



Village of South Russell

5205 Chillicothe Road

South Russell, Ohio 44022

440-228-6700

PLANNING COMMISSION MEETING RECORD OF PROCEEDINGS

August 12, 2021 at 7:30PM

Members Present: Steve Latkovic, Chairman, James Flaiz, Dennis Galicki, Mayor William Koons, Ph.D., Elisa Budoff

Other Officials: Bridey Matheney – Solicitor, Dave Hocesvar, Building Official, Ruth Griswold, Board Secretary

Visitors: None

Meeting called to order by Mr. Latkovic at 7:31p.m.

Ruth Griswold conducted roll call. All present except for Mayor Koons.

Mr. Flaiz motioned to approve the minutes from May 13, 2021. Mr. Galicki seconded. On roll call vote, motion carried unanimously.

Mayor Koons arrived at 7:33p.m.

Mr. Latkovic began the meeting by addressing item #1 under New Business, regarding split rail fencing on the lot line, and Council's request to have the Planning Commission provide clarity as to whether to allow chicken wire, mesh or other material attached to the fencing.

Mr. Flaiz said he watched the Council meeting, but it wasn't made clear to him if Council was okay with the concept of just split rails on the property line, but not other types of fencing. Mr. Galicki said Council deemed that any fencing other than split rail would not be permitted on the property line. Given that, the question arose if the split rail fence on the property line would then

be permitted to have chicken wire attached to it. Ms. Budoff said most split rail fences have wire attached, since the intent of the fencing is usually to keep a dog in the yard. Mr. Flaiz agreed with Ms. Budoff.

Mr. Galicki said some people would say that the whole intent of split rail fencing is to not have anything added to it, if it is situated on the property line. He went on to say that if the split rail fence has chicken wire attached to it, it should be 3' off the property line. Ms. Budoff asked for what purpose. Mr. Galicki replied for cutting grass and maintaining the fence.

Mr. Latkovic said he would presume that whoever would want the split rail fence on the property line would also like it to still afford the ability to keep something in, whether it be children, dogs, or other animals. Mr. Flaiz said he does not think that allowing some sort of wire is unreasonable. Mr. Latkovic suggested the wording should be different.

Ms. Matheney said Council did not take a vote to allow the split rail fences on the property line; what they did instead was table everything and asked Planning Commission to determine if attaching wire or mesh to the fencing should be a consideration.

After reviewing the definition of split rail fencing in the zoning code, Ms. Matheney said residents at the public hearing said they would want wire or mesh attached to split rail fencing for the practical purpose of containing animals, or to protect gardens. She reiterated that there was no vote by Council on the issue of split rail fencing on the property line. Mr. Flaiz asked how many Council votes would be needed to approve the recommendation. Ms. Matheney said it would take four votes to approve.

Mr. Galicki asked Ms. Matheney if the Village were to approve the placement of split rail fencing on property lines, would HOA rules or the zoning code take precedence. Ms. Matheney said the applicant would still need HOA approval after being granted zoning approval by the municipality. Mr. Galicki asked what would happen if an HOA strictly forbade any fencing, but the applicant got zoning approval. Mr. Flaiz said it would be up to the HOA to enforce their rules. Ms. Matheney said each entity would be responsible for enforcing their rules.

Mr. Flaiz said part of the problem is that historically, the Village would not issue a building or zoning permit if the structure was contrary to the HOA rules, but that has recently changed, much to his consternation, as president of his HOA. He said even though fences are prohibited in his neighborhood, as well as in Kensington Green, without board approval, the Village could still issue a zoning permit for a fence. He said he believes this practice is wrong and does not know why this policy change was implemented by this administration.

Mr. Flaiz said the rationale for keeping fences 3' off the property line was for maintenance. He said does not think a split rail fence on the property line, with chicken wire attached to it, would present a maintenance issue. Ms. Budoff said it is difficult to mow the grass around a split rail fence regardless of where it is.

Mr. Hocevar said this issue was instigated by the Building Committee due to a number of complaints from residents who wanted their fence on the lot line but did not want to go through the process of obtaining a variance. He went on to say that the issue of having just split rail allowed on the property line, with or without chicken wire, was discussed at the Building Committee meeting that morning. He said they all came to an agreement and thought it best to just leave the ordinance as it is today, and have residents request a variance if they wanted it on the property line. He said that would also allow the HOA to weigh in on the decision.

Mr. Latkovic asked Mr. Hocevar if he meant that everything regarding the fence ordinance should be left alone, including the possibility of allowing split rail fences on the lot line. Mr. Hocevar said that is correct.

Mr. Flaiz said he is annoyed that the Village would issue a building or zoning permit on items that are prohibited by the HOA, and by doing so, they are basically saying to the HOA, hire your own lawyer and use your own money because we are going to give permits even though it violates your HOA restrictions. He said for many years it was not done that way.

Mr. Hocevar said the Board of Zoning Appeals would consider the HOA requirements prior to granting a variance. Mr. Flaiz said he would hope that the BZA would not issue a variance for something prohibited by an HOA, but that the Village should not even issue a permit for such an item. He said for instance, in Chagrin Lakes, they do not permit accessory structures. He asked Mr. Hocevar if the building department would issue a permit for a shed, when five years ago they would not have done so. Mr. Hocevar said that is correct. Mr. Latkovic asked what had changed. Mr. Hocevar said the legalities involved had changed. Mr. Flaiz said the administration changed it and prefers the HOA to spend money on lawyers instead of refusing permits for items not allowed by an HOA.

Mr. Flaiz asked for confirmation that the Building Committee did not want to change the fence ordinance at all. Mr. Hocevar said that is correct; the discussion regarding the variables involved led the Building Committee to decide that the ordinance should be left alone, allowing the Board of Zoning Appeals decide on a case-by-case basis. He said the changes were proposed in response to complaints that had been received, and those applicants, at the time, were made aware of the option to go before the BZA.

Mr. Galicki questioned if a variance that is granted contrary to HOA rules would allow the applicant to install a fence. Mr. Flaiz said the Village won't enforce the HOA requirements, so it gets pushed back to the HOA to contend with.

Mr. Latkovic said that is a slightly different, although important, issue. He went on to say that from his perspective it sounds like leaving the fence ordinance alone is the right way to go, although it seems rather confusing as to how it all played out. He said to Jim's point, if someone is issued a permit by the Village, it does not restrict an HOA from enforcing its own provisions, but it would require the HOA to pursue legal action to prohibit a resident from doing something against HOA rules since the permit had been issued. He asked Mr. Hocevar if HOA approval is

required prior to issuing a fence permit that complies with the ordinance. Mr. Hocevar said HOA approval is requested from the applicant. He said if they refuse or are unable to obtain HOA approval, he defers to Ms. Matheney as to whether the Village could still issue a permit without HOA approval.

Ms. Matheney said that has always been a question. Mr. Flaiz said he thought the Village did not ask for HOA approval any longer. Ms. Matheney recalled at the last Board of Zoning Appeals meeting the board required HOA approval of the applicant, and the Planning Commission also asks for HOA approval.

Mr. Latkovic said although the topic is very interesting, he does not want to continue discussing it. He said regardless of the policy of the Village when it comes to requiring HOA approval, it is not a subject that will get resolved this evening. He said he believes everyone should have a voice in it, and if members want it to inform their vote otherwise, that would be totally appropriate.

Mr. Flaiz asked Ms. Matheney if the Village Zoning Code could prohibit the Village from issuing a zoning or building permit if it contravened the HOA deed restrictions. Ms. Matheney said she was unsure, and she would have to look into the issue. She added that her own community struggles with that question as well. Mr. Flaiz stated that as HOA president, he has often signed off on blueprints, but has not done so in five years. Mr. Latkovic questioned if the Village wanted to subject their authority and oversight to that, as far as actually codifying the HOA requirements. Mr. Flaiz used the example of someone in the Kensington neighborhood wanted to put up a chain link fence, a permit is issued by the Village and the HOA doesn't find out about it until it has been installed, and the HOA then has to fight with the property owner. He said in the past, the Village would have required HOA approval prior to issuing the permit. Mr. Latkovic said it does open up a lot of questions as to the Village's obligation to understand HOA requirements. He said he thinks it would be good practice as a Village to encourage compliance with HOAs and respect their regulations.

Ms. Budoff said she thinks it should be the resident's responsibility. She said she had contractors working on her roof and had thought they were doing all the appropriate things until she found out they did not get a permit. She reiterated that it should be the resident's responsibility to find out when permits are needed and to contact their HOA.

Mr. Galicki said he agreed in principle, but what about the resident that doesn't care about any HOA rules and insists on installing a chain link fence in spite of their rules. He noted that a council member who lives in Kensington Green has a chain link fence. Mr. Latkovic said that that chain link fence has been there forever.

Ms. Budoff expressed concern about allowing fences on the property line and outlined a scenario where two residents have fences that abut each other, perhaps due to not liking the look of the neighbor's fence, and then maintenance, including work by the utility company, becomes difficult. She said she feels having a 6' wide area between neighbors' fencing is necessary.

Discussion followed regarding procedures necessary to address the zoning code change. Ms. Matheney said technically Council initiated the change, then the Planning Commission revised it and made a recommendation to Council. Council then tabled it and did not introduce it as an ordinance. She said she therefore believes it is up to the Planning Commission to act on it.

Mr. Galicki said in light of what Mr. Hocevar shared about today's Building Committee meeting, which is comprised of the same people who introduced the zoning change, is it the intent of that particular council person to now withdraw the proposal.

Mr. Flaiz said Council initiated it, the Planning Commission essentially rejected it by recommending a revision, so the one they initiated has been rejected, and since the PC sent it to Council, he felt they should act on it. Ms. Matheney said they tabled it and want the PC to discuss the chicken wire and mesh issue. She said it now sounds like two members of Council want to drop the recommendation.

Mr. Latkovic said regarding the proposed changes to fence ordinance Section 4.01(b)(4), there seems to be a lack of administrative direction when the Planning Commission sends something as a recommendation to Council for action, but no action is taken. He said in this instance, Council did not do what it was supposed to do. Ms. Matheney said the language of it is, Council has to act after three meetings, or a waiver thereof. Mr. Latkovic said that the problem is that the public has been denied the opportunity of understanding Council's position on what the Planning Commission wanted to do. Ms. Matheney said the public was at the meeting. Mr. Latkovic said his point is that there was not an up or down vote on the Planning Commission's recommendation. He said the appropriate thing Council should have done would have been to reject the proposal and asked Planning Commission to re-initiate.

Mr. Galicki said up until this evening, he believes it was the expectation of Council that the Planning Commission would provide a definitive answer on the allowance of chicken wire on the split rail fencing on the property line or not. He said what has really thrown a fly into the ointment, is the Building Committee wanting to just forget the whole thing. He believes Council acted in good faith by asking Planning Commission for their thoughts on the allowance of chicken wire, and that as of Monday night, that was every Council member's expectation. He said it is only due to the most recent Building Committee meeting that things have now changed.

Mr. Latkovic asked Mr. Hocevar what precipitated the Building Committee's position at their last meeting. Mr. Hocevar said the chicken wire issue was discussed and it was decided it would be too difficult to police. He gave an example of a new resident moving in and adding chicken wire to an existing fence. He said the department would not be able to control it as they should and thought it better to leave it alone, with the resident always having the option of obtaining a variance. Mr. Latkovic asked Mr. Hocevar since the Building Committee's initial request was to have all fencing be permitted on property lines, if their current position is due to the Planning Commission's amendment to only allow split rail on the property line. He said it seems since the outcome isn't going the way the Building Committee wanted it to go, they just want to leave it how it was. He said the difficulty in policing the chicken wire matter seems like a bad argument

to him. Mr. Hocevar said they just looked at the overall picture, and residents not wanting to give up some of their property. Mr. Latkovic said the Planning Commission addressed that issue and voted that the appropriate middle ground would be to allow split rail fencing on the lot line, since it has a less-intrusive nature and still affords the ability to provide maintenance, and property owners who want a different type of fence on the lot line can always request a variance. He said apparently chicken wire makes a lot of difference with split rail fencing. Mr. Hocevar said the question of what you can and can't do with regards to chicken wire would mean more policing and it may be best to leave the ordinance as it is.

Ms. Budoff said it is not actually chicken wire, it is a green rubber coated wire. Mr. Latkovic said they haven't even discussed the different types of chicken wire, and what type of wire they are talking about would clearly be part of the question. There's the actual chicken wire, or it could be a heavy corrugated metal, or it could be green, gray, three feet or six feet. He questioned how detailed they would get. Mr. Flaiz said that was a good point.

Mr. Latkovic asked Ms. Matheny what would happen if the Planning Commission did not take any action on this matter. She said it would go back to Council for action. Mr. Flaiz said someone needs to introduce it to Council, it would then go through three readings, then Council would have to vote on it thirty days after the third reading. Mr. Galicki asked about the definition of chicken wire that was requested by Council. Mr. Flaiz said that would not be in there, he should just introduce the original revision. Ms. Matheny said it is possible that Council would vote to pass the ordinance. Mr. Flaiz and Mr. Latkovic said that would be fine too.

Mr. Latkovic asked if the Planning Commission could amend their own vote. Ms. Matheny replied yes because Council tabled it and did not introduce it. Mr. Flaiz said then the Planning Commission could revise their recommendation. Mr. Latkovic asked Mr. Galicki if he wanted to revise the recommendation of Planning Commission to include chicken wire. Mr. Galicki said Council wanted to know if the Planning Commission wanted to okay the chicken wire, and define it, or not have any issue with it at all.

Discussion followed regarding the several types, styles and colors of the product that is most often referred to as chicken wire, of which there were many variables. Mr. Latkovic said it would be like opening a Pandora's box.

After discussing what would be the best action to take, it was verified with Ms. Matheny that a withdrawal of the Planning Commission's recommendation would be okay.

Ms. Budoff motioned to withdraw the Planning Commission's recommendation to Council. Mayor Koons seconded. On roll call vote, the motion passed unanimously.

Mr. Latkovic then moved on to item #2 under New Business: Planning Commission Certification Procedures, and asked Ms. Matheny to explain.

Ms. Matheney said this issue has come up a couple of times, as Board of Zoning Appeals and Planning Commission meetings are sometimes cancelled if there are no applicants, and there may be meeting minutes pending, waiting to be approved. The code indicates that once the actions of the board are certified by the secretary on a certain form, it is returned to the applicant and the zoning inspector then issues the permit. The question is: What is certification? Is it when the meeting minutes are approved, or upon obtaining a signature from the Planning Commission Chair, or an okay on the draft minutes? She said recently, cancelled meetings have brought up this question as to when certification occurs, and the timing of the same. Ms. Matheney said this is not defined in our code, and this is a little different than the fiscal officer attesting to Council action once a document is signed. She said there are some forms mentioned in the code that we don't necessarily have, adding to the concern of what constitutes certification.

Mr. Flaiz said, from being on the Planning Commission for a long time, he always thought that certification occurred when the Chair signed the plans. He recalled plans being signed at the meetings, which then allowed Dave to issue the permit and the work could begin.

Ms. Matheney said the language in the code is the same for Planning Commission and the Board of Zoning Appeals. The BZA waits for the meeting minutes to be approved, which is at least another 30 days, but can be even longer if meetings are cancelled.

Mr. Latkovic said at these public meetings, he would think that when the board takes the step forward legally approving whatever is before them, unless otherwise stated clearly, it should be at that point that legal authority is given.

Mr. Flaiz noted that in Townships, the BZA usually waits until the minutes are approved, because the decision may be appealed to Common Pleas Court. Mr. Latkovic said that process is probably written in the Township code. He said if not, it could be argued that when it is approved by the body, unless otherwise stated, then legal approval has been given. He said in South Russell, the practice of having the Chair sign off on the plans at the meetings makes a lot of sense and creates an accurate record.

Mr. Flaiz asked what happens after the BZA approves an applicant to, for example, construct a garage closer to the property line than allowed, would the contractor be permitted to begin the work or would they have to wait for the approval of the meeting minutes. Mr. Hocevar said although this came up recently, it has never been an issue before, and the contractor would begin the work after the minutes were approved. He said Ms. Matheney was recently consulted on this matter because of an applicant who obtained Planning Commission approval years ago and never began the project but wanted to move forward now.

Ms. Matheney said the property that brought this question to the forefront is the barn at 306 and Bell. The applicant obtained developmental approval from the Planning Commission years ago, and while she is not sure if it was ever actually certified, a permit had never been issued. She said the plans have not changed and therefore, she does not feel the applicant should have to go

back to the Planning Commission. She went on to say that there is definitely an expiration date on a zoning permit, but not on certification of the Planning Commission's actions.

Discussion followed regarding the many businesses that were proposed to occupy the barn before the Planning Commission approved the site for office space. Mr. Hocevar said the owner of the barn has a lot of requirements to meet on the interior before being issued a building permit.

Ms. Matheney said she is concerned because it is not clear in the code as to when the actions of the Planning Commission become certified, and that the Planning Commission may want to consider making it clear. She noted that certifying action of the Planning Commission is not subject to appeal rights, unlike the BZA.

Mr. Flaiz said the BZA concerns him, because of the clock when it comes to the appeals. He said applicants shouldn't have to wait 60 days for certification, but he does understand waiting until after their minutes are approved. He said he feels once the Chair of the Planning Commission signs off on the plans, that action should be enough to certify their decision, as he wouldn't want to hold anybody up.

Mr. Latkovic said clarity on board certification is needed for everybody's benefit and suggested creating a form for such purpose. Ms. Matheney said there is an area on the application forms for the Planning Commission, BZA and the ARB for the secretary to certify the action of the board, but she had assumed that certification occurred after the minutes were approved.

Mr. Flaiz said when he was approved at the ARB for projects at his house, they were able to obtain the permits and start the work without having to wait for any minutes to be signed. Mr. Hocevar said historically they did issue permits after ARB approval without waiting for the minutes, but he wanted to make sure that was legally correct to do so. Ms. Matheney said it is important to be consistent with procedures. Mr. Flaiz said he hates red tape and does not want to hold anybody up. He said in his opinion, once action is taken at a meeting, the action can be certified on a form by the building department and that would be fine.

Mayor Koons asked if there was anything holding us back from doing what Mr. Flaiz suggested. Ms. Matheney said currently that is not being done with the BZA, they wait for the minutes to be approved and then the action is certified. She said when there are conditions on the variances, it can be difficult to get those 100% correct without the minutes. Mayor Koons said an ARB applicant who receives approval can obtain the permits the next day and asked if the delay after the BZA was necessary since the neighbors had been notified of the variance request. Ms. Matheney said she believes it has just been a pattern of practice. Mayor Koons suggested eliminating that pattern and allowing the applicant to the BZA to obtain the permit soon after the meeting. Mr. Flaiz said in the absence of the approved minutes, some official documentation from the Village must be issued in case a neighbor wants to appeal the decision to Common Pleas Court. Mayor Koons said when the approval of minutes is delayed due to cancelled meetings, this becomes a problem.

Mr. Flaiz asked if this has been an issue with the BZA. Mr. Hocevar said there was a situation with a new house on the west end of the Village that obtained a number of variances and an affected property owner inquired about the appeal process. He said the language was not clear as to if the appeal could move forward or if permits could be issued prior to having the minutes officially approved, which is why the matter of certification came up.

Mr. Flaiz said, to Mayor Koons' point, the certification procedures for BZA should be treated differently than the Architectural Review Board and the Planning Commission. Ms. Matheney agreed.

Mayor Koons said when the BZA takes action and grants a variance, there should be a time period of thirty days before the permit would be issued to allow for the appeal process.

Mr. Latkovic said the applications submitted to appear before the boards should notate "approved" or "denied." Ms. Matheney said she believes they do. Mr. Latkovic asked why that could not become the record of the board's action, if somebody wanted certification prior to the meeting minutes being finalized. That formal document could also be used to file an appeal. He said after every Planning Commission meeting, he always signs the plans and that is also an official record of the board action. Mr. Flaiz pointed out that there is an area on the zoning permit application that indicates actions of the boards.

Mr. Galicki questioned whether Common Pleas Court would require the transcript of the board decision. Mr. Flaiz said since the appeal must be filed within a certain number of days, and if the minutes are not yet approved, the person could tell the court that they need an extension on the filing until the minutes are approved.

Ms. Matheney said the conditions on the approvals are still a concern. She said there have been a number of variances granted with very specific conditions and making sure they are written exactly right is very important. Mr. Flaiz agreed and recalled instances when the Planning Commission members, although rarely, tinkered with conditions prior to approving the minutes. Ms. Matheney used Augie's as an example of an approval by the Planning Commission that had multiple detailed conditions. She asked if the conditions are written on the plans. Mr. Latkovic said he does not do that, and that is a very good point. Mr. Flaiz asked if the conditions are written on the application. Ms. Griswold said no, but the conditions are attached, and it is noted as such. Mr. Latkovic asked how long that would take administratively to complete that form. Ms. Griswold said she has always completed the minutes and had them approved prior to attaching them to the application.

Mr. Latkovic said it seems as though the board is subjecting their own approval to the subsequent approval of the minutes, which doesn't seem appropriate. Ms. Matheney said the decisions still require certification. She referenced Section 3.04(1)(c), which reads, "*Action: Following a review of the application and reports thereon, the Commission shall within the time limit as set forth in paragraph (b) approve, conditionally approve or disapprove the application.*"

Commission action, including any conditions thereto shall be certified by the Secretary on Form Z-1 to the applicant and the Zoning Inspector.

Ms. Matheney noted that the code reads the same throughout when addressing certification procedures.

Mr. Latkovic said after the board takes action and the secretary signs the application, with conditions certified, the application should be given to the applicant and should suffice as certification. He asked Ms. Griswold if that is being done. She said yes, but it is unclear as to when that certification can occur, and whether it must have the approved minutes attached. Ms. Griswold said a conditional approval by the ARB includes plans that have been marked up according to the board's requirements and given to the applicant with the permit. She said the approved minutes, when signed, may be provided for clarity.

Mr. Flaiz said, as with his own experience following an ARB meeting, prompt action after a board decision should be encouraged. He said although the code is not artfully drafted, he believes the intent is to have a signature on the application, with conditions noted, serve as certification.

Mr. Latkovic said he does see a problem in that the code does not provide a time frame in which a certification must take place. Mr. Flaiz said, along those same lines, he has always wanted to amend the code to indicate that any board decision expires after twelve months if no action is taken by the applicant. He went on to say that there have been instances when applicants obtain approval from the Planning Commission, and then years pass without the approval being acted upon. He said they could be granted an extension or be required to come back before the board. He asked Ms. Matheney her opinion.

Ms. Matheney said a zoning permit should be issued after certification by the board, and the zoning permit does expire within six months of issuance. She said the board could put a time frame between the board action and the issuance of a zoning permit. She said as long as the plans are the same as when the applicant received approval, she's not sure if they should be required to come back.

Mr. Latkovic asked where the certification statement appears in the zoning code. Ms. Matheney referred to pages 19c, 21c and 23c. Discussion followed as board members reviewed the areas of the code. Ms. Matheney said she could draft something, but past practices have been for certification to occur after the signing of the plans, although that doesn't necessarily apply to the BZA. Mr. Latkovic asked Ms. Matheney to draft some recommendations and present at the next meeting. Mr. Flaiz said any proposed changes should allow the applicant to begin their project when the secretary certifies it on the application form.

Mayor Koons asked Ms. Griswold if the notification letters that are sent to surrounding residents prior to a BZA meeting also informs them of their right to appeal a BZA decision within thirty days. Ms. Griswold said no, it does not indicate that on the letter. Mayor Koons said they should be informed of that. Ms. Matheney said at the beginning of a BZA meeting, the Chair does talk

about giving sworn testimony and also the right to appeal any decision of the board. Mayor Koons said perhaps the Chair should also talk about appeals after the decision has been rendered and inform the applicant that they cannot start work until after thirty days.

Mr. Flaiz said he does not think there should be a thirty day wait on the applicant's permit just because a neighbor might want to appeal. He said it is incumbent upon the neighbor to file an appeal and obtain a stay. He said even though it may cost their neighbor money, because they may have to put up a bond, this is how the appeal process works.

Mr. Latkovic asked if an appeal period was addressed anywhere in the code. Ms. Matheney referred to section 3.07(d) which reads, "*Decisions of the Board shall be final within the Municipality, except that an appeal therefrom may be taken to the Court of Common Pleas for Geauga County in accordance with the laws of the State of Ohio, by any proper and interested party, including the Municipality. A Notice of Appeal shall be filed with the Secretary of the Board.*" She questioned if "final" meant approved minutes. Mr. Latkovic said, since it says "*within the Municipality*" his interpretation is that it means there is no other power within the municipality that can do anything about that decision. Ms. Matheney questioned when the time of that final decision would start. Mr. Latkovic said he feels it is when the decision is made. Mr. Flaiz said he believes it would be when the secretary certifies the decision on the form.

Mr. Hocesvar relayed a situation where the builder of a new house obtained a variance but, after consulting with his legal counsel, decided to wait before digging the foundation due to the property owner who had indicated she may appeal. The contractor wanted to avoid the possibility of having to tear out what was started, so he waited until the minutes were officially approved. Mr. Flaiz said that he understands the contractor would be running the risk of that, but it should be incumbent on the Village to provide certification. Mr. Latkovic summarized the issue at hand, and said the question is, when does the thirty days start; after the board decision, or after the minutes are approved. He asked how much time had transpired between the decision and the approval of the minutes. Ms. Griswold said two months had passed before a meeting was held and the minutes were approved. Mr. Flaiz said that scenario is very difficult for a builder.

Ms. Budoff asked why a ten-minute Zoom meeting couldn't be scheduled just to approve the minutes. Mr. Flaiz said Zoom meetings are no longer being allowed for public meetings.

Mr. Flaiz asked Ms. Matheney if she would be drafting something clarifying that the time period for any appeal would begin when the secretary signs the form certifying the action of the board. Mr. Latkovic said has to be clarity provided behind the certification, and the applicant must be aware of what has been approved. He said the intent is to provide both the applicant and party interested in an appeal with a clear understanding of what has been approved, and of the time frame allowed for appeal. He said the challenge is if there ends up being a discrepancy between the certification on the form and the approved minutes. Mr. Flaiz said the secretary has to be very careful in taking down the conditions at the meeting. Mr. Latkovic said rather than have it provided by the end of the meeting, it would be wise to allow a day or two for the secretary to review the recorded minutes. He asked Ms. Griswold if that would be reasonable, and how much

time would be needed to have that transcribed. Ms. Griswold said she has done that a couple of times in the past and feels confident she could have the conditions certified withing a few days. Mr. Latkovic suggested allowing 5 business days, beginning on the day after the meeting. Ms. Griswold asked if the conditions should be approved by the chairman prior to her certification. Ms. Matheney said that was a good question, since, for instance, the meeting minutes were approved tonight and the form can now be certified by the secretary, but that action was being delayed until the meeting minutes were approved. Mr. Flaiz noted that Augie's was not in a rush to get the patio project started. Mr. Latkovic suggested that Ms. Matheney include language that provides flexibility, allowing the chairman of each respective board to make adjustments and also afford the opportunity to vary from a very rigid rule for unforeseen circumstances.

Mayor Koons said the appeal process should also be outlined on the letter that the affected neighbors receive prior to the meeting. Ms. Matheney agreed but also said she would have to be careful to not have it offer legal advice. Mr. Flaiz suggested the statement informs them of their right to appeal and then include the section number of the Ohio Revised Code. Mayor Koons said he would ask Mr. Maistros if he could also summarize the appeal process not only at the beginning of the meeting, but also after the approval has been granted. Mr. Latkovic agreed and said although the Planning Commission amends the code, it does impact both the BZA and ARB. He said it would be appropriate to ask the other boards for their perspective to ensure any procedures that would be established are realistic and fit in with how their boards function. Mr. Flaiz agreed and said it should be run past them at their next meeting.

Mr. Flaiz asked board members how they feel about having an expiration date added to board approvals. He said he doesn't believe it is a good idea to have approved items linger without any action taken on the applicant's part. He said in the past, the Planning Commission has put an expiration date on specific items as a condition. Discussion followed and Mr. Latkovic asked for quick research of other municipalities as to their procedures when it comes to having time frames on board approvals. He said that would assist in deciding what would make sense moving forward.

Mr. Latkovic addressed item #3 under New Business: Planning Commission Approval and Pending Issuance of Permits ad asked Ms. Matheney to explain. Ms. Matheney said this is very similar to certification procedures but pertains specifically to the barn project across the street. She said they came before the Planning Commission in 2017 and approval was granted for office space. She said there was no zoning permit issued at that time. Now they want to proceed with the improvements, using the same plans from four years ago, and they want a zoning permit. She said once the zoning permit has been issued, there is a certain amount of time in which the work has to be done, although extensions can be requested. She said the time frame between the decision of the board and the issuance of a permit speaks to what Mr. Flaiz brought up regarding possible expiration of board decisions.

Mr. Flaiz confirmed that although the site was approved for offices, the individual tenants still must appear before the Planning Commission. Ms. Matheney said that is correct. Discussion

followed regarding when tenants are required to appear before the Planning Commission, and it was verified that individual tenants must initially appear prior to occupancy of the new office space, but thereafter, providing the use remains the same, i.e., new dentist moving into space formerly occupied by a different dentist, subsequent tenants do not have to appear.

Mr. Latkovic then referred to Ms. Matheney's memo that outlined Zoning Code Recommendations to Consider.

Mr. Latkovic noted the late hour and said they would begin to address each item, and whatever items remain should be organized on a list in the order of importance. He began by addressing the first recommendation:

- *Consider changing references to individual ordinances throughout the Zoning Code*

Ms. Matheney said that references to ordinances appear throughout the code, but that practice is very difficult to keep up with and she would recommend eliminating it. Mayor Koons asked if there would be any negative response to this. Ms. Matheney said some people like to see when things were changed. She said another issue may be the publishing company the Village has, and how often they update the book; she thinks it may be once a year. Mr. Latkovic noted the amendments are all on the website. Mr. Flaiz said he is fine with deleting the references to individual ordinances, and most zoning codes do not reference ordinances.

- *The B-1 and I-1 Districts-are they separate? Zoning Map shows an overlay of the B-1 & I-1-1 District (Section 1.03 of the Zoning Code)*

Mr. Latkovic said he is unaware of the history behind this, although it seems unnecessary to have an I-1 District. Mr. Flaiz said they used to have factories in that area. He said he has always viewed it as an overlay. Ms. Matheney said it actually has a separate category. Mr. Flaiz said he is aware of that, but it is for office and research laboratories, and offices are allowed under the B-1. He questioned if the Village would ever want industrial in that area again. Mr. Hocevar agreed that things have changed over the years.

Mr. Latkovic said as far as he can tell, I-1 is different in that there is a Conditional Use for metal and non-metal production and distribution. Ms. Matheney said it also includes wireless cell communication and asked if there were any current businesses for metal and non-metal production in that area at this time. Mr. Hocevar said there used to be, but at this time there are no such businesses. Mr. Flaiz noted the space that CrossFit now occupies used to be a machine shop.

Mr. Latkovic said the practical implication of removing I-1 is that there would be no Conditional Use to consider for metal and non-metal production. Ms. Matheney said she was just wondering why it was on the map as a B-1/I-1 District, and in the code they are separate, and that she had not considered the removal of I-1. Mr. Flaiz said there is also an overlay of the cluster in the northeast quadrant, and that his first thought when he saw the memo item, was if the Village still

needed an I-1 District. He went on to say that the area is now more of an entertainment district and questioned if the Village would want a manufacturing business in that area.

Mayor Koons asked if a furniture refinishing business would be permitted. Ms. Matheney read the definition of industrial use from the code, and it was determined that it would fall under that category. Mr. Flaiz asked if there was still a furniture business in the area, and Mr. Hocevar said he is no longer there, and the business was just for storage. Mr. Flaiz recalled complaints regarding chemical odors. Mr. Hocevar said that was due to the illegal storage of highly combustible PVC tubing, and they are in the process of relocating. Mr. Flaiz said if the I-1 zoning was eliminated, any businesses presently in that area that fall under industrial zoning, a Conditional Use would be grandfathered in. Ms. Matheney said you could still have a Conditional Use under the B-1 Business District.

Mr. Latkovic said there is a lot of space back there, and it would be interesting if someone wanted to use that area for a reconditioning or welding shop. He said while the idea of industrial use doesn't mesh up, it makes sense to retain some aspect of Conditional Use to allow for Planning Commission approval. He added that it is confusing to have that overlay.

Mr. Galicki confirmed that the reason this was brought up for discussion was only because of the duality of the zoning, and not because someone was told they could not locate their business there. Ms. Matheney said that is correct, and the text of the code should match the map. Mr. Galicki asked if there would be any harm in maintaining it as an overlay. Mr. Flaiz said that may allow a business with offensive odors to locate there.

Discussion followed regarding the definition of I-1 and the fact that metal and non-metal would still be a Conditional Use.

Mr. Flaiz suggested adding those Conditional Uses to B-1. Mr. Latkovic said that would clean it up. Mr. Flaiz said he does not think an industrial use is appropriate for the Village in 2021. Mr. Hocevar said the current building and fire codes are very restrictive and greatly limit the businesses that could be located there. Mr. Flaiz said if the tenant chose to meet the codes, they could carry on an activity down there, and Mr. Hocevar agreed, although he said it would be extremely costly.

Mr. Latkovic said any business, such as a rubber company, would still have to appear before the Planning Commission for a Conditional Use, and the Planning Commission could simply deny the application due to the offensive odors, but a research laboratory may not be denied.

Mr. Flaiz said he feels the nature of that corridor has drastically changed within the last 20 years, but whatever the Planning Commission decides to do is fine.

Mr. Latkovic said by moving the definitions of uses under B-1, it would clean things up a bit and light industrial would no longer appear in the code.

Discussion followed regarding adding metal and non-metal production to B-1 or eliminating it completely. Mr. Galicki said he had no problem eliminating it. Mayor Koons said he felt light

industrial should be kept in the code, just in case. Ms. Budoff said she agrees with Mr. Flaiz that the area has changed a lot in the last 20 years. She said her concern is what may possibly happen in the next 20 years. She said although different tenants now occupy the spaces, the building itself is still a factory, and may employ a lot of people. Mr. Galicki said another side of that is the vision for the community, and he has always wondered why that factory was even there. He said it has been there forever under various names. He pointed out similar changes in Bainbridge; the factory that will be the future home of Arborwear, and the winery tucked in amongst research labs and light industrial activities. He said the winery is nicely tucked away and doesn't identify the entire neighborhood and is a good mixed-use. He said it all depends on the vision for the future, and what type of industry, if any, would be permitted.

Mr. Flaiz said, as Mr. Latkovic proposed, the solution may be to add metal and non-metal production and distribution as a Conditional Use to B-1 and eliminate industrial.

Mr. Latkovic said, as legal clarification, it should also read as "Metal Production, Non-Metal Production, Distribution Operations".

Ms. Matheney asked if research laboratories would be included. After reading the definition of research laboratories, discussion followed, and the board decided to remove research laboratories.

- *Section 1.05 of the Zoning Code provides that the Zoning Map shall be on file with the Zoning Inspector-recommend that Zoning Map be on file in Village records or on file with the Building Department*

Mr. Latkovic and the board agreed that the above clarification should be made to Section 1.05.

- *Section 2.01(12) and (113)- the Building Inspector is defined as both the Building Inspector and the Zoning Inspector, which may need to be amended*

Mr. Latkovic said he spent some time researching this, and his recommendation is to eliminate all references to Building Inspector and to change them all to Zoning Inspector. He referred to Section 3.01(c) and noted the titles are cross defined. Mr. Galicki said he thought it was written that way to identify Mr. Hocevar specifically for the time he was employed by the Village, when he held both positions. He said he is now a contract employee and is the Building Inspector but not necessarily the Zoning Inspector. Mr. Latkovic said the problem is that there is no difference in job responsibilities, and it is confusing. He said "Building Inspector" is referenced 24 times and "Zoning Inspector" is referenced 39 times. Mr. Latkovic said there are drastic differences between these two roles, but the Zoning Code does not differentiate. He said "Building Inspector" is referenced a number of times under Conditional Use for Oil and Gas Purposes, for Penalties, Recreational Vehicles and as previously noted in Section 3.01 (c). He said there is not a discernible difference between these roles in the Zoning Code, and since there is an actual practical difference, it should be clarified with the Zoning Board.

Ms. Matheney said she believes there are two different job descriptions, enacted by Village ordinance, for both positions.

Mr. Flaiz clarified that Mr. Latkovic's suggestion was to make all the references in the Zoning Code to the Zoning Inspector.

Mr. Hocevar said in the past, the Building and Zoning Inspector have been the same person, performing both jobs.

Mr. Flaiz said the way things are going, the Village may have to someday contract with the County Building Department, but as he has often said, the Village will always need a Zoning Inspector, even if the Building Department is contracted out. Mr. Hocevar agreed that there should be some type of separation in the code in case a Zoning Inspector needs to be hired.

Mr. Latkovic said this may be a bigger issue than thought and they may need to spend some time differentiating what should be in the Zoning Code as far as responsibilities. Mr. Flaiz said the Building Inspector should not be mentioned in the Zoning Code, other than where it is indicated that the Building Inspector issues a Building permit. Options and ramifications were discussed. Mr. Flaiz noted that the Oil and Gas Code has been pre-empted by State law, and many of the references to Building Inspector are in there. Mr. Latkovic said they should look to just removing that from the code entirely. Ms. Matheney pointed out that that is an issue listed on page two of her memo.

Mr. Latkovic said if the situation is ever that the Building Inspector is contracted with the County, they need to ensure that the only reference in the Zoning Code is to the person responsible for Zoning.

Mr. Flaiz asked Ms. Matheney to check the code for all references to Building Inspector. He said they may want to change all references from Building Inspector to Zoning Inspector, eliminate Building Inspector references, and delete Building Inspector from the definition of Zoning Inspector. Mr. Latkovic noted that the vast majority of such references are in 7.02

Mr. Latkovic then referred to Section 4, page 33, (J) under Parking of Recreational Vehicles: "*A recreational vehicle parked or stored outdoors must be adequately screened, if visible from any adjoining premises, as approved by the Building Inspector.*" Mr. Flaiz said that should be approved by the Zoning Inspector. Mr. Latkovic and Ms. Matheney agreed.

Mr. Latkovic then referred to Section 7.02 (W), starting on page 99. He said there are a whole slew of references that can be skipped there, since the whole thing will be eliminated.

Mr. Latkovic then referred to Section 7.02(x), page 108, Violations and Penalties. He quoted the portion that says, "*At the hearing, the Building Inspector shall present the grounds upon which it is claimed that the Zoning Code or any order, term or condition of the conditional use permit has been violated by the applicant*". It was agreed that the code should read Zoning Inspector.

Mr. Latkovic then referred to the last sentence in Section 3.01(c) page 17: " *No building permit shall be issued by the Building Inspector prior to the issuance of a zoning permit.*" He said "by the Building Inspector" should be eliminated.

Mayor Koons referred to Section 2.01 (69), page 9, and everyone agreed that the error should be corrected, and read 5.02 instead of 502.

Discussion of the Zoning Code recommendations would continue at future meetings.

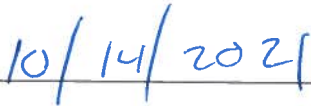
There being no further business, Mr. Latkovic adjourned the meeting at 9:27p.m.



Steve Latkovic, Chairman



Ruth Griswold, Board Secretary



Date



Date