliola reiterated that the code requires a 40-foot setback, the applicant is now proposing a 35-foot setback for a variance of five feet. Mr. Fischbach replied correct. Mr. Iafigliola stated that the last time the applicant was before the Commission the applicant proposed a 25-foot setback. Mr. Fischbach replied that is correct. Mr. Iafigliola stated that now there is a compromise of 10 feet. Mr. Fischbach replied correct. Mr. Iafigliola stated that the current plan shows a 10-foot side yard setback, which is within code. Mr. Fischbach replied yes. Mr. Iafigliola asked if he would have any objection to moving this side setback an additional five feet to center and place the house 15 feet from the eastern property line. Mr. Fischbach replied that is correct. You would have basically 15 feet on each side of the home and very close to being centered on the property.

Ms. Lapohn replied that she likes the fact that it will be moved further away from the Halloran house and believes it makes much more sense.

Mr. Halloran stated that he does not want to be difficult. When we first heard that the Peto's were going to build we thought this would be a good enhancement to his property. We are concerned that if it appears dis-jointed when it is built then that certainly would impact our property values in the long run. Our major concern was when we were approaching the previous meeting he looked at where this would be located and it just appeared that this was not consistent with what the neighborhood is. If the ground had been considered buildable there would have been a different house there, probably would have been one of the Cape Cods, which is on the other side, it would have been more in line. He believes that they are building a little bit too much house for the property. The property was deemed unbuildable. He realizes that the initial plan was to try and get two properties there and it probably would have worked

out better. There are other houses in the neighborhood where the garage sits far forward and at this point, he is saying that this would be about 17 feet in front of our house, moving it over five feet does help, but it just appears that this is a bit ambitious to put this house there. We don't want to stand in the way and realize that we do not have a vote in this. He understands that the compromise of moving the house over does help out and we do not want to be difficult but in the long run we have to look out for our own interests and we want to make sure that the city is looking out for our interest and the interest of the neighborhood.

Mr. Iafigliola stated that he understands Mr. Halloran's concerns and he hopes that he appreciates the position that the Commission is in in trying to strike the best balance that we possibly can. He hopes that Mr. Halloran sees that if a compromise is to be struck, one of the true definitions of a compromise is no one gets exactly what they want but hopefully you can live with the decisions.

Closed public hearing at 9:04 p.m.

Mr. Iafigliola moved to **approve** Planning and Zoning Case #20-2020 a request made by Valore Builders on behalf of Ernest Peto, owner of 25389 Tyndall Falls Drive, PP# 291-18-032, for a front setback variance of 5 feet to Section 1240.05(b) to permit the dwelling to be located 35 feet from the street right-of-way in lieu of the required 40 feet to permit the construction of a new single family, with the condition that the house be moved an additional five feet to the east so that the side yard setback to the west and east is approximately 15 feet; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

COUNCIL LIAISON REPORT – Mr. Munteanu stated that he was going to discuss the CRA but Mr. Bemmer sent out an email discussing the same issue. Mr. Iafigliola stated that the Planning and Zoning Commission has the duty to appoint a member to the body in question, but the member that is appointed does not have to necessarily be a member of the Commission. Mr. Bemmer replied that is correct. The statute is silent so the Commission can pick one amongst the board or another individual.

Mr. Iafigliola asked what the timeline was for this body to be created. Mr. Munteanu stated that we are hoping to have things put into place the beginning of Spring 2021.

APPROVAL OF MINUTES – Mr. Thompson moved to **approve** the minutes of December 2, 2020; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

OTHER BUSINESS: Mr. Iafigliola indicated that the last time he spoke with Dave Fenderbosch he indicated that his term on the Commission is expiring and was not seeking to be re-appointed. He would like to thank Mr. Fenderbosch for his service on the Commission. Mr. Fenderbosch would like to thank the Commission and wish everyone a Merry Christmas and Happy New Year.

Mr. Iafigliola stated that the Mayor would need to appoint someone to Mr. Fenderbosch's position and Council would need to approve that appointment. The Clerk responded that

Council needs to approve the appointment. Mr. Iafigliola stated that he would request Mr. Munteanu and Mr. Bemer to help find a individual to fill the open position.

Mr. Munteanu stated that during the last Council meeting Council voted to waive the building fees for the new St. Jude Home being built on Falls Glen Drive.

Mr. Thompson stated that there was an email regarding the new ABR guidelines. He briefly reviewed them but is not sure what was changed since it was not a redlined copy showing the changes. He would request that ABR write some sort of summary showing the Commission what changes were made and why. The Clerk indicated that she would speak with Chairman Tomasch.

ADJOURNMENT: Mr. Iafigliola moved to **adjourn**; Mr. Thompson **seconded**. Voice Vote: 7 ayes; 0 nays. **Motion carried.**

Meeting adjourned at 9:15 p.m.

Planning & Zoning Commission Clerk

Date