



MINUTES OF THE REGULAR MEETING  
BOARD OF ZONING APPEALS

November 5, 2015

**A. Call to Order – 7:30 p.m.**

1. Roll Call - the following members were present: D. Falcoski, B. Seitz, C. Crane, and L. Reibel. Mr. J. Sauer served for Municipal Planning Commission Board Representative R. Hunter who was not present at the meeting. Also present from city staff were: L. Brown, Director of Planning & Building; D. Phillips, Chief Building Inspector, and P. Fox, Director of Law.
2. Pledge of Allegiance
3. Affirmation/swearing in of witnesses.
4. Mr. Falcoski moved to approve the October 1, 2015 minutes, seconded by Mr. Seitz. The minutes were approved.

**B. Items of Public Hearing**

Mr. Phillips reviewed the following from the staff memo:

**1. Variance – Fence – 7046 Worthington-Galena Rd. (Penny Roberts) BZA 39-15**

Findings of fact:

1. This property is in the I-1 district where the minimum front yard requirement is 50 feet. Fences cannot be erected between the right-of-way line and the front yard setback.
2. The applicant has erected 65 feet of a 40” tall, post and chain fence, from the building sidewalk to the tree lawn to the west to approximately the right-of-way line. The majority of the fence is within the 50 foot front set back.

The following conclusions are presented:

1. The applicant is attempting to prevent vehicles from entering the south curb cut, travel north past the building, and then travel to the east along the north property line to reach Huntley Road. A more effective, long term means of traffic control may be adding a curb and landscaping to prevent through traffic. The requested variance is substantial.

2. The delivery of governmental services should not be affected. Chief Highley, Division of Fire, provided a memorandum to the Board addressing site access.

**Discussion:**

Ms. Crane stated that the applicant would like to remove this application from the table. Mr. Seitz moved to approve the motion, seconded by Mr. Falcoski. All Board members voted, "Aye".

Ms. Crane said that this application was tabled last month because they wanted to hear back from the Fire Department. The Board received a Memo from the Fire Department and that Memo is now part of the record. Interim Assistant Fire Chief for the City of Worthington, Al Woo, was present at the meeting to answer questions.

Ms. Crane stated that there are two issues involved here. The first issue is that the property owner is getting a lot of cut through traffic. The second issue was that cars were parked to prevent cut through access and that was not acceptable to the Fire Department. Chief Woo said there is actually 360 degree access around the property. There are two entrances off Huntley Road, two main drives go through that area. The business owner was cited under the Ohio Fire Code for failure to maintain fire lane access, access to those roads that go through the area. The front of the structure, even though it is a parking lot area, needs to have fire lane access. Chains are only supposed to be used for security purposes only, but since the chain can be removed rather quickly, that was sufficient enough for the Fire Chief at that point in time. Chief Woo said that he met with City Staff to go over a couple of other items. He believes there are other opportunities to meet the same intent of the business owner, but the Fire Department will not vacate Fire Lane access around the building. If the business owner wants to minimize the access of cars coming off the road he believes there are other options. Mr. Sauer asked Chief Woo if a permanent structure across the parking lot area would not be acceptable and Chief Woo said that is correct. From a fire fighting tactic and strategy standpoint, the Fire Department would need access to save that area. He also said there were some proposals for landscaping to help curb the traffic such as small curbs or pavers that would help slow traffic down, but still allow access for the Fire Department. The bottom line is that the Fire Department needs to have access to that road.

Mr. Brown stated that the applicant is going before Community Improvement Corporation (CIC) on Monday because they are part of the Re-Cap Program to improve the areas along Huntley, Schrock and Worthington-Galena Roads. City Staff is comfortable with a six month time period to allow the applicant to go through the CIC process for the Re-Cap money, and also give staff time to explore other alternatives for meeting the zoning and fire codes.

Ms. Crane asked if the applicant was present. Mrs. Penny Roberts stated that her address is 7046 Worthington-Galena Rd., Worthington, Ohio. Mrs. Roberts said that she understands a little bit of the fire code but this is one single building. She still does not

agree with needing a fire lane in front of the building. Mrs. Roberts said that the reason that the fence went up was cars were flying through the area while they were trying to move into the building. The fence was for safety of their family. They were asked to remove everything and she said they did. As she was walking her one year old granddaughter out of the building, they were almost smashed into the parked cars by a car that was flying through the area, so she told her husband that a fence needs to be installed for safety reasons. Her son has employees inside the building and the employees are also at risk of being hit by cars flying through the area. There are offices in the front of the building, but the Fire Department will have access to the offices on either side of the fence. There is a fire hydrant located on one side of the fenced area. The fence that was put up is in compliance because they used a mechanism that will allow the fence to be dropped if necessary. Mrs. Roberts said that she came before the Board of Zoning Appeals originally for a variance for a fence last month. The fence that is currently there was put up for safety reasons but she would like to install something more appropriate.

Ms. Crane asked Mrs. Roberts if she was comfortable with having the temporary fence approved for a six month time period and she said that would be fine. They would like to get started with projects to improve the building because bricks are beginning to fall off the wall, and the fence will be the deciding factor of whether they stay or go.

Mr. Sauer said that he assumes that Mrs. Roberts will be working with city staff and the Fire Department to come up with a reasonable solution and Mrs. Roberts said yes.

Ms. Crane asked if there was anyone present that wanted to speak either for or against this application and no one came forward. Ms. Crane asked to hear the second motion for temporary approval of the fence for six months.

Ms. Reibel moved:

**THAT THE REQUEST BY PENNY ROBERTS AND UNDER PSI PROPERTIES LLC FOR A TEMPORARY USE PERMIT FOR 6 MONTHS TO ERECT A FENCE AT 7046 WORTHINGTON-GALENA ROAD, AS PER CASE NO. BZA 39-15, DRAWINGS NO. BZA 39-15 DATED SEPTEMBER 2, 2015, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.**

Mr. Falcoski seconded the motion. Mr. Phillips called the roll. Mr. Sauer, aye; Mr. Seitz, aye; Mr. Falcoski, aye; Ms. Reibel, aye; and Ms. Crane, aye. The motion was approved.

## **C. Items of Public Hearing – New**

### **1. Variance – Accessory Building Area – 410 Tucker Dr. (Dennis Meacham/Bakhshi) BZA 45-15**

Ms. Crane said that due to the large number of people that were in attendance for this meeting she is going to outline a list of procedures that will be followed. First the item will be introduced, then there will be a presentation by city staff citing the facts of the case including precedents of similar cases, the Board will then have a chance to ask city staff questions. The applicant, or their representative will be called to the podium and Board members will have a chance to ask questions. After that there will be time for citizens comments. Due to the large number of people that would like to speak, she asked that they limit their time to two minutes each, and be relevant issues to the case which are in the seven items listed in the staff memo. Those items are whether the property in question will yield a reasonable return without the variance, whether the variance is substantial, whether the essential character of the neighborhood would be altered, or whether adjoining properties would suffer substantial detriment, whether the variance would adversely affect the delivery of governmental services, whether the purchaser of the property was aware of the zoning restrictions, whether the property owners predicament can be obviated through some method other than a variance, and whether the spirit and intent behind the zoning requirement would be observed and substantial justice be done by granting the variance.

Ms. Crane said the Board did receive a very large amount of correspondence via email and personal mail, all of which are part of the record. Ms. Crane explained if someone has already sent in a letter that it was not necessary for them to read their letter this evening because the letter is already part of the record. She asked that all comments be directed to the Board, or to the applicant or city staff through the Board. All speakers must state their name and address for the record at the podium.

Mrs. Fox said that she wanted to make a few comments before city staff made their presentation to the Board. She said with respect to this application, the Codified Ordinances of the City of Worthington requires this Board to look at the seven criteria contained in 1129.05(c) which has already been outlined. As a basis for granting an application for a variance the factors are used to determine whether a property owner encounters practical difficulty in the use of the property without the variance. In authorizing a variance the Board may attach conditions as it deems necessary to assure compliance with the objective of the zoning code. Mr. Brown will go into more detail about those factors and how they relate to the property at 410 Tucker Drive. A property owner encounters practical difficulty when a zoning requirement reasonably deprives him of permitted use of his property. The key to this decision is the reasonableness. None of the seven factors are singularly conclusive. For example, a property owner may not be denied an opportunity to establish a practical difficulty simply because he did not have knowledge of the zoning restriction. That factor needs to be weighed against some or all of the other factors or not considered at all if it is not necessarily relevant to the determination based on the facts that are presented to the Board. Also a property owner may be prevented from using his property in a manner that would provide him with the

greatest possible benefit but not necessarily be deprived of the beneficial use. It is a higher standard if they cannot use their property to the greatest benefit but that is not necessarily the standard that the Board is looking at this evening. The Board should weigh the competing interest of the property owner, the community, the neighborhood and adjoining property owners to arrive at a decision in that it attempts to do substantial justice and that it observes the spirit of the zoning code rather than the strict letter of the code. The ability of the property owners to seek variances would not exist if the city required everyone to stick to the strict letter of the code. There are a lot of different standards to look at. You have to look at all of them and weigh them against public good, the property owner's rights, and the adjoining property owners' rights.

Mr. Brown said that the site before you is actually circled in red, 410 Tucker Drive, and was originally platted in 1950 as Medick Estates and existing R-16 lot with a total allowable accessory structure of 850 sq. ft. Mr. Brown discussed photographs of the property where a majority of the vegetation has been removed. He said that the proposal being presented is an accessory structure, not the house.

Mr. Brown reviewed the following from the staff memo:

Findings of fact:

1. This property is an existing lot of record in the R-16 district where total allowable accessory building area is 850 square feet.
2. The applicant is proposing to construct a 10,230 square foot, two story dwelling with an 864 square foot garage attached to the principal dwelling, and a 3004 square foot single story detached garage and pool house, with a covered porch. The proposed total accessory building area is 3,868 square feet. The requested variance is 3,018 square feet.
3. The lot is 140.17 feet by 527.24 to 529.19 feet totaling 74,039.9 square feet (1.70 acres), which is 58,039.9 square feet (1.33 acres), or over 362.7% larger than the minimum for the R-16 district of 16,000 square feet (0.37 acres).
4. The absolute 850 square foot accessory building area limitation is irrespective to lot size and applies to all R districts. An 850 square foot building would be 5.3% of the minimum R-16 lot size and 8.2% of the minimum R-10 lot size. This proposal is 5.2% of the lot area.
5. The minimum dwelling unit size for an existing lot of record in the R-10 and R-16 districts is 1200 square feet. The 850 square foot accessory building area represents 70.8% of the minimum dwelling area required. The proposed accessory building area in this application represents 37.8% of the dwelling area.
6. Dwellings, including attached accessory buildings, must be setback a minimum of 10 feet from a side property line and the sum of the 2 side setbacks must be a minimum of 25 feet. Dwellings must also be setback a minimum of 30 from the rear property line. Detached accessory buildings must be setback a minimum of 8

feet from the side property line and 10 feet from the rear property line. The applicant is proposing the dwelling and attached garage be 10 feet from the west property line with the sum of the 2 side yards totaling 37 feet 4 inches. The detached accessory building is proposed to be 15 feet 8 inches from the east property line and 30 feet from the north property line.

7. Staff has compiled accessory building area variance information from the last 10 years and is attached to its memorandum.

The following conclusions are presented:

1. Large lots allow a larger investment in the property and generally accommodate larger structures. When properties also have a swimming pool, it may require more or larger maintenance equipment and materials than a typically sized lot in the community. Equipment and materials are generally not permitted to be stored on the property unless it is within a building.
2. The applicant originally proposed the detached accessory building be located 20 feet from the north property line. After conversations with staff, the detached accessory building is proposed 30 feet from the north property line. These proposed setbacks meet or exceed the setback requirement for a dwelling in this district.
3. The addition of landscaping along the west, north, and east property lines to soften the detached garage/pool house would further mitigate the substantial nature of the detached accessory building area variance request. The portion of the variance request for the attached garage is not substantial. A landscaping plan was emailed to the Board earlier in the day, and to neighboring properties whose email addresses were available.
4. The delivery of governmental services should not be affected.
5. Part of the intent of the accessory building area limit is to prevent imposing accessory buildings overshadowing the main dwelling. In this particular case, the main dwelling will be 10,230 square feet in area and the proposed accessory buildings are 37.8% of the principal dwelling, which is a typical relationship between dwellings and accessory buildings.

**Discussion:**

Mr. Brown said that when staff was reviewing this, they took a look at the surround lot and surrounding neighborhoods and they do feel that larger lots can generally accommodate larger structures. When properties have a swimming pool and a lot this size they will need to have a structure to store equipment. Mr. Brown said about ten and a half or eleven years ago, at 576 Tucker Drive, the only variance he was able to find, for a detached accessory in the Medick Estates area. They were unable to find any other detached accessory structures. At the time the total allowable accessory structure area was 750 square feet. The property owners requested a variance, in addition to their

attached garage which was 750 square feet and the request was for a two car detached garage of 1500 square feet. Mr. Brown said that he would like to point out, however, with that case, the detached garage had 900 square feet on the first floor, and 600 square feet for storage on the second floor. This parcel is also one and a half acres in size.

Mr. Brown continued to say there is an acre and a half lot next door to the property and they have a swimming pool. The majority of the homes in Medick Estates range in size and some of them have attached two and three car garages. Most of the places you find older accessory structures is in old Worthington. The fourth criteria is whether there would be an impact on governmental services. City staff does not believe there will be an effect on governmental services, however, late last week the Environmental Protection Agency (EPA) was called in to the site. Any disturbance over an acre requires an EPA Permit. With this instance the EPA stated to us that removal of the trees on the property, the grading, the construction of a new house, and the demolishing of the existing house bumped it up since the lot was 1.7 acres in size.

Mr. Brown continued to say the applicants are still working to get a storm water prevention plan in place and will be required to handle their storm water and have post construction best management practices to see how the storm water will be handled in relation to the structures. Staff was comfortable with that criteria.

Mr. Brown continued to say, in reference to the fifth criteria, whether or not the property owner purchased the land without knowing about the zoning restriction, Mr. Brown said that he is unaware if the purchaser of the property was aware of the zoning restriction. The applicants did go before the Municipal Planning Commission to amend the front setback and have followed procedures since then of filing for a demolition permit and a building permit for the house.

Mr. Brown continued, in reference to the sixth criteria, whether the property owner's predicament feasibly can be obviated through a different mechanism other than a variance, and the size of the accessory building needs to be dictated by the size of the property. Some type of storage does seem to be reasonable on this site due to the size of the lot in relation to the house.

Mr. Brown said whether the spirit of the intent behind the zoning requirement would be observed and a substantial justice be done by granting a variance, staff had a difficult time with this structure since it would be one of the largest accessory buildings in Worthington. Others in Worthington are required to have an 850 square feet accessory building or come before this Board for a variance. The overall accessory building did seem excessive for the site and in context for the neighborhood. Staff did not feel, as the project stands today, that this project meets criteria for granting a variance as outlined in the Codified Ordinances in City of Worthington.

Ms. Crane said that she would like to thank city staff since there is a full house at the meeting this evening for their thorough work and thoughtful and informative analysis of the issue. She said that she also read correspondence from people knowing that the Board has a record of approving variances. Applicants usually work really hard with

staff to come up with a proposal that the Board will be comfortable with, and that is why you get a high rate of approval. She said people just do not come in here cold with their wish list of what they would like to do. Applicants work with city staff to work on a proposal that is likely to be successful.

Mr. Sauer asked if the porch is included with the pool house area and Mr. Brown replied yes.

Ms. Crane asked if the applicant was present. Mr. Aaron Bakhshi stated that his address is 410 Tucker Drive, Worthington, Ohio. Mr. Bakhshi said that his General Counsel Mr. Steve Justice is also present. Mr. Bakhshi said that he is asking for this variance so he can build a garage and a pool house. He said that had he been aware that he needed a variance he would have asked for one at the last meeting he came to, but he just recently became aware that a variance would be needed. He said he needs the space because he has five small children that have a lot of toys and he also has a car collection. He will not store all of his cars at the home, just the cars he drives frequently. He said that his attorney has prepared a brief statement for the Board.

Steve Justice stated he is an attorney with the firm of Dungan & LeFevre, and he practices in Troy, Ohio, which is in Miami County. Mr. Justice said that he appreciates this opportunity to meet with the Board members. He has represented clients before similar Boards in other counties.

Mr. Justice asked Mr. Brown if the city staff's position is that this application does not meet the seven criteria necessary for approving the variance. Mr. Brown replied that is correct. Mr. Justice said that he has been waiting for an answer from city staff for approximately three weeks, and now that he is under oath he would like to see that this is the first time that he has heard such response from city staff. He said that he would like to go through to some extent that that determination is not correct.

Mr. Justice said as Mr. Bakhshi stated earlier, he is the attorney that represents Mr. Bakhshi and his family, who own the property at 410 Tucker Drive. He said that he wrote a letter to the Board which they currently have with them this evening, sent by city staff via email earlier in the day. The letter seeks to support the variance application. Mr. Justice said that his client, Mr. Bakhshi, is of Indian descent, and his family definitely has roots in the Worthington area. His wife was raised in this area, and his maternal grandparents were some of the founding members of Worthington. He said it was a great deal of joy to find this property and move back into this particular area. Mr. Bakhshi is an American citizen, born in the Columbus area, and went to high school in this area. He also owns companies in this area, one of which is Burke. His company manufactures parts for the United States military and as well as the aerospace industry. Mr. & Mrs. Bakhshi have five children all under eight years of age.

Mr. Justice continued to say in May of 2015, Mr. Bakhshi sought permission from the Worthington Municipal Planning Commission to build the new home, which is depicted on the screen, in Medick Estates, at 410 Tucker Drive. He sought permission to demolish the old home in order to build a new home, closer to Tucker Drive, so that he and his

family could enjoy their back yard. The family closed on the property in June 2015 and shortly thereafter the Municipal Planning Commission granted their request so they could locate the house closer to the front of the property. Medick Estates is predominately a Caucasian community. Mr. Bakhshi had encountered some....Mr. Justice was interrupted by noise from the crowd. Ms. Crane interrupted and asked the audience to allow Mr. Justice to speak without being interrupted. Ms. Crane also stated that Mr. Justice must not be familiar with Worthington because he would know that people do not need an ethnic cause to get upset about trees and their neighborhoods. She also stated that she does not find that part of the discussion relevant to this application. She said that she has read Mr. Justice's letter and it is part of the record. She asked Mr. Justice to discuss the seven criteria while not insulting the residents of Worthington saying this is a racial issue. She said she has read several letters, and that she does not agree with all of the letters, and some of the letters contain language that is not polite, but she has seen no evidence of a racial issue. She said that if Mr. Justice feels that Mr. Bakhshi is being discriminated against, that issue should be dealt with elsewhere and not before the Board of Zoning Appeals, possibly by filing a civil rights complaint. She explained that she is not an attorney, but would like Mr. Justice to address the issues concerning the pool house and garage, and the adherence to the seven criteria.

Mr. Justice thanked Ms. Crane for expressing her personal opinion. He said he did not intend to accuse the community of being racially offensive, he was just making a factual statement. He said he is just giving testimony before this Board and that he has a duty under the law to create a record, and that record is of course, if this Board decides to deny this particular variance request, and he hopes it does not, then this particular applicant only has an opportunity to appeal the record which is before this Board. He is just trying to provide factual information, so that the Board members can make a reasoned and informed decision as to whether this variance should be granted or denied.

Mr. Justice said that he wanted to state a few more facts before discussing the seven criteria. He said that he anticipates that a number of the neighbors are going to speak in a little while and complain that trees were removed from this site. If the Board will allow Mr. Justice to address those comments at a later point in time, he will skip over that and focus on the seven criteria now, but if he is not going to have the opportunity to speak later or respond to that then, he needs to address that now to create a record. Ms. Crane said that the Board is concerned with landscaping the accessory structure.

Mr. Justice said that he understands that and thinks that he may not have communicated that well. He is concerned about the neighbors' comments about the trees and not focusing on the issue that is before this Board, which concerns the request for the variance for the pool house and garage, and not about the lawful removal of trees from the site. Mr. Justice said that if Ms. Crane does not anticipate complaints from the neighbors about trees, or does not allow that, or allows him to discuss that at a later point in time and respond to the neighbors' statements after they are done, then he is willing to forego any reference to the tree removal and focus on the pool house and garage.

Mr. Seitz said that he anticipates that Ms. Crane will do her best to keep the audience members on point. Ms. Crane said we are not really talking about the tree removal here. Mr. Justice replied very good.

Ms. Crane said that she would like the audience members to know the Board understands the emotions and the objections to the removal of the trees, but that is not what the Board is discussing this evening. She continued to say as far as landscaping is concerned the Board is concerned about screening around the proposed structure.

Mr. Justice said that this particular landscaping plan was prepared so as to depict the type of visual screening that would be provided for purposes of the pool house and the garage. There will be landscaping in the front, but this meeting is about the screening of the accessory structure so that is what that area is being focused on. Mr. Justice said that he will move forward to discussing the facts pertaining to this variance.

Mr. Justice said that the property at 410 Tucker Drive is 1.7 acres in size, which is not a small lot, and currently zoned in the R-16 District. All R districts do have a current zoning area requirement of 850 square feet that is the largest it can be without a variance. The Bakhshi's are planning to build a home that will be approximately 10,230 square feet, but will be a two story home so the footprint of the home itself will be consistent with the neighboring home to the west, which is approximately 4000 square feet, and is not a two story structure, but a similarly sized footprint. The home itself will have a smaller garage attached to the home and the focus of this particular variance is with respect to a detached garage and pool house with a covered porch that would be located at the rear of the property as depicted in the diagram. As the city staff has indicated, when you add together the attached garage to the house and detached accessory building at the rear of the property then you reach a total exceeding the 850 square feet, the excess totals 3018 square feet.

Mr. Justice stated depicted in the plan that is presented, the Bakhshi family is proposing to provide a visual screen on the northern, eastern, and western boundaries of this property. You will see on the eastern and western property boundaries they are proposing to plant arborvitae which at planting time will be 6 feet to 8 feet in height. They will mature and grow much taller than that, but if you plant the arborvitae much taller than that you have a risk of losing them. On the northern boundary there are trees and brush already located in that area. There is also a 10 foot chain link fence that separates the northern homes which are on smaller lots, and not part of Medick Estates. Mr. Bakhshi is proposing to plant spruce trees that will be 8 feet to 10 feet at planting all along the northern property boundary to provide a full visual screen for the neighbors from the pool house and garage. The minimum size for a lot in the R-16 District is .37 acres or 16,000 square feet, so the 1.7 acre lot at 410 Tucker Drive well exceeds the minimum size for an R District lot. When the accessory building limitation area of 850 square feet is considered with the minimum sized lot of .37 acres then you find that the maximum acceptable ratio between an accessory building and a lot size is 5.3 percent. If we take the area of the proposed accessory structure, the pool house and the garage, and compare that to the size of the lot, the ratio is only 5.2 percent. So the proposed structure does not exceed the maximum ratio. Similarly, the minimum house size in the R-16

district is 1200 square feet. When the maximum accessory building size of 850 square feet is considered in light of a house this size, it is apparent that an accessory building could be as large as 70.8 percent of the size of the house under the zoning code and be acceptable. This proposed accessory building planned by the Bakhshi family is only 37.8 percent of the size of their proposed house. The proposed accessory buildings also comply with that particular ratio, and in addition the setbacks on both sides, east and west and on the northern property boundary are also in compliance with the zoning code. As part of the Memorandum to this particular Board, the Planning Commission staff compiled an attached chart that is dated October 30, 2015, that was provided by Mr. Phillips, the Chief Building Official, who is a member of the Board of Zoning Appeals. Ms. Crane said that she has a copy of the document that Mr. Justice was referring to but she does not have a copy of the Municipal Planning Commission's Memo.

Mr. Justice stated that the chart that was prepared by city staff sets forth the accessory building applications that have been addressed since 2006, about nine years, and it is his understanding that around that time frame the current 850 square foot requirement went into effect. The chart depicts for the Board all of the accessory building variances that the Board has been asked to address in the R-16, or R-10 districts since 2006. Mr. Justice said that when you examine the chart you will see that in the last nine years, the Board has considered twenty-five applications, not including the application of the Bakhshi family. In that nine years, the Board has not denied a single building variance application. The Board has granted variances to twenty-two of the twenty-five variance applications. Three of the applications were withdrawn before the BZA issued a decision. So essentially, since 2006, this Board has not denied a variance application for an accessory building that has exceeded 850 square feet.

Mr. Justice continued to say, significantly, when you dig down into the details of that chart you will find that of the twenty-two variance applications that were granted, nine of them had higher accessory building area to lot area ratios than the 5.2 percent ratio in the Bakhshi's application. Nine of the twenty-two applications had larger accessory building area ratios to the lot size than what the Bakhshi family is seeking today with their proposed accessory building on this 1.7 acre lot. Moreover, of the twenty-two variance applications that the BZA has granted, fifteen of those applications had higher accessory building area to house ratios than the 37.8 percent ratio in the Bakhshis' application. Even though the Bakhshi's accessory building application is the largest request for variance since 2006, its ratio to the overall lot and house size is clearly in the low to mid-range amongst those variance applications that have been granted by this Board. The ratio values he submits are a much more equitable means to gauge the relative impact of a variance application as opposed to the pure size of the proposed accessory building. That is why the city staff stated in its comments that, in this very Memorandum, that large lots, like this one, allow for a larger investment in the property and generally accommodate larger structures. The staff further noted that part of the intent for the accessory building area limit was to prevent an accessory building from overshadowing the main dwelling. You can have a home an R district that is 1200 square foot and you could imagine that you could build an accessory building that would overshadow the home unless you put a limit on the size. So if you have a 1200 square foot building and an 850 square foot limit on an accessory building that is almost over 71% and would be the upper range of that

ratio. When you take that concept and apply it to all the homes in the R district, some of which are much larger lots, a purer square footage limit probably does not make sense. Maybe Worthington should consider a ratio percentage instead of a pure square footage amount. A 1.7 acre site, as opposed to a very much smaller site, has an 850 square foot limit for an accessory structure, and that does not make sense. That is why looking at the structure by itself is not a good measure and it is not an equitable comparison. The better concept is to look at the ratios.

Mr. Justice continued, in this particular situation, the city staff specifically found that the Bakhshis' home and the proposed accessory buildings are only 37.8 percent of the principal dwelling. The staff concluded that this ratio was a typical relationship between dwellings and necessary buildings in this R district even though the detached pool house and garage at the rear of the property is large. Furthermore, the staff recognized that properties with swimming pools may require more or larger maintenance equipment and materials than a typical sized lot in the community given that equipment and materials generally are not permitted to be stored on the property unless they are stored within a building. The inclusion of a pool and its intended equipment will require a larger accessory building than otherwise. This is both a pool house and a garage. The equipment will be required to be stored inside a building. It necessitates a slightly larger structure than just a pure garage.

Mr. Justice continued, in relation to the seven factors, the first factor deals with whether the Bakhshi family can make a beneficial use of this property without the detached garage and pool house. The Bakhshi family submits that they cannot. Even if they could, based on the ratios and the analysis that was just given to you, the Board, and in light of your prior decisions, the fact that this ratio, this proposed accessory building, both to the lot and the house, is in the mid to low range of the same ratio for the same kind of variance requested twenty two times by this Board in the past nine years and every single one of them were granted. Given that this is in the mid to low range of that. It would be inequitable to deny the Bakhshis' the requested variance.

Mr. Justice continued to say the Bakhshi family chose this particular lot because of its large size and could accommodate a larger house, a pool house and a garage. Mr. Bakhshi told you already that they have several children. Mr. Bakhshi has a car collection and he would like to store some of his cars on his own property. He wants to care for and secure his own personal property. Given the number of children and the situation of this family, a simple two car garage will not meet their beneficial needs. The staff noted that this proposed accessory building, the ratio of that and to the lot was typical, and not out of line, not huge, but typical of a home in an R district. Given that this Board has granted twenty-two variances and this ratio proposal is in the mid to low range of that, this factor itself weighs heavily in favor of granting the variance.

Mr. Justice continued to say second, this requested variance is not substantial. One of Mr. Justice's colleagues Mr. Anderson, submitted a legal Memorandum to this Board as well. Mr. Justice said that Mr. Anderson argued the seven points and he took the position that the variance is substantial for one reason because of the size of the accessory building is three times the limit of 850 sq. ft. When you view that by itself, yes it exceeds

the limit by three or four times but that is not the best or equitable way to view this situation. To determine whether a variance is substantial in its context you need to take a look at the lot and consider the size of the accessory building in a relationship to the lot. What is that ratio? You need to consider the size of the accessory building to the house. What is that ratio? Make an apples to apples comparison to other R lots in Worthington. You will find that each of the variances you have granted, twenty-two, in the past nine years, this particular ratio falls in the mid to low range, so this is not a substantial variance when you consider it in the proper way.

Mr. Justice continued to say the Bakhsh's' requested variance for the pool and the garage will not substantially alter the character of this neighborhood nor cause a substantial detriment to the adjoining neighbors. This variance is about the pool house and the garage. It is not about the trees that were lawfully removed earlier. Virtually all of the twenty-two accessory building variances that have been granted by this Board over the last nine years have been for garages and/or pool houses. All of them. It defies reason to contend that building a garage or a pool house on the back of a 1.7 acre lot will substantially alter the essential character of this neighborhood. Think about it. Building a garage and pool house on the back of a 1.7 acre lot that is visually screened on three sides from its neighbors, it defies reason to say that it will substantially alter the character of this neighborhood. Mr. Justice said that he heard Mr. Anderson and he had read comments and letters from neighbors about invading their privacy, but this will not invade the neighbors' privacy. He has already discussed the screening that will be planted, and there will be a visual barrier so that the neighbors' will be screened from one another. He has heard general and vague allegations that somehow the building of this pool house and garage is going substantially lower property values. Of course there is no evidence to that side effect. When this particular house is finished, and the Board allows this family to proceed with the variance, this project will improve the property values of all of the homes around it. When the neighbors decide to sell their houses or lease their houses the realtors will stand in front of this house and take pictures of it to show what their house is worth.

Mr. Justice continued to say the staff has already indicated number four that the requested variance will not affect the delivery of governmental services. Mr. Justice said Mr. Brown mentioned the fact that this is a 1.7 acre site and that recently someone contacted the Ohio EPA and suggested that this site would require a storm water pollution prevention plan to prevent sediment run off during rain events. The fact of the matter is that under Ohio law if a lot is larger than one acre and if construction activity is covering that area then the contractor is supposed to implement what is called a storm water pollution prevention plan. Mr. Bakhshi's Architect is present at the meeting this evening, and he already aware of that, and in compliance. When Mr. Anderson drafted his letter and sent the letter to Mr. Brown, Mr. Brown is now aware of that. I will tell you this though, this is the first time that the staff is aware of in the history of Worthington that any private home owner who is constructing a home in a mature development has ever had to prepare a storm water pollution prevention plan. Why is that occurring here? Because the neighbors are doing everything they can to stop this family from living here."

Mr. Justice continued to say in reference to number five, the Bakhshis' were not aware of the zoning restrictions related to the acceptable area for accessory buildings, either at the time they purchased the property or at the time the Municipal Planning Commission granted their plat amendment. They did not know. He has provided for the Board, in a particular handout which has four different homes, all along Tucker Drive with garage structures, some attached, some detached, specifically 576 Tucker Drive, the last two pages of the exhibit, that particular house apparently has two garages, and a pool in the back. If you look at the Franklin County Auditor's website, you will see that their house has a framed garage and the structure is 1032 square feet. One of the garages alone is in excess of the 850 square feet. There is also a detached garage which is 956 square feet. That house on Tucker Drive, a few houses away from 410 Tucker Drive, has accessory structures that exceed 2000 square feet. There are three more houses on Tucker Drive that are listed in the handout. All of those houses have garages that exceed 850 square feet. Some of the garages are attached. One of the garages is rather large, and there is no square footage listed, just a blank. He provided the information for a reason. Mr. Bakhshi drove around this neighborhood with his wife to see whether or not they wanted to purchase this property and one of the things that they were looking for whether they could build the house that they want, can they build a garage and a pool house. They were looking for a relatively large lot for which they could build on. What did they see when they drove around the neighborhood. What they saw were large homes on Tucker Drive in Medick Estates, and they saw large garages, and some were detached, with pools. Just the type of thing that they were looking for. They had no idea when they bought the property, and no idea when they sought and platted the amendment to move the house closer to Tucker Drive that there was a restriction of 850 square feet. They had no idea. They found out after the fact and why they have brought this application to the Board. Given that they did not know ahead of time, certainly this factor weighs favorably on granting the variance.

Mr. Justice said in reference to the sixth factor, the Bakhshis' predicament cannot be obviated feasibly through some other method. The family has tried over and over again to find some way to communicate with the neighbors, and address the concerns of the neighbors. He said when the family began receiving very distasteful letters, comments and emails, Mrs. Bakhshi drafted a letter that she provided in response to the rather viscous comments that were coming from the neighbors. Even as recently as last weekend, one of the nearby neighbors by the name of Rob Schmidt, contacted Mr. Justice and wondered if he might be able to propose some way to bring about peace here and addressed the concerns so they could develop a relationship of trust and have a good neighborly relationship moving forward. Mr. Justice asked what did he have in mind and Mr. Schmidt's response was that he would like to go to the immediate neighbors of this property and meet with them and see if they would be willing to meet with Mr. Bakhshi to talk about this situation to see if they could come to a meeting of the minds and resolve the concerns. Mr. Justice said that sadly, Mr. Schmidt called him on Sunday and said that he did meet with the immediate neighbors and that he could not get them to first of all agree on what they wanted, or agree on what should be said. Mr. Schmidt was saddened to inform me that he did not think it was worth bringing a client to a meeting to have a discussion because it will not be productive. The neighbors cannot agree on what they want, they cannot agree on what they want to say. I thanked Mr. Schmidt for his time.

Mr. Justice said that the Bakhshi family did not intend to move into this neighborhood and be attacked. No family would want the neighbors to start a petitioned website with negative comments. The Bakhshi family has tried to explore other alternatives to obviate this situation reasonably through some other method but they have been unable to this point to be able to negotiate something with the neighbors. City staff encouraged this and I agree and that is what this point is about. All the Bakhshi family is getting is hate mail and negative comments. That type of conduct should not be rewarded by this Board in denying a variance. Mr. Justice said that this Board should help this family and grant this variance.

Mr. Justice continued to say the last point, number seven, is a broad catch all. Granting the Bakhshis the requested area variance is consistent with the spirit and the intent behind the zoning requirement and with the Board's prior accessory building variance decisions over the last nine years. Granting this variance would result in substantial justice. When you consider the ratios that Mr. Justice spoke about earlier and the pattern of the Board granting variances, some of those ratios were much higher than this proposal. For this Board not to grant this variance really sticks out. One must wonder what the lawful justification for doing that is in light of the Board's prior decisions. This is a Board that makes a decision of reason based on the law and based on its own decisions in the past. Staff has already indicated to the Board that their job is not necessarily to apply the zoning code to the letter of the law because that would mean there would never be such a thing as a variance but to consider the concerns of all. Mr. Justice said that sometime you need to stand up for the little guy against the masses. He said that he humbly requests on behalf of the Bakhshi family that the Board would grant this variance. He said that he believes that all seven of the factors weigh in favor of granting the variance. He thanked the Board for their time.

Ms. Crane said that she had a couple of comments about the twenty-two approvals and percentages. She believes that she has voted on all of the prior cases, and that she did not always vote favorably for the variances. She said this proposal is unique in that when you look at these variances for accessory structure area, many times they are in a location that is quite remote. She remembers one that was a substantial variance in terms of area and it was off a street from Olentangy River Road. The property was very well screened. The most recent variance was 63 Granville Road, again a substantial variance, but part of that was a historic barn that the city wanted preserved and is being repurposed from a garage to a home office. Because it is being repurposed it needed a variance to renew the fact that it was allowed to be there and then a new garage was also being built. Each of the prior cases is unique and this case is unique, and you cannot just say that this Board just approves everything that comes before them.

Mr. Justice said that he wanted to make a comment about something Ms. Crane just mentioned about 63 Granville Rd. Mr. Justice said that nothing was allowed to be done to the barn and that is why an additional structure had to be built. He continued to say that the reason the Bakhshi family planned a one story pool house and garage was because of the neighbors. If you build the structure higher, then the neighbors will be able to see more. If the neighbors' concerns were to have some visual screening and

protection then the idea was to build something with low gables and surround with arborvitae, which would truly be a visual screen.

Ms. Crane asked the Board members if they had any comments or questions. Mr. Justice said that the Architect and Builder are present at the meeting if anyone wanted to ask specific questions.

Mr. Sauer said that most of Mr. Justice's rationale and argument for granting the variance is based upon his evaluation of ratios, ratios of the size of the structure proposed to the size of the house or to the size of the lot. He said that the point he wanted to make was that the zoning code does not use, recognize or discuss or talk about the tool of ratios. It may be something that Mr. Justice thinks that should be in the zoning code but it is not in there. The zoning code simply says 850 square feet. So, the concept of using ratios to justify a particular size of an accessory building is something Mr. Justice would like to do but it is not in the code. The Board members are obligated to go by the code, and that is not to say that they do not grant a variance on occasion but the ratios are not a justification.

Mr. Sauer said secondly, if he looks at the chart, and he looks at the various percentages, he sees absolutely no relationship between the size of the property and the size of the variance granted. Larger properties do not always get a larger variance and smaller properties are not limited to only small variances, so you cannot just look at the chart and think there is some factor, ratio or formula to justify or determine the size of the variance, so your whole rationale of using ratios is bogus. He said that is his opinion.

Mr. Justice said you may want to revert to the city staff because it was not my idea. They are the ones who basically say, in this particular case, the new dwelling will be 10,230 square feet in area and the accessory buildings are 37.8 percent of the principal dwelling which is a typical relationship dwellings and accessory buildings. He is just trying to speak the language.

Mr. Sauer said that may be the staff's opinion but he does not always agree. He feels that the zoning ordinances should be used as a starting point. Mr. Justice said that ratios are one way of analyzing the data. Mr. Sauer said that it bears no relevance for making a decision.

Mr. Sauer said that he wanted to make another point about beneficial use. He does not see how denying this variance creates a hardship or takes away the beneficial use of this property. Mr. Sauer said that he can understand the applicant's lifestyle maybe one that would like to have these things but there are people that would like to have horses on their property, and he has also heard of people wanting to raise chickens. So just because Mr. Bakhshi wants to store his auto collection is not necessarily a reason. Mr. Sauer said that zoning ordinances do not guarantee that you can do on your property, everything, in the City of Worthington, that you would like to do. He does not see how beneficial use is lost.

Mr. Justice said that is just one of seven factors, and one is not controlling. Mr. Sauer said that in reference to number two he believes that the variance is substantial. He said that Mr. Justice does not feel the same way because the buildings are in proportion. This is one of the biggest variance requests that has come before the Board and Mr. Sauer feels that it is substantial. In reference to Mr. Justice's comment about the character of the neighborhood and asking how a pool house could be detrimental to the neighborhood, Mr. Sauer said if you cut down all the trees in the back instead of working with the trees and vegetation that could affect the character.

Mr. Justice asked if this was about the trees and Mr. Sauer said no, he was just saying how a pool house could affect the character, and tearing down trees does affect the character of the neighborhood. Mr. Justice asked Mr. Sauer if he feels that the neighborhood is being affected because trees were lawfully cut down in order to build a house and he said he just told Mr. Justice how it could affect the character, and it has.

Mr. Justice asked Mr. Sauer how the building of a pool house and garage affect the character of the neighborhood. Mr. Sauer said if you have to clear cut the back of the yard to build it that would affect the character of the neighborhood. Mr. Justice stated that the trees were lawfully removed. He asked Mr. Sauer if he planned to deny the variance because of the trees being cut down to build on the lot and Mr. Sauer said yes.

Mr. Sauer said that Mr. Justice said that the variance should be granted because the Bakhshi family was not aware of the limitation of the accessory structures and therefore since they did not know about it, they should not have to comply. Mr. Sauer said that he did not buy that argument. He said that lack of knowledge is not an excuse to not comply.

Mr. Justice said that one of the criteria that Mr. Sauer has considered is whether or not the property owner knew of the restriction when they purchased the property. The reason why that is there is because if someone purchased the property knowing the restriction and then comes in and says you people should give me a variance for this that is far different, at least as the Ohio Supreme Court thought, and as Codified in your Ordinances that someone who buys the property, gets the property platted and then finds out, that is different. Mr. Justice was just stating a fact that his client was not aware of the restriction until after platting the land.

Mr. Sauer said if Mr. Justice's client said that they did not know he would have to take his word for that. Mr. Justice explained that he is under Oath. Mr. Sauer said that is not a reason for granting the variance. Mr. Justice said that is just one factor that Mr. Sauer needs to consider, and if someone knows about the restriction and sort of comes to it anyway, buys the property and expects you to change it, that is a different situation.

Mr. Sauer said that his last point had to do with spirit and intent. He said that when he looks at the intent of the code it promotes public health, morals, safety, comfort, general welfare and conserving the values of the property. The zoning code establishes certain rules of the game for the purpose of establishing some order and some harmony in the neighborhoods so everyone can get along and live together. What he sees breaks that

pattern. There is no longer harmony in the neighborhood because of the actions of Mr. Justice's client. Mr. Sauer said that he cannot support this.

Mr. Justice said that when you access those seven factors, it is the duty of the Board members to examine what you are doing now with what has been done in the past. If that is not done then the Board members decision can be seen as somewhat arbitrary and capricious which is a standard that allows your decision to be reversed.

Mr. Justice explained that it is very important for this Board to examine what they have done in the past, and if it is substantially similar through the ratio analysis or otherwise, then he said that he respectfully submits to the Board to desperately consider that. He said that consistency is important from any tribunal. Mr. Sauer said that he agrees that consistency is important but what he is saying is that application is out of the pattern because he does not accept Mr. Justice's theory of ratios to justify it.

Ms. Crane called for a ten minute recess.

Ms. Crane asked the other Board members if they had any questions or comments. Board members said that they wanted to hold on to their comments until later. Ms. Crane asked for a show of hands of how many people that wanted to speak about the accessory structure and the seven points that were elaborated before and several people raised their hands. Ms. Crane asked the audience to limit their speaking time to give others a chance to be heard. She asked to keep their speaking time limited as possible to two minutes. A number of letters that were submitted earlier are already part of the record.

Matt Wooster, 400 Medick Way, stated their property is located directly south 410 Tucker Drive. He said that he and his wife just moved into the neighborhood two months ago and feels that his property would be mostly affected by this development, and was disappointed that he was not contacted by the attorney like the other neighbors were. They purchased their home because it has large floor to ceiling windows that look directly onto this property. One of the reasons they fell in love with the home was because of their view of all of the trees, but this discussion is not about the trees so he said he would talk about something else. His home was built in 1956 and is 3015 square feet. The proposed accessory structure would be bigger than his home. Ms. Crane asked for clarification as to where the Wooster home is located and he said that their house backs up to Tucker Drive.

Angie Wooster, 400 Medick Way, said that she would like to talk about whether the neighborhood would be substantially altered. She feels that is one of the more subjective points. She reiterated that she and her husband just moved into the neighborhood and that is one of the things that helped make their decision, the large properties, the homes set back away from the road, and the many trees. She explained that was a recent judgement call they made, the character of the neighborhood before moving in. She urged the Board not to approve this application.

Matthew Anderson, 330 Medick Way, said that his house sits about three or four houses to the east, and he is an attorney. He has already submitted a letter to the Board which he understands is already part of the record. He said there is a bottom line standard of whether or not to approve a variance, as Ms. Fox pointed out earlier, is not whether the applicant is entitled to the maximum beneficial use of the property. It is whether or not the rejection of the variance request will unreasonably restrict their use of the property. Mr. Justice made reference to his Memorandum, and that there are several swimming pools in the area. He feels that denying this application would not unreasonably restrict the Bakhshi's use of the property. Mr. Anderson agreed with Mr. Sauer in that ratios did not mean anything to him. He believes that most of the homes in the Medick Estates area have a total square footage that is less than that of the proposed accessory structure. The substantial character of the neighborhood, with respect to Mr. Justice, he attempted to explain to the Board why the proposed detached garage and pool house will improve the character of the neighborhood, but Mr. Justice is not from Worthington, so Mr. Anderson is not sure how this will improve the neighborhood. He also questioned whether or not Mr. Bakhshi really did not know about the zoning restriction. Mr. Anderson said with respect to the general welfare of the neighborhood, there are a lot of neighbors that are in attendance to oppose the granting of the variance, and he also respectfully submits that the Board deny the request for the variance.

Caitlin Anderson, 330 Medick Way, said that she would like to specifically speak in regards to point number three about the essential character of the neighborhood. She explained when she and her husband moved to the area a year ago, it was the character of the neighborhood that helped them make their decision to buy the property, modest homes on wooded lots, and the trees, but she realizes that the meeting is not about trees this evening. She said that you cannot forgo the discussion about the trees because the trees make up the character of the neighborhood. She said the architecture of the homes also gives the area character, such as the 1950's style of ranches. She said if you start to change the essential character of the neighborhood by allowing enormous accessory structures you will forever alter what is known as Medick Estates. She is concerned that a precedent will be set and that Pandora's Box will be opened and not be able to be put back together. The price of the Bakhshi's home will be more than the price of most homes in the area. She asked that the Board reject the request for a variance.

Ms. Crane explained that this property is not located within the Architectural Review District, so the home will not be discussed. The home meets the zoning code and that is not the discussion for tonight's meeting. The Board does not have any authority over the design of the home. The Board is only discussing the accessory structure and the trees with respect of providing a landscape buffer to the accessory structure.

Anthony Hahn, 399 Highgate Avenue, said that he shares a property line with 410 Tucker Drive. He asked the Board to reject the request for a variance. He said when you think about practical difficulties that does not include storing a car collection, and you do not need 3000 square feet to store your kids' toys. He feels that a 10, 000 square foot home allows for the beneficial use of the property and feels that the proposed accessory structure will be too large. When realtors come into his neighborhood they do not take pictures of the neighboring houses. He does not know how this accessory structure will

increase the value of his property. He said that the Medick Estates area is not the Parade of Homes area. The Medick Estates area does not have a lot of accessory structures and if that is what the applicant would like then maybe they should check out the Columbus Parade of Homes.

Ms. Crane asked Mr. Hahn what he could see from his back yard before the original house and vegetation were removed. Mr. Hahn replied that in the summer he could only see the grass and the vegetation of the neighbor's property, but the house also sat back further. In the winter there were no leaves on the trees so they could see directly into the neighbor's yard. Mr. Hahn said that he purchased the home about eight or nine months ago and that the original owners who lived in the house for thirty-two years are present at tonight's meeting. He said that he appreciates the Bakhshi family screening the accessory structure but what about all of the noise that will be generated. Mr. Hahn also stated that he heard Mr. Bakhshi wants to store eight cars instead of four. He heard that he wants to install a lift in the garage so he can store eight cars instead of four, and will these cars be coming and going all hours of the day. He said that he was never contacted by anyone and he does have a proposal. He asked if there was already a two or three car garage attached to the house and if so, just add the lift to that portion of the garage and put the pool behind the house. Mr. Hahn does not want an accessory structure built 30 feet from his property.

Bethany Hahn, 399 Highgate Avenue, stated that she wanted to speak about the character of the neighborhood. She and her husband moved into this neighborhood because of the character, feels that the proposed accessory structure is a big step away from the original character, and it is substantial. She feels that this structure is going to tower over her and her neighbors' property, and even though pine trees will be planted she is also concerned about the noise factor. She is also concerned about the precedent that might be set. There are other houses on Tucker Drive that are small with large lots that might be sold and who is to say that someone else might request even a larger accessory structure. She is concerned that someone may want to move into the accessory structure since it will be so large. There is no guarantee that the Bakhshi family will want to stay. What happens if they live in the area for five years, then decide to move away. There will be two houses on the lot, and it's possible someone less responsible may move in. Her other neighbors have a swimming pool, three children and a two car garage and they seem to be able to manage. She believes that Mr. Bakhshi should not be able to store his car collection in a garage on the site.

Thomas Boes, 515 Tucker Drive, said he lives several doors down and across the street from 410 Tucker Drive and wanted to talk about the ratio of the size of the collective structure relative to the size of the structure near the street. There are two structures that are both the size of homes. He believes this is a substantial variance. He also feels that this will set a precedent and would alter the character of the neighborhood and is not in favor of this variance.

Andy Kennemer, 470 Tucker Drive, stated he lives three houses to the west of 410 Tucker Drive, thanked the Board members for their service, and wanted to reiterate what his neighbors have been saying. This is a very substantial variance that is being considered, and he is also concerned that this may set a precedence. He believes that this will be a detriment to the neighbors that live immediately adjacent to the property. Mr. Kennemer said that he understands the situation that his neighbors are in. He also said that he wanted to go on record as saying that he believes he is speaking on behalf of the residents of Medick Estates as well as all of Worthington to say that they welcome any new neighbor to the neighborhood regardless of race, religion, or sexual preference.

Michelle Miller, 6460 Masefield Drive, said she lives around the corner where Highgate turns into Masefield by the park and wanted to speak about whether the property owner's predicament can be obviated through some other method. She said that she installed a swimming pool a few years ago. She said that she has a much smaller house, 2700 square feet, and a small pool, but they do not have a 3000 square foot pool house. She purchased the home from the original owner who raised nine children in the home. She appreciates the fact that the property owner feels that they need a bigger house because they have a bigger lot but it is not necessary. She believes that the accessory structure is too large because it will be larger than most of the homes in the area.

Rob Schmidt, 356 Highgate Avenue, said that since he was discussed earlier in the presentation, he wanted to clarify one thing. Mr. Schmidt said that he did reach out to Mr. Justice in an effort to see if there is common ground to be reached or if there is an opportunity to discuss this even though this hearing was rapidly approaching. Mr. Schmidt said that he has lived in the City of Worthington for ten years and since he has been here he has dedicated himself to becoming part of the community. He served on Worthington City Council for a couple of years and he also served as the President of Swiminc, the organization that runs the Worthington pool. The reason he reached out was because this is not how we do things in Worthington. He said Ms. Crane is right, the reason variances are granted are because applicants come to city staff and they work carefully together to get to a result that you can approve and that is not what is happening here. When you hear arguments about twenty-two variances being granted I think your point is well taken. Each one of those is an individual case. Each one of those is an individual property and that is exactly how the variance provisions of the code are supposed to be applied. Individual consideration, individual factors as applied to a specific case. You do your job well, the city does their job well and the reason that I tried to bring everybody together is because this is not how I see Worthington. I do not view it as a contentious body of people getting together to argue about the essential character of the neighborhood. He said that he failed because both sides at this point did not seem to have much to talk about. He said that the landscaping plan that showed up this evening he was told did not exist last Friday. Mr. Schmidt says that the landscaping plan exists now because that is an issue that has come up. They realized that they needed to make a different type of presentation to this Board because of the neighbors. Mr. Schmidt said that most of the neighbors agree this is not what is consistent with the character of the neighborhood. He said that he lives across the street, but it is up to this Board to make a final decision.

Mary Dillhoff, 430 Tucker Drive, said that she lives one house to the west and moved into the neighborhood a little over a year ago. They used to live in Worthington a few years ago, but moved away for a while, and realized they wanted to come back and live anywhere on Tucker Drive because they loved the street, the neighbors are great, and the street is beautiful. They desperately wanted to talk with the home owners about this plan but did not want to meet with lawyers, they wanted to meet as neighbors. They did not want lawsuit threats of libel and slander, but they did want to prevent this issue in the first place. She said that she believes that this project does effect the essential character of the neighborhood, but to be more scientific about it though she did some research on the Franklin County Auditor's website and determined that the average size lot in the neighborhood is 1.2 acres. The sizes of the houses range from 1306 square feet to 7289 square feet. Forty-six percent of the homes are under 2700 square feet. She continued to say that the accessory structure will be bigger than half of the houses on the street, obviously large in comparison. She believes that the applicant's counsel has tortured the data to make it say whatever they wanted. She said that on the accessory sheet that the Board was given she would agree that the data appears to be normal but you cannot really compare with the smaller lots because an accessory structure obviously takes up a larger percentage of a smaller lot. This is not a good comparison. If you look really carefully at that data there are three homes that were approved that are over one acre, so if you want to compare the one acre lots with his, his lot is five times bigger with the accessory square feet per lot area. She said that she agrees with her neighbors and that the variance should be rejected.

Chris Dillhoff, 430 Tucker Drive, said that he wanted to touch a little bit on the letter that came out by Mr. Justice and his conversation talking about how the neighbors did not want to have a meeting. He said that going back to October 1, that was the first time he tried to reach out to the applicant. He said that he did not have a way to contact Mr. Bakhshi so he tried through social media, using Linked-In and Facebook, and it was not until the construction started that he got the builders telephone number and was able to obtain the applicant's telephone number through the builder. He spoke with him on the telephone for maybe an hour and a half to two hours talking about what was going on. Mr. Dillhoff said that through social media and through talking with Mr. Bakhshi on the telephone that he invited him and his entire family to come over to his home to see if they could come to an agreement on what might be reasonable. Mr. Dillhoff said that he feels that the variance is substantial. When he thinks of the character of Medick Estates he thinks of large lots that are sparsely populated, smaller structures on the lots, larger wooded lots, with wildlife in between. He said that the proposed accessory structure does not support that character.

John Burns, 161 Tucker Drive, said that he would not discuss what has already been mentioned about the substantial variance, and the change in the character of the neighborhood because he feels that is already clear. Since the applicant's letter, and the fact the record may be appealed, he wanted to bring attention to a few points. Mr. Burns made reference to whether the applicant was aware of the zoning requirements before he purchased the property. He feels that is intended to go against bad faith. He stated it does not say because you are ignorant of the fact then you get the variance. He thinks the applicant has that twisted around. Mr. Burns continued to say he thinks when you hear

about the applicant's business dealings, he is a businessman that owns various businesses, and he made a substantial purchase in making this house. That each one of the homeowners also made substantial purchases in which they engaged real estate agents and attorneys. They reviewed their deeds, they saw the restrictions and should be aware of what the local Ordinances are. The applicant should have been properly advised by architects, and by arborists. In looking at this, if this was his plan from the beginning to build on this property his architect should have asked what are the zoning requirements, are there any restrictions. Mr. Burns wanted to look at the ratio analysis. He agreed with Mr. Sauer's comment that is not a determining factor or rational to justify this proposal. He said that ratios can go both ways. If Mr. Bakhshi was aware of the Ordinance with restricting the accessory building to 850 square feet then he would have realized that he could not build that and should build a smaller house. Mr. Burns wanted to discuss the EPA plan that is already in place. He said that the vegetation plan is late in the game. He feels that most people would get the storm water protection plan in place before cutting down one tree. Mr. Burns feels that the applicant is just doing patchwork over something he had planned to do all along instead of using the forethought and planning ahead and getting the appropriate permits and variance and plans in place before making the change.

Cheryl Evans, 360 Tucker Drive, said that she is a thirty-two year resident of Medick Estates and when it comes to the character of the neighborhood, when people move into this neighborhood, we welcome and are all thrilled with the young families. She said that when she moved in, she had four children and soon after had two, had six children from ages one to eight, and she only had a two car garage. All of her children succeeded, and did not bother the neighbors, and they are present at the meeting this evening. Ms. Evans said that she wanted to speak about the character of the neighborhood. She said we are a community and he has moved into this property without any concern or respect for the neighbors. Ms. Evans said that she hosted a neighborhood party this past summer and almost every single person that came to her event is present at the meeting this evening. Ms. Evans asked the audience how many of you have been to one of these meetings before. One unidentified person in the audience person replied never. She feels that the applicant has violated the character of the neighborhood and feels that the proposal is excessive. She said that she believes that Mr. Bakhshi does not need that large of a garage to store his cars.

Rainer Teufel, 490 Tucker Drive, said that he lives four houses to the west and would like to discuss the character of the neighborhood. He said there are no no-kid zones, the kids are all over the neighborhood, and they have always been welcomed all over the neighborhood. He said that the character of the neighborhood, whether you like it or not, this neighborhood includes trees. He said that he wished that the architect, planner, or whoever it was, would have super imposed what was there before with what they are trying to build. Ms. Crane reiterated that only the accessory structure is being discussed. Mr. Teufel said that there used to be a beautiful buffer of vegetation in the back of the property. He feels that the character of the neighborhood has been severely changed. He said that he spends thousands of dollars to save trees, and after storms has to save trees, and lawful or not cutting down the trees affects the neighborhood. Ms. Crane reminded Mr. Teufel that the meeting this evening does not concern the planting of trees. Mr.

Teufel said that building a large accessory building at the back of the property is not in character with the neighborhood, so he is very much against it.

Lou Castelli, 370 Tucker Drive, said that he has lived in the neighborhood for twenty-five years, and he lives directly across the street from where the new structure will be, and it will directly impact his house because he has never seen a house from his kitchen window in twenty-five years. Mr. Castelli said that the 3000 square foot garage will be a very significant change from what exists there today.

Tracey Trgovac, 411 Highgate Avenue, said she has lived in the area with her family since 2008 and asked the Board to reject the variance. She said that the 10,000 square foot house and 3000 square foot accessory structure is excessive for this area, and not keeping within the designs of the neighborhood. Ms. Trgovac said that this proposal will forever alter the character of the Medick Estates neighborhood and properties along Highgate Avenue that back up to Medick Estates like her property. She feels this is a dangerous precedent that will be set in the community and would be sad if the Board grants the applicant's request for a variance. She said that she was originally drawn to the neighborhood because of the tree lined streets and that the neighboring properties have already been affected. Ms. Trgovac said that taking down the trees, while legal, was inconsiderate of the neighbors, who find that the trees make the neighborhood special. She does not feel that the ratios apply to this special neighborhood. She further stated that there are other areas in Columbus where this type of building would be welcomed but Medick Estates is not it. A petition with 190 signatures, from mostly Worthington residents, sends a clear message that we are not in favor of this kind of development because it is not consistent with the neighborhood. The applicants have no way proven a practical difficulty which they need to overcome which is one of the criteria needed for approving a variance. A large number of cars and toys is not a practical difficulty. If they cannot prove a practical difficulty and the majority of the people of Worthington are against it then this variance should be denied. She believes that this development will lower her property values and reduce her ability to enjoy her backyard, and it already has. She urged the Board to deny this variance.

Molly King, 420 Medick Way, said that she and her husband and three kids live very close to the proposed project. She wanted to speak regarding to the essential character of the neighborhood. One of the main reasons she purchased her home was because of the complimentary nature of the homes and landscape. Her favorite comments from visitors are that her neighborhood is so beautiful, they love the woods and the landscape. The comments are not about how big and impressive the homes are. That may be New Albany, or Upper Arlington, but that is not the character here. She said that they purchased the home from the original builder who built the home in 1956. At that time they had to appeal for zoning approval to add a second story on to the home so that it could accommodate four bedrooms. They were going to place two of the bedrooms below grade to maintain the integrity of the neighborhood. She said her entire home, including the basement, is 3000 square feet, which is not much different in size than the proposed pool house and they manage quite well with three kids. They are asking that the Board reject this variance and save the integrity of the beloved neighborhood.

Russ Anderson stated that he and his wife until this past March lived at 399 Highgate Avenue, directly north of the property in question. Mr. Anderson said they lived in the area for thirty-two years and the reason that he is present at the meeting tonight is to explain that this is a close-knit community. The houses are made of wood, brick, and stone, surrounded by nature. He said that the reason all of the people were at the meeting is because it means something. What the applicant wants to do is totally out of character and his process for which he did this is out of character. He said that most of the neighbors in the room would talk with their neighbors before doing something like this. Mr. Anderson asked the Board members to deny the request for a variance.

Ron Cooper, 5846 Sinclair Road, Columbus, said that he owns 2 and three-quarter acres on Sinclair Road and he maintains his own property. He said that he has been involved with Mr. Bakhshi through this entire process and he has given the utmost consideration for his neighbors. He said that he has visited the property many times himself, and met the neighbors to the east of 410 Tucker Drive and they have expressed extreme gratitude and appreciation for what Mr. Bakhshi has done. Mr. Cooper said that it is no surprise that those neighbors did not show up because of the wrath of the neighborhood. What he is seeing is that if a person does not play by the neighbors' rules then they will stand up against you. Mr. Bakhshi's neighbor works for the EPA. Mr. Cooper said that most of the people in the room will not even be able to view the accessory structure Mr. Bakhshi intends to build because of the grade, and because of the trees he intends to plant. The size of the structure is irrelevant. He said if a structure is authorized, whether it is 800 square feet or 2700 square feet, it makes no difference from the visual perspective of anybody on the property. Ms. Crane asked why Mr. Cooper was present at the meeting and Mr. Cooper said that he is at the meeting because Mr. Bakhshi is his friend. He said that he can tell that the neighborhood is unifying because of this proposal, and he can appreciate that. He sees the pride and emotion that they have. Mr. Cooper said that it is sad though that the neighbors cannot appreciate that Mr. Bakhshi and his family are trying to establish a life for themselves. He does not have to play the rules with the society he has to play within the rules of the Ordinance, which he has done. Ms. Crane said that he is going through the process. He said through this long process he has seen the seasons on Tucker Drive, and most residents along Tucker Drive do not provide their own lawn care service. Most people do not take care of their own grounds, from what he has seen. Mr. Cooper said if you do not provide your own lawn care service, and you do not provide your own fulfillment of the grounds, you may need a larger structure to store your tractor and equipment in.

Ms. Crane asked the Board members if they would like to make any comments. Ms. Reibel said that she had a question for city staff. She stated that the table does not show all of the instances where applicants tabled their requests for a variance. Mr. Brown said that is correct. Ms. Reibel said that she also noticed that the accessory structure request is for 3018 sq. ft. and is not that bigger than anything else that has been approved. Mr. Brown said that is correct. Ms. Crane said that the largest structure that was requested so far was 2520 square feet and that was for Morning Street. Ms. Crane asked if the square footage included the basement also and Mr. Brown said yes, but that particular building was never built.

Mr. Falcoski asked Mr. Justice if he had tried to obviate this situation by talking with the neighbors and Mr. Justice replied yes. He asked Mr. Justice if the architect has tried to obviate this through a different design and Mr. Justice replied that he does not believe that any plans have been drawn up yet. Plans are usually drawn up after a variance has been sought, and that Mr. Bakhshi has been trying to consider other alternatives. Mr. Justice said that he spoke with Mr. Collins earlier, who mentioned that he was also an attorney. Mr. Justice asked to be corrected if wrong but even an attached garage is considered an accessory structure and is included with the square footage. He said that even if Mr. Bakhshi built a detached garage the size that Mr. Collins was suggesting, it would still need a variance. Ms. Crane said that Mr. Bakhshi would need a variance as is. Mr. Justice said that he does not believe that there have been plans drawn or an alternative design but that is something worth considering. He continued to say that Mr. Bakhshi had tried before this meeting to get the neighbors to have a discussion, and he is hoping that is something that can be explored even after this hearing. He said it takes two to communicate and you have to have willing parties on both sides. Mr. Justice said that he did receive positive sentiments during the break that gives him hope that something like that can happen. He said that the family has received very negative comments and it has been tough for them.

Ms. Reibel asked Mr. Justice, looking at criteria number one, as to whether the property owner would get a reasonable return, is it your position that without the 3800 square foot pool house, the property could not be sold at a reasonable price. Mr. Justice said that sometimes reasonable is sometimes subject to be to the eyes of the thinker. If you are talking about being subjectively reasonable that would be open to a variety of opinions. If you are talking about objectively reasonable, then Mr. Justice said he would not have an answer to that. He has not tried to sell the property as it currently is, and does not know if someone else would think that is a reasonable price. He does not know what the determination of reasonableness would be.

Ms. Fox stated that she wanted to make a clarification about the accessory structure in the back, and that it is proposed to be slightly larger than 3000 square feet and the 800+ additional square footage referenced in the chart and in the application includes the attached garage.

Mr. Seitz said that he had a couple of questions for Mr. Bakhshi. He told Mr. Bakhshi that he sympathizes for what he is going through because he lives in an incredibly unique neighborhood himself in Rush Creek Village off South Street. He said that he believes that most people in the room have read about the issues and the process that he and his wife had to go through to build their house in Rush Creek Village which is slightly larger than most of the homes in the area if you do not include the add-ons which have occurred over the years. Mr. Seitz said what Rush Creek has that you do not is your neighborhood does not have a Planned Review Committee. Mr. Seitz said that he was able to go through his Planned Review Committee as a conduit to communicate with his neighbors to see what would be allowed and to let the neighbors know what he was planning to build. Mr. Seitz encouraged Mr. Bakhshi to use city staff as his Planned Review Committee. He said, as Ms. Crane pointed out, there is a track record here of approvals and part of that is because of staff and their recommendations to move forward with

getting that approval from this Board. Mr. Seitz said for Mr. Bakhshi to utilize his neighbors because they are all present at the meeting. He said that he read all of the letters and did not put much weight into the letters with disparaging comments. He said that he hoped that the audience has learned about the process that Mr. Bakhshi has gone through today and there have been twenty-two approvals in a row. Mr. Seitz said that he has sat on this Board since 2013. In the process of all of those approvals, there are more people in this room today than any one of those particular variance requests of the past and that he should take that into account. He said that he mentioned working with city staff and now is the time to utilize that step and work with the neighbors to get what it is that he believes his family needs. Mr. Seitz said that he did not join this Board to vote no to any variance. He believes his job is to read the gray between the black and white and he is more interested in helping Mr. Bakhshi achieve what he wants and what he needs, and that help is in the room tonight, with city staff and the neighbors.

Mr. Bakhshi said that he is aware that one of his neighbors sent in a legal brief to the Board. He said in his past experience when lawyers and attorneys get involved, you bring your attorney. You do not bring a knife to a gun fight. That is how he has found his success as a businessman. When that happened, and I don't know if anybody knows this, but I have redesigned this house seven times and spent \$40,000.00 trying to accommodate my neighbors. He was thankful that his friend showed up at the meeting because it was nice to hear something good about himself. Mr. Bakhshi said he has accommodated every single thing that the neighbors have asked him to do. He said that he has met every single zoning requirement that is set forth. He is only asking for one small bend in the ruling. He said that he likes nice things, but he is not asking for a twenty-car garage, he would like just a four car garage. He said that he does not want to build a pool house to have people move into it, this is just for him and his family. He said he is very protective of his family, and that is why his wife is not at the meeting this evening because she has been slammed and insulted on social media. He said that he has also been insulted over and over and it is ridiculous that he has to defend his own actions that are legal. Mr. Bakhshi said that he has done everything that the neighbors wanted him to do. He discussed the difference in the grade of the property and that it was necessary to cut the trees down for his driveway. Some of the vegetation that was cut down was Honeysuckle which is a known invasive species in Ohio. He said that cutting down trees and replanting mature trees is not cheap, it is very expensive, and will cost him hundreds of thousands of dollars to do this. He said not one person on this street has gone door to door and asked each and every neighbor if it was okay to mow, mulch or landscape their own lawn. Mr. Bakhshi said that his maternal grandparents are some of the founding members of Worthington and his wife's grandparents are also from Worthington and they are very tied to the community. He said if people do not take care of their homes they will end up like the house that was in the newspaper on Evening Street. The family is almost going bankrupt trying to fix it, and that is the right thing to do. He said that he is not asking to do something crazy. The pool house and detached garage will be all brick structures. They will be beautiful. He said that he has been constantly harassed through emails, social media and telephones calls.

Ms. Crane said that she would like to make a few comments. She said that her thoughts on this application as to whether there will be a reasonable return without the variance was yes, she does not believe that beneficial use of the property will be denied without the variance, the property is a home, a residential lot, and the will be able to be used to have a reasonable sized house. She asked if the variance was substantial and her answer was yes, whether the essential character of the neighborhood would be altered or whether adjoining properties would suffer a detriment, she said this was problematic. She believes that the landscape plan will help, but she said that she has mentioned before, when the Board approves larger structures they have typically been in an isolated large lot where there is a buffering and screening. Ms. Crane referred back to the site plan. She said you see where the existing house was and although the proposed pool house is large, it does meet the setback requirements. She feels since the pool house was moved so far back that there will not be as much screening from the Highgate Avenue side, which will feel the most impact from this structure in the rear. She said that she would like to have seen this proposed to where the original house was. She understands that some of the vegetation was an invasive species and that trees can be replanted, but there is not a lot of room left for plantings at the moment. She does not see governmental services as an issue. Ms. Crane believes that the lack of knowledge regarding the zoning restrictions does not excuse the applicant and she agrees that Mr. Bakhshi is not a naïve person because he is a successful businessman. She feels that Mr. Bakhshi's realtor or attorney should have been on the ball. She said that every community has zoning restrictions. Ms. Crane said that she did not see a predicament other than having a two or three car garage which is standard in this area. She feels that it is not the City of Worthington's duty to accommodate Mr. Bakhshi's hobby and that a seven or eight car garage is not necessary. She feels that this could be obviated some other way and the spirit and intent behind the zoning variance is excessive. Ms. Crane said that she would like to see this matter tabled, maybe redesigned, maybe smaller, or moved closer to the house. She explained that Mr. Bakhshi was under no obligation to request a tabling though. Ms. Crane said that as this proposal exists she is not inclined to vote for it.

Mr. Seitz asked if the motion is brought forward and denied, how quickly can the applicant resubmit and Mr. Phillips said tomorrow is the deadline for the next meeting since there is no waiting period.

Mr. Seitz moved:

**THAT THE REQUEST BY DENNIS MEACHAM AND AARON BAKHSHI FOR A VARIANCE FROM CODE REQUIREMENTS FOR TOTAL ACCESSORY BUILDING AREA TO ALLOW THE CONSTRUCTION OF AN ATTACHED GARAGE, AND DETACHED GARAGE AND POOL HOUSE WITH LANDSCAPING (SUBMITTED NOVEMBER 4, 2015), ALONG THE WEST, NORTH, AND EAST PROPERTY LINES AT 410 TUCKER DRIVE, AS PER CASE NO. BZA 45-15, DRAWINGS NO. BZA 45-15 DATED SEPTEMBER 18, 2015 BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.**

Mr. Falcoski seconded the motion. Mr. Phillips called the roll. Mr. Sauer, nay; Ms. Reibel, nay; Mr. Falcoski, nay; Mr. Seitz, nay; and Ms. Crane, nay. The motion was denied. Ms. Crane suggested the Mr. Bakhshi speak with city staff to see how he would like to proceed with his plans.

**2. Variance – Front Yard Setback – Porch Rails – 202 E. Granville Rd.** (Steve Ellington & Lynn McPherson) **BZA 46-15**

Mr. Phillips reviewed the following from the staff memo:

Findings of fact:

1. This property is an existing lot of record in the R-10 district where the minimum front yard requirement is 50 feet along a regional thoroughfare.
2. The existing dwelling is 22.70 feet from the East Granville Road right-of-way and the existing front porch is entirely within the front setback.
2. The applicant is proposing to alter the existing entry porch by widening the stairs, adding handrails, and adding a skirt under the porch. The requested variance is to allow these alterations within the front yard setback.

The following conclusions are presented:

1. The variance request is not substantial.
2. The essential character of the neighborhood should not be substantially altered.
3. The delivery of governmental services should not be affected.

**Discussion:**

Ms. Crane asked if the applicant was present.

Lynn McPherson, 202 East Granville Road, and Steve Ellington, 452 Cloak, Belleville, Ohio had nothing to add.

Ms. Reibel said that she got to tour the home earlier and the home looks wonderful.

Ms. Crane asked if there was anyone present that wanted to speak either for or against this proposal and no one came forward.

Mr. Falcoski moved:

**THAT THE REQUEST BY STEVE ELLINGTON AND LYNN MCPHERSON FOR A VARIANCE FROM CODE REQUIREMENTS FOR FRONT YARD SETBACK TO ALLOW THE CONSTRUCTION OF PORCH RAILS AT 202 EAST GRANVILLE ROAD, AS PER CASE NO. BZA 46-15, DRAWINGS NO. BZA 46-15 DATED OCTOBER 9, 2015 BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.**

Mr. Seitz seconded the motion. Mr. Phillips called the roll. Mr. Sauer, aye; Ms. Reibel, aye; Mr. Falcoski, aye; Mr. Seitz, aye; and Ms. Crane, aye. The motion was approved.

### **3. Parking Agreement for Lot Split – 918 High St. (MK&K Realty, Inc.) BZA 47-15**

Mr. Phillips reviewed the following from the staff memo:

Findings of fact:

1. This property is in the C-2 district with varying parking requirements based upon the use of the property. Joint use parking agreements between property owners are to be accepted by the Board of Zoning Appeals. The form of the agreement must be approved by the Director of Law.
2. The existing properties are 3 lots under common ownership with parking agreements in place for the various tenants in leases and subleases. The applicant is proposing to split the lots into 2 to facilitate future development. The proposed parking agreement will allow the existing and future tenants parking and access to current and future parking on the properties regardless of future property ownership or lease language. The form of the agreement is still being drafted and is expected by the time of the hearing.
3. The Municipal Planning Commission has approved the preliminary plat for the subdivision. After the Commission reviews the final plat, it then must be approved by City Council before it can be recorded.

The following conclusions are presented:

1. The parking arrangements will not be substantially different than the current condition.

#### **Discussion:**

Chris Kessler, 145 East Rich Street, Columbus, said that he has submitted the Agreement and already spoken with Ms. Fox. He said that the Agreement is already contained within the leases on the property and what they have done is prepared a Memorandum of the sub-sub-lease, which is basically for them to file with the County Recorder so that way both third parties are on notice of the Agreement that is already in place as far as the parking is concerned.

Ms. Crane asked for clarification of the location of the new property line and Mr. Kessler clarified the location. Ms. Crane asked if that is in preparation to develop along High St., and Mr. Kessler said no, this is not in preparation of development. This is just a lot split that defines the lease area of the proposed split and this will provide a clear cut tax bill.

Mr. Sauer asked if this lot split will affect the area that can be built on. Mr. Kessler replied that is not related to the building pads whatsoever. This is strictly related to the parking area. Mr. Sauer asked if the building pads will be limited in size since the Agreement mentions square footage of the other buildings. Ms. Fox said that she is looking at the exhibit which is an exhibit to the Lease Agreement that was drafted back in 2012. She believes that this is an old exhibit that was part of the existing lease that is now just being used to carry forward this exhibit into an Agreement for parking. Mr. Sauer asked Ms. Fox if this Agreement had anything to do with limiting the size of future buildings and Ms. Fox replied no.

Ms. Fox asked Mr. Kessler to be on record if the building pads have any effect on what can be built there. Mr. Kessler replied that is not the issue, this is specifically related to parking. Mr. Kessler said that he would try to address Mr. Sauer's question. Mr. Kessler said that he was not involved at the time of the original agreement. He understands that was done in bad taste on the part of CVS and CVS representatives. Mr. Kessler continued to say that he is present at the meeting tonight on behalf of the property owner. He said the building pads as illustrated on the attachment, those are based on an old exhibit where those were the proposed buildings at that point in time and in this Lease it does not limit the square footage in size. What it does is limited the square footage as proposed at that time. Mr. Kessler said that this property is very complicated, and he was not prepared to address the building pad and square footage questions this evening. This is to allow parking after the lot is split. Ms. Reibel asked if this was locking in limited development and Mr. Kessler replied no, this Agreement does not lock in limited development.

Mr. Sauer asked if this Agreement exists already and Mr. Kessler replied yes, where the lot lines will be. Mr. Sauer asked if there would be two pieces of property after the lot split and Mr. Kessler replied yes. Mr. Sauer asked if there would be still access to the common areas and Mr. Kessler replied yes. Mr. Sauer said that he did not see that written in the Agreement anywhere. Ms. Fox explained that that is not part of the parking arrangement, that the Board is not approving a lot split this evening, only approving the parking lot Agreement. Ms. Fox said this Memorandum has been prepared to be filed with the Franklin County Recorder and they have indicated that they are working diligently with CVS to get their signature on the Memorandum of Lease. We are taking them at their word to get that signature and we will continue to work with them to make sure that that is done. They have also indicated that if they cannot have that done within a reasonable time period that they will take the steps unilaterally to file an Affidavit or some other document that would put a third party on notice that this actually exists.

Ms. Crane asked if there was anyone else present that wanted to speak for or against this proposal and no one came forward.

Mr. Falcoski moved:

**THAT THE REQUEST BY MK&K REALTY, INC. FOR ACCEPTANCE OF A JOINT USE PARKING AGREEMENT AT 918 HIGH STREET, AS PER CASE NO. BZA 47-15, DRAWINGS NO. BZA 47-15 DATED OCTOBER 9, 2015 BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.**

Mr. Seitz seconded the motion. Mr. Phillips called the role. Mr. Sauer, aye; Ms. Reibel, aye; Mr. Falcoski, aye; Mr. Seitz, aye; and Ms. Crane, aye. The motion was approved.

**4. Variance** – Rear Yard Setback – Enclose Porch – **552 Evening St.** (Kristin & Alec Carpenter) **BZA 48-15**

Ms. Crane stated that the applicants requested for this item to be tabled since they could not remain at the meeting. Mr. Falcoski moved to table the meeting. Mr. Seitz seconded the motion. All Board members voted, “Aye”. The matter was tabled.

**5. Variance** – Rear Yard Setback – Fence – **142 E. South St.** (Sean & Kelly Alto) **BZA 49-15**

Mr. Phillips reviewed the following from the staff memo:

Findings of fact:

1. This property is an existing lot of record in an R-10 district where fencing must be set back 30 feet from the right-of-way.
2. The applicant is proposing the erection of a 4 foot tall fence along the north property line, which is also the alley right-of-way. The requested variance is 30 feet.
3. The property is subject to, and the fence has been approved by, the Architectural Review Board.

The following conclusions are presented:

1. The alley is not actively used near this property and there are no Worthington utilities within it. Other fences in the area have been constructed to the alley. These factors mitigate the substantial nature of the variance request.
2. The essential character of the neighborhood should not be substantially altered.
3. The delivery of governmental services should not be affected.

**Discussion:**

Kelly Alto, 142 East South Street, said that she agreed with everything that city staff said and had no other comments.

Ms. Crane asked if there was anyone present that wanted to speak either for or against this proposal and no one came forward.

Mr. Seitz moved:

**THAT THE REQUEST BY SEAN AND KELLY ALTO FOR A VARIANCE FROM CODE REQUIREMENTS FOR REAR YARD SETBACKS TO ALLOW THE ERECTION OF A FENCE AT 142 EAST SOUTH STREET, AS PER CASE NO. BZA 49-15, DRAWINGS NO. BZA 49-15 DATED OCTOBER 13, 2015 BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.**

Mr. Sauer seconded the motion. Mr. Phillips called the roll. Mr. Sauer, aye; Ms. Reibel, aye; Mr. Falcoski, aye; Mr. Seitz, aye; and Ms. Crane, aye. The motion was approved.

**D. Other**

There was no other business to discuss.

**E. Adjournment**

Mr. Falcoski moved to adjourn the meeting at 11:19 p.m. and Mr. Seitz seconded the motion. All Board members voted, "Aye" and the meeting was adjourned.