

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
June 23, 2020**

Members present: Fricke, Freshman-Johnson, Holdren, Kraemer, Rockey
Also present: Jamieson, Markowitz, Edwards

The meeting was called to order at 7:30 p.m. by Chairman Wade Fricke.

**SOLETHER LANE - AN APPEAL TO THE ACTION OF THE PLANNING AND ZONING COMMISSION
IN APPROVING A LOT CONSOLIDATION.**

Mr. Markowitz swore in Mark Rodgers, 120 West Summit Street.

Mr. Jamieson said Dennis Marino applied for a lot consolidation with the village for several parcels of land along Solether Lane. These are two parcels that he owns that were part of the original Solether Lane subdivision when it was created in the 1990s. They are considered leftover parcels from the original layout of the of the subdivision. He is looking to purchase a portion of land from a property along West summit Street and include that piece of land with these other two parcels to create a site to eventually develop into a new residence. So he submitted his application. That review fell within the purview of the Planning and Zoning Commission. And that matter came before Planning and Zoning on May 18th, 2020 and that information was sent out to everyone. The review of Planning and Zoning resulted in the approval of the creation of the parcel with the variance of the requirements for the lot depth. Lot depth was the one item in looking at this parcel that did not meet our zoning code. And under our zoning code Planning and Zoning could approve and modify the required lot depth in cases of a subdivision, a parcel of land. So that's how the application came to be. Planning and Zoning did approve it and then after it was approved to be created I received the appeal application from Mark Rodgers and Hope Gumprecht. And that is why the matter now falls to the Board of Zoning Appeals.

Mr. Markowitz said we are given very little in the code for direction on the standard of review or what factors there are to be considered when you are hearing an appeal from a decision of the Planning Commission, or it could be the Architectural Review Board. And we've had a few from the Architectural Review Board and had the same issue come up. So what you're doing is you are looking at whether the Planning Commission followed the directives given to them when a they are being asked to modify the subdivision regulations to allow this slot to be subdivided and then consolidated. You look first at legalities. Did they meet the legal requirements. And then secondly, you look at whether their decision was either reasonable or whether there was some abusive discretion because the code gives them the ability to modify, which implies that there's some discretion available to them in granting the modification, in

this case the ratio of the lot depth to the lot with. The way you have to look at it is did they follow the code, and if they did, was there action reasonable, or did they abuse any discretion that was granted to them, which they do have here.

Mr. Fricke said just to be clear, Ms. Gumprecht and Mr. Rodgers were not the applicants. It was Mr. Marino who was the applicant who appeared before Planning and Zoning. Mr. Rodgers and Ms. Gumprecht appear as a interested parties. What was done by Planning and Zoning has an impact that we're going to hear from them? Mr. Markowitz said correct. Mr. Fricke said I just want to make that clear because usually we're hearing a presentation from the applicant who's trying to get a variance. This one is a little unusual, in at least two regards, in that it's an appeal from Planning and Zoning but also it's an interested party and not the person who appeared before Planning and Zoning. Mr. Markowitz said they have standing because they're neighbors and they did oppose the Planning and Zoning Commission's action.

Mr. Jamieson said I do have multiple documents brought up showing the parcel, the appeal application, as well as the variance application. So whatever document you need me to bring up, let me know and I'll show it on the screen. Mr. Fricke said and that applies to Mr. Rodgers as well. If Rob can help you with any document that you think might be helpful that you're aware of we can use that to.

Mr. Rodgers said I think Rob has all the documents that we would have to present. We also were a little bit confused by the procedure, what was going on, and Planning and Zoning and exactly what they were doing. It appears to me, what they were approving was a variation from the subdivision regulations, Section 1161.05(c)(h1)&(h4), which 1161.05 is conformity to zoning districts. Individual lot and building specifications shall be in accordance with the building districts and regulations listed in Chapters 1119 through 1139 inclusive. 1161.05(h1), zoning conformance, the lot size, width, depth, and the minimum building setback lines shall meet at a minimum, the existing zoning regulations, except where the commission and village engineer determined hillside protection regulations apply. And then 1161.05(h4), minimum lot depth, no lot depth shall exceed four and a half times the lot with, or be less than one and a half times the width unless otherwise approved by the commission. So I'm guessing that the significant thing that they approved was a variation of 1161.05 because the lot depth is less than one and a half times the width. Having said that we, we prepared our documents based on the belief that in granting the lot split and consolidation, the Planning and Zoning was implicitly also approving what would essentially become variances to the zoning code so we based our arguments on the Duncan Factors. Based on our analysis of the Duncan Factors, this project just doesn't meet the criteria for an area variance or the area variances that would be needed to construct the house that was proposed on the lot split and consolidation plan. It gets a little bit confusing, but there was a proposed footprint for the house on the lot split and consolidation plan, which I think Rob is showing to us right now. And you can see at the 50 foot mark from the street the lot width, I think it's marked as 200 feet and the lot depth is at the

mid point, I think is 90 feet. So that's a pretty substantial variation from both Section 1125.03, the area, yard, and height regulations, which require a lot depth of 160 feet. And in this case, the lot depth is the mean horizontal distance of the lot and I drew between a front and rear lot lines. So the lot depth on the North side is 42.27 feet. On the South side, it's 158 feet. So the mean distance is a 100.13 feet or 59.87 feet under the minimum required lot depth, which is pretty substantial. And it's also, under 1161.05(h4), the depth is less than one and a half times the width. I think this is a big variation that the Planning and Zoning Commission did address directly. Let me address Duncan Factor No. 2, whether the variance is substantial. Yeah, it is very substantial because it is only 62.5% of the depth. It is an odd shape lot and it's going to require variances to build a house in that lot. The setbacks are going to be moved back. The backyard and setback will be 30 feet. There's a proposed incursion into the front setback based on the plan. And the shallow backyard, essentially with a 30 foot depth to the backyard and the house being up against that 30 foot line there's no place to put anything in the backyard. When you look at the lot, because the front yard essentially is the front yard setback, 50 foot meets the backyard setback. There is essentially almost no side yard there also on the North side. Duncan Factor No. 2, this is a very substantial variance. Factor No. 3, this is a neighborhood of large lots and putting this house on a small lot in the backyard of one of these large lots and adjacent to another large does change the character of the neighborhood. We, along West summit street and even Solether Lane, are used to our deep lots. We like the privacy, we like the wildlife, and like not being in these densely built neighborhoods.

Mrs. Freshman-Johnson said can we take a step back and review the lot layout right now? Although we have background, I think we need to take a step back and show the place of the lot that's been purchased and consolidated as an appeal approval or as an approval by the Planning and Zoning. I think it would be better to start there. There's a lot of background and we've read through it, but I need to see it on screen to understand the relationship. Some of the details are a little confusing from the minutes of the ARB meeting.

Mr. Jamieson said Rachel, do you want me to explain these parcels as they are on the screen now? Mrs. Freshman-Johnson said yes, please. I know where the parcels are, but I need to understand. Basically this other person at 68 Summit has purchased another parcel and they want to merge it and build a house on it? Mr. Jamieson said Coy property, which is the person that owns the parcels 27 and 28 that are consolidated, which is at the corner of Solether and West Summit. Part of their parcel includes this rectangular piece of land back here. It's an oddly shaped parcel of land. So Mr. Marino wants to purchase and the Coys have agreed to sell just the section of that back parcel, and then join it with parcels number 39 and 38 as shown on this map and then make a triangular shaped separate parcel by doing that. So it'd be a lot split, splitting off this rectangular piece of land from parcel 28 and then a consolidation of that piece of land with 39 and 38 to create one parcel.

Mr. Rockey said and do we have the total square footage of that three parcel combined lot? Mr. Jamieson said I believe we do. I have to look that up if you give me a few minutes. I can

tell you that the the square footage of all three of these parcels combined does exceed the required square footage for the zoning code. So, as far as square footage, it meets the requirement. I will look that up.

Mrs. Freshman-Johnson said okay, go back to that other page. I think that was showing the dimensions of the lot. That's the triangular lot right there? Mr. Jamieson said yes. Mrs. Freshman-Johnson said and then you had some measurements on the other tab. That's the now the newly combined triangular lot right there. Mr. Jamieson said yes, it's right along here where the cursor is, it goes all the way up and comes down. So on the Northern part of it the side yard is 42.27 feet. On the Southern part, I think I have to measure that, look at that a little differently. 158.39 feet as you go along the Southern side yard. The frontage along the street, 240 feet, 40.58 feet is the length along the front in the back, 221.63 feet across the back. Mrs. Freshman-Johnson said and what's the minimum? Mr. Jamieson said the total lot square footage added together is 20,385 square feet. The required lot size in R1-100 zoning district is 20,000. So it exceeds it by 385 square feet. Mrs. Freshman-Johnson said and is there a minimum length of footage? I know it meets the frontage footage, but is that side yard meet standard footage? Mr. Jamieson said there is no side yard length. There's a side yard setback of 10 feet, 10 foot side yard setback required, which that would be to whatever building you're going to build. If you are looking at the lot itself, the only thing would apply to just the lot without the structure would be the lot depth and the lot depth in the R1-100 is 160 feet. When measuring the mean the lot depth, you look at the mean horizontal distance, which would be at the center of the lot and you measure back at that line. It looks like on this copy that we measured that at a 90 foot depth, when a 160 is required. Mr. Fricke said and at no point of the property it is 160 feet? Mr. Jamieson said correct. Even at the one side it's 158 feet.

Mrs. Freshman-Johnson said If you go back to, I think it's tab four, can we understand now directly then if you can scroll up a little, we can barely see that 28 lot. So, directly then the Rodgers parcel is directly right there. Mr. Jamieson said so the Rodgers parcel comes back and does touch the the side yard or this part of the parcel. Mrs. Freshman-Johnson said and who owns parcel 39 and 38? Is it owned by the homeowners association? Mr. Jamieson said it is owned by Dennis Marino. Mrs. Freshman-Johnson said oh, it already is, but they are empty lots? Mr. Jamieson said correct. Mrs. Freshman-Johnson said and he had bought them from where? Mr. Jamieson said they were part of the subdivision. He's the original developer of the subdivision.

Mr. Rodgers said just to clarify a little bit more, Hope and I actually own the property that abuts the South Eastern line of the proposed lot, as well as the Northwestern side. So yeah, this is the property here on the map that the house is, closer to 120, and you can see that our property basically sort of makes a jog around the the proposed lot up to 65 Solether Lane. We own most of the adjacent property to this and I think the Sadowskis at 65 Solether Lane or the other is adjacent as well as the Coys. I guess we're under the belief that by approving a lot of split and consolidation there is some approval of variances that are gonna to be implicit in that

in order to make it buildable. I Don't know for sure if that's correct or not our objections are based largely on the idea that we're going to potentially have a new house constructed on the high point of this piece of property here 10 feet from that Southern property line that abuts us and 30 feet from the from the Eastern line. So it's essentially going to jam a house right up against our property there. And it will be fairly visible. We have some photographs that show the views from the back of the house into the area that would have the house built in it. Right now we can look through our woods, we can see the Sadowski house. Although, there is a fair amount of woods in between us and that house. This proposed lot would have a new house on it, which would be considerably closer to our house. Other issues that we are concerned about will be runoff. We have a pretty steep hillside. Most of the back end of our lot at 120 and then almost all of the back end of our adjacent lot at 68, which is immediately to the East of the 120 lot and the back is ravine. We have significant issues with runoff and erosion that we have to deal with back there. Any construction that occurs on this proposed consolidated lot is going to change the vegetation cover. The house itself creates a permeable surface, which needs to be drained away from our lot. Plus, removing the trees and planting grass and putting in a driveway creates a lot more less permeable surface that will potentially increase the runoff and increase our erosion problems that we're already trying to mitigate. Not that we necessarily have to address the Duncan Factors but this circumstance here, this is something that this has existed for 34 years, these two little triangle lots. It's been quite a long time since Solether Lane was developed and there wasn't any expectation when Solether Lane was developed that there was going to be the access for these additional two lots, 13 and 14, as they are called on Solether Lane to be developed. But the developer held onto these properties for 33 years or more hoping to be able to purchase a property from us to create lots out of it. We haven't wanted to sell, we prefer to use our property the way that we're using it. We don't think that it's appropriate for development. We think that given the hillside slippage issues in the region and adjacent properties that we wouldn't want to take the risk of selling it to someone to build on. I think it would potentially be unstable. There was no real expectation at the time that Solether Lane was developed that these little slivers of property ever would be buildable lots. So essentially the circumstances were self-created by the developer instead of splitting these slivers of land off to adjacent properties or trying to sell them to, I think it was the Griffiths that lived in 136 West Summit at the time, they chose to hang on to it. I don't think that they can claim a hardship based on the fact that they own these two slivers of property. They had an opportunity to dispose of them in the past and instead chose to retain them. I think the spirit and intent of the zoning code really is to protect the interests of the property owners in the village. The interests include our interest and included the interest to our neighbors. I think of all the people along With Summit Street that have large lots and I appreciate having the extra space behind the houses, the large bike yards. We're not the only place in the village that has this. There are other lot like along Ridgewood Road and some along East Washington Street and Bell Street that have a similar situation and there's value to that. Those properties are worth more because they have the large lots and they have the deep views.

Mr. Rodgers said skipping back to the Duncan Factors, I think it is an alteration of the character of the neighborhood and I think that our property and adjoining properties will suffer a detriment as a consequence of permitting the development of this consolidated lot. The lot itself isn't an issue, but because the lot's being consolidated for the purpose of trying to build a house on it the subsequent construction and use of the property as to building lot would be detrimental to our interest and the interest of our neighbors.

Mrs. Freshman-Johnson said is there any way we could see the topology of that lot? I think you've mentioned it has a significant hillside. Even though I'm familiar, I'm having a hard time picturing what kind of terrain is there. Mr. Jamieson said every line is about two foot difference between lines. Say here where my cursor is 990 feet, and that line there is 980. So you have two, four, six, eight, ten, so about two foot of grade change between lines. Mr. Rodgers said so you can see it drops off pretty steeply as we go to the East and then back towards 65 Solether. Mr. Jamieson said on your property. Mr. Rodgers said yes, and that's part of the reason we chose not to even consider selling our property. Other than preserving our view, it's just not appropriate to develop, to build on the back of that piece of property.

Mrs. Freshman-Johnson said why do you think it's not appropriate to build on that piece? Mr. Rodgers said it's a steep hillside. You can see from the property line it drops off. Mrs. Freshman-Johnson said each line is only two feet, one, two, three, four, five, ten feet? I'm looking at your property. I'm just trying to understand the depth. Mr. Rodgers said back here it's not so big, but when you go towards the North end of the property. Mrs. Freshman-Johnson said that's not their property. Mr. Rodgers said that's our property. Mrs. Freshman-Johnson said I thought your property is down lower here, sorry. I'm turned around on the triangle. Mr. Rodgers said our property borders the South side of the back of that proposed lot and it borders all of the East side of the proposed lot. Mrs. Freshman-Johnson said so it does go pretty deep. Mr. Rodgers said yes, it's a pretty steep ravine and there have been erosion problems in the neighborhood previously at 75 Solether. There has been some significant slippage there. Mrs. Freshman-Johnson said right, but your house sits up that way. Mr. Rodgers said the house is fine, the house is up here. It's the back of the back of the property. So we were concerned about erosion coming off of neighboring properties into ours. At 65 there is a drain pipe that comes off the back there that has already created a gully. Granted it was 33 years ago and we essentially inherited it from Hope's parents with the existing problem. It's creating a gully that just keeps getting deeper and deeper every time it rains hard.

Mr. Markowitz swore in Hope Gumprecht.

Ms. Gumprecht said the Marinos gave us, I think, before, but these two triangles were kept when the Solether Lane plat was created in about 1985 with the intention that they would eventually be able to purchase property from two additional land owners. The portion that the Coys have entered into a partnership to develop now, and then this rear portion of 120 that we

currently own. So every time something changes, you know, what someone sells, someone gets divorced, someone dies. We would hear from them about that. We never wanted to sell because we like the deep lots, the privacy, the view of the wildlife, etc. And then more recently with issues with soil instability specifically on Solether Lane with 75, just on the other side of the 65 and then several issues that we've known about for a long time. We're very concerned about any soil disturbance adjacent to the lot at 65. We're number 12 on this plat, because we're concerned that that could be a problem for that house. It's built seven feet from the property line, which was code at the time. So we have also thought that we didn't want to have anything to do with selling property that would clearly require the village to evaluate in terms of hillside building ordinance and that could potentially damage another structure. We didn't want to take that chance. So that is how the Marinos have ended up with the two triangles left, that they are now trying to consolidate with the Coy parcel. I hope that helps a little bit with the background and the history.

Mr. Fricke said it looks to me like having walked there briefly, your back piece of property would be entirely unbuildable. Is that Correct? It's a pretty steep gully or alley, or whatever you want to call it. Ms. Gumprecht said exactly. We believe it's much more valuable as green space and to manage surface run off.

Ms. Kramer said is the lot, if it is consolidated, the triangular lot, do we know that it's buildable? Mr. Jamieson said as it's shown here on the screen, the only part of the footprint shown that would not be in compliance would be this section of the attached garage. If they use the same footprint. The 10 foot side yard setback does meet code requirements. There is one interesting section of the code for the rear yard in the R1-100 district. The required rear yard setback is 50 foot or 30% of lot depth, whichever is less. So when you look at the lot depth, if it's an approved lot, a lot depth is only 90 feet. So when you take 30% of that, the 30 foot does meet requirement based on the lot depth. The general R1-100 district it's a 50 foot setback is the code if it was a fully conforming lot.

Mrs. Freshman-Johnson said Just going back to that proposed footprint of that house right there that they're showing what size house does that become? We didn't get too far into it other than it would be a two-story house, similar to others in the area. I believe Mr. Marino is I believe on tonight and he could answer those questions. Mrs. Freshman-Johnson said it looks, I don't know if anything's drawn to scale, significantly smaller, in order to meet a lot of these lot requirements because of this weird lot, then the other houses in the area. Mr. Jamieson said I believe it would meet our required square footage. It would not exceed the required square footage. Mr. Marino can probably better speak to his intent for the lot. Mrs. Freshman-Johnson said the whole footprint fits in the middle of that other house across the street.

Mr. Holdren said when the Planning and Zoning granted this lot consolidation, did they? I thought I read somewhere in their minutes that they made a comment to the design of the house can't change? If they grant this, no variances could be granted or something along

those lines. Mrs. Freshman-Johnson said it just says the house is to be built as cited on the plans. In other words, don't say you're going to build this house and then go and be like, just kidding, we're going to build another house and try to get all these variances. Mr. Jamieson said I do have up on the screen, in the motion that was approved that was made by Ms. Paolizzi, it states, I also believe that I trust that Marino's commitment to keep it within the zoning requirements except for that corner of that garage. So that was part of the motion. There was also part of the motion to stipulate that all water run-off would be directed to the storm sewers on Solether Lane and not to the East hillside. Mr. Fricke said and I think what you're reading was only one person saying as they were voting. Mr. Jamieson said that was the motion that ended up being passed. Mr. Fricke said so I guess to answer your question Jim, I don't think they conditioned anything. The vote wasn't conditioned upon no variances. One person said I would trust that you only would continue to need that little tiny chunk, but that was it. Mr. Jamieson said there was no official conditions in there; it was a comment made in the motion.

Mr. Markowitz swore in Rob Dubyak from the Law Firm Dubyak Nelson LLC.

Mr. Dubyak said I won't be providing any testimony, just arguments of counsel, but I do have Mr. Marino here in attendance who will be offering any testimony or questions that the board may have. I'm here as counsel for Mr. Marino and Mr. Bob coy. As it was indicated early on in the hearing, this is an appeal of the determination by Planning and Zoning from last month. At Planning and Zoning last month, the parties appeared both Mr. Marino and Mr. Coy and presented the written application they submitted to the village and provided testimony and evidence and explained to the project. That hearing was approximately two hours long. The Rodgers were there and also participated in the discussion and raised a number of the same issues or concerns or opinions that they expressed today. As Mr. Markowitz indicated at the beginning of this hearing, this is not an analysis of the eight factors of 1111.07, rather it is a determination by the Board of Zoning Appeals to determine whether Planning and Zoning followed the requirements of the Chagrin Falls zoning code and acted reasonably or not. Certainly under Section 1111.07, the Planning and Zoning has the ability to vary, modify, or waive certain provisions of the Planning and Zoning code. So I would submit to the Board of Zoning Appeals that Planning and Zoning did follow the requirements of the code. Then the next question is, is whether they acted unreasonably or not, and whether they abused their discretion? Again, they listened to the parties for two hours and considered all the issues. I believe Mr. Rodgers in his presentation today confirmed that all eight factors were discussed and addressed and he certainly had an opportunity to express his opinions, which is simply what he appears to be doing here tonight, but that is not, I would submit the purpose of tonight's hearing that is to determine whether or not Planning and Zoning abused its discretion in making the decision that it came up with. And I have not heard any evidence or any allegations that Planning and Zoning acted unreasonably or abused their discretion.

Rob, can you point me to the code where in the code it says reasonable or abusive discretion is the standard? I didn't see that and I just was grasping for anything to help us with our standard of review. Mr. Dubyak said the code does appear to be ambiguous as to the Board of Zoning Appeals review or discretion, but it does indicate that you are to review the decision of the different agencies, whether it be the ARB or the commission, and it certainly appears from an overall reading of the code that the BZA has the ability to review the decision of Planning and Zoning. It certainly isn't from my reading of the code to be a fresh reading and review of the eight factors, rather a review of the decision by Planning and Zoning. Also, I believe there is case law authority regarding general review.

Mr. Fricke said Okay, because I just want to make sure. I didn't see abuse of discretion anywhere and so I understand what you're saying.

Ms. Gumprecht said I just wanted to address the Planning and Zoning Commission meeting on May 18th. Initially when we were first made aware of this in March, it was going to come to the Board of Zoning Appeals and then when we learned again, after the sudden cancellations, it was going to Planning and Zoning. So when we were at the Planning and Zoning Committee, the Duncan Factors that we were aware of and thought were relevant or not part of that discussion. Not specifically a dress like you guys would normally run through those. And then secondarily the chairman, Patty Baker, stated as the meeting was coming to a vote that some of these zoning issues, the fact that this is not compliant with our R1-100 zoning or with the subdivisions zoning could be addressed by the Board of Zoning Appeals that that's the place for that. Something to that effect. It's in the notes. I just saw those notes a little bit right at the end. So that's why we thought that when we were coming here and again would be the Duncan Factors at some point those would come into play, but we're not sure where, because the procedure is confusing for us. So I apologize for our being off with that, but just so you understand, we're kind of confused about the procedure.

Mr. Fricke said no need to apologize. This is confusing stuff. It's important stuff. And it's just why I wanted to get to say that at the beginning, make sure Dale Set us all straight.

Mr. Markowitz said there is nothing in our code that requires the Planning Commission to use the Duncan Factors. The Supreme Court of Ohio created the Duncan factors out of, let's say thin air. They made up the factors on their own. There was nothing in the Ohio Revised Code that mandated that they do that. They just determined that for area variances you would follow the Duncan Factors. The Planning Commission here is dealing with the shape and size of a lot, which has some similarities to what you do when the Board of Zoning Appeals is considering an area variance request. But I don't see that we have to imply or infer that the Planning Commission has to follow the Duncan Factors. I think that the code could have set whatever factors it wanted and easily could have done what we did for the Board of Zoning Appeals, which was we specified what the standard would be for use variances and then followed the Duncan Factors for area variances. So my interpretation is that in following the

mandates from chapter 2506 of the Ohio Revised Code, which is the Ohio Administrative Appeals Act that you review the Planning Commission decision in a similar way to what the Common Pleas Court would review your decisions, which is you look to see if it's unconstitutional, whether it's illegal, whether it's unreasonable, or whether it's an abusive discretion. So that's why I used those criteria for you tonight and to me. The Planning Commission, you have to have some standard for what they're supposed to do and that's why I would rely on reasonableness for their decision.

Ms. Kraemer said I guess one of my thoughts is in response to what Mr. Rodgers said is regardless of whether we agree with their application or whether we determine that P&Z did not abuse their discretion, this would conceivably still have to come back to us with respect to variances. I don't see how it wouldn't.

Mr. Fricke said Rob, if you could put the cursor over the little tiny corner of the garage. Right now Lisa, as this drawing is done, that part would come before us for a potential variance. Ms. Kraemer said and that's because the lot depth has been? Mr. Jamieson said actually, that section is related to the lot depth. That's in the required 50 foot front yard. Ms. Kramer said but I'm saying the reason there's nothing else that they would have to request from us is because P&Z has basically exempted the lot depths in granting this consolidation and approving the consolidation. Mr. Jamieson said that's correct. Mr. Markowitz said in essence what they did is they created a grandfathered lot, even though it's a new consolidation.

Mr. Dubyak said just as a side note, the anticipated house, the home size is going to be in the around the 3,200 to 4,000 square foot range.

Mr. Fricke said and Rob, you would have, as you do with all BZA appeals or motions before us or applications before I should say, you've given notice to all the people effectively on Solether and West Summit? Mr. Jamieson said everybody within 300 foot.

Mrs. Freshman-Johnson said okay, so I just want to make sure we're clear on the board that I'm going to make a motion in the affirmative, which means you're supporting the application of the appeal, meaning if you vote yes to the affirmative motion you are overturning the P&Z decision. I just want to make sure everybody understands how this works.

Moved by Mrs. Freshman-Johnson, seconded by Ms. Kraemer on behalf of the application for 120 West Summit. The application to appeal the approval to consolidate three parcels on Solether Lane as a purchase from the Coy residents. We have reviewed that the the review of the parcels was done under the Planning and Zoning code and their responsibilities to review 1161.05, Design Standards, and there are many factors underneath those design standards of which Planning and Zoning utilized to make their decision and review of the lot consolidation. They have design standards, making sure the lot is buildable, any individual lot is in conforming shape, physical considerations, and 1161.05(d) were considered, the natural land use and

stability of land. Also in 116.05(h), which deals with the actual lots. There were many portions of the code that were reviewed by them discussing these lots, which included the minimum lot depths, which was reviewed and discovered that they might not meet the lot depth. And that was reviewed at a 4.5 to one lot depth ratio can be determined to be overridden to range in a more equivalent depth measurement. There was other factors used in that 1161.05 as well, that were reviewed. In the end, the Planning and Zoning determined that the lots would be allowed to be consolidated after purchase and that it did meet all the requirements. In reviewing all of the factors that P&Z reviewed and they did follow the code, they discussed all the portions of the different code that would be applicable here. They did acknowledge the implicit variances that would be needed to build on this lot. And at this point in time, the lot was presented to have a minimal variance. However, the appeal is saying that they did not act reasonably under the 1161.054 that there are physical considerations for the natural land use, that they did not consider considering lot runoff and other soil disturbance disturbing. They also have found in their appeal that they are allowing a nonconforming grand-fathered lot to become conforming in the consolidation and using lot ratio and other setback or other depth ratios in the code that allow for this and therefore potentially abusing their discretion and interpreting how to re-align calculations in the lot. And then lastly, the realities that the topology of the land makes it a very difficult lot to build on and to require the drainage requirements that P&Z said they would like to drain into the sewage. And so the topology of the lot creates some difficulty in potentially disturbing the land which was discussed and interpreted to be okay in 1161.05(d), Physical Considerations. For all of those reasons, the motion is to approve the appeal to not allow the consolidation.

Fricke: If this had come before us right out of the gate as a BZA matter I would have serious concerns under the Duncan Factors, however, and not to over think this or over lawyer at I believe our charter here is different and we're looking at reasonableness of what Planning and Zoning did as well as whether they abused their discretion. And while I may not agree with the decision, I don't think that they were unreasonable nor do I think they abused their discretion. If this comes back before us with variances, I certainly will consider those very carefully. I would vote no to the motion just because I believe that I don't think we can show that Planning and Zoning abused their discretion or was unreasonable.

Holdren: I agree with what Wade stated. I think the Planning and Zoning followed the code in granting this consolidation and so I would vote no on this appeal.

Kramer: I am going to vote no, as well. Although I agree with Wade I think this is a challenge to see how this all turns out in terms of what's built on this lot. And I understand the concerns, especially relative to the hillside issues to just simply say you have to make all of the water go to a certain place is

way easier said than done. So I think there's going to be a lot of concerns when they come back. But I think in terms of the evaluation that was done by P&Z with respect to the lot consolidation, I don't see an abuse of discretion in the way that was done. So I vote no.

Rocky: I do believe that P&Z has done their due diligence in looking at the code and I don't think that there was any abuse of power in any of this so I'm going to have to vote no.

Freshman-Johnson: I'll also vote no on the appeal. They acted reasonably under the code and I believe they did a thorough review, acted reasonably, and followed the code. I also will say the risk of doing this is up to the owner. This is a very awkward lot. It's going to be very difficult to build the house that they want. It's a very large house on one of the smallest lots you can do. And I would just be very weary of the ability to move forward with the plans as is, but I guess that's up to them to move forward in buying a lot. I vote no.

Mr. Fricke said this action will be final within fifteen days unless appealed to Council by a petition of three or more Council members.

JIM FINLEY, 70 EAST SUMMIT STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(g), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 931-13-008.

Mr. Jamieson said this is located in the R1-60 zoning district. The applicant is proposing to construct a new attached garage to the existing house. The garage went before the Architectural Board of Review on June 16th and it was granted preliminary approval with the addition of an East elevation window. In the zoning review of this he proposed to build a structure two foot and eight inches from the proposed side yard lot line to the East. Our code requires a five foot side yard setback. So there are two foot, four inches less than the code requires.

Mr. Markowitz swore in Halley Novak.

Ms. Novak said we are working on his new garage edition that we're proposing to be located on the East side of the existing residence. The addition will be for a two-car garage with some storage above and then also a new mudroom that would attach the addition to the existing house. We are asking for a variance at the side yard. We're proposing a two foot eight foot setback and we strongly feel that this is the minimum variance we can request to still be able to fit a two-car garage on this property. Two-car garages seem pretty common on the street. I

think there's five on this side of the street the next intersection having front-loaded garages. Also mentioned, we went in front of the Architectural Board of Review last week and they had mainly just positive things to say about the scale of the addition as well as the detailing of it. Right now we have a 12 foot setback to the neighbor's house to the East. And that's taken to like a deck structure set further South on the site. And then that setback would increase where their house jogs. The idea of pushing the garage further South on the site and making it a detached garage, while that was considered it is our opinion that that's not feasible due to the existing topography from the existing driveway. Further South on the lawn there's over an eight foot drop in typography. It seems to be pretty typical on this side of East summit street. And then again to turn the garage, to get the garage door facing away from the street is not possible just due to the existing setback of the house.

Mr. Fricke said the garage is proposed to 20 feet, two and a half inches wide. Is that correct? Ms. Novak said yes, that is correct.

Mr. Fricke said I haven't measured garages in a while. You said that's the minimum you feel comfortable with for a two-car garage? Ms. Novak said I think if anything, we're getting to be a very, very narrow garage compared to what is a typical. We're showing a 16 foot garage door there. Typically you'd want three feet say on each side of that garage door, we're definitely less than that. So I really feel like we have tried as best we can to condense the width and compress that width and give us more setback. However, I do think what we're proposing here is what is required to make the garage feasible.

Mr. Holdren said I believe you said that if you put the garage in the back, either a detached or attached, there's a big slope there. You broke up there for a second, is that correct? Ms. Novak said yes, that is correct. There's at least an eight foot drop kind of where the front of the garage door would have to be to the back of the garage. It's very light in there, but as you can see kind of at the rear of where we're showing the garage now the grade is about at say ten sixteen roughly. And I'm pushing that back further on the site to the South property line we're down to 106. So just from there, that's an 11 foot drop, so we wouldn't obviously be right at the property line, but there is a very significant fall on grade there. And there's also a few trees located just South of that retaining wall that the home owners is hoping to retain. Mr. Holdren said and there's an existing driveway but there's no existing garage back there? Ms. Novak said that is correct.

Mr. Fricke said and even if you moved it straight back, wouldn't you still have the same side yard setback issue? Ms. Novak said that is also correct, yes.

Ms. Kraemer said there's no garage associated with this house right now? Ms. Novak so what you are seeing is where the new garage addition is right now, that's just driveway. Where the boot room is located, there is a structure kind of coverings a stairwell down to the basement ut, but we aren't planning to remove any structure.

Mr. Fricke said Rob, you also gave notice as required by the code? Mr. Jamieson said yes within 300 feet.

Moved by Mr. Holdren, seconded by Ms. Kraemer to approve a variance for the property at 70 East summit Street. A variance to section 1125.03(g), side yard setback. The code says they need a five foot side yard set back and the applicant is requesting a two foot four inch variance for a two foot eight inch setback. The property will still yield a reasonable return without the variance. I do not feel the variance is substantial. The essential character of the neighborhood, which is in this case is very important at least to me, I do not think it would be substantially altered. At least not in a negative way. I think having this garage will actually improve the look of the neighborhood. The variance will not adversely affect the delivery of governmental services. The property owner did not purchase the property with the knowledge of the zoning restriction. And I do not feel the property owner's predicament can feasibly be obviated through any other means other than a variance. We already talked about how the garage can be located nowhere else on the property except for where it was presented. And I believe the spirit and intent behind the zoning requirement would be observed and substantial justice would be done in granting this variance. And the variance is not based on circumstances that are self-created by the applicant. For these reasons I make the motion to approve the variance.

Freshmen Johnson: I vote aye, for the reasons stated in the motion.

Fricke: Aye, for all the reasons stated the motion.

Holdren: I vote Aye.

Kraemer: Aye, for the reasons stated in the motion.

Rockey: Aye, for the reasons stated in the motion.

Mr. Fricke said this action will be final within fifteen days unless appealed to Council by a petition of three or more Council members.

The meeting adjourned at 9:00 p.m.

Wade Fricke, Chairman
lgb