

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
NOVEMBER 28, 2018

MEMBERS PRESENT:	Denver Brooker George A. Gilliam Benjamin Hoen Thomas Zych Dennis Porcelli	Vice Chair Chair
MEMBERS ABSENT	Liza Wolf	
STAFF PRESENT:	Vesta A. Gates Karen Knittel Elizabeth Rothenberg Richard Wong	Zoning Administrative Assistant City Planner Assistant Law Director Planning Director

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present except Ms. Wolf whose absence is excused. He stated that the alternate, Mr. Porcelli was present so the Board had a quorum.

APPROVAL OF THE MINUTES OF THE OCTOBER 17, 2018 PUBLIC HEARING

Mr. Brooker moved to approve the minutes as written and distributed. Mr. Gilliam seconded the motion which carried 5-0.

Attached are the November 28, 2018 minutes transcribed by court recorder Brian Kuebler.

1 MR. ZYCH: We will call to order,
2 the regularly scheduled meeting of the
3 Cleveland Heights Board of Zoning Appeals
4 for Wednesday, November 28 at 7:01 p.m.

5 Let the record show that all
6 members of the Board are present except
7 for Ms. Wolf, whose absence is excused.
8 Mr. Porcelli, our alternate, will be
9 sitting in so we have a full quorum of
10 members.

11 We have been circulated to us the
12 minutes of the meeting, the Board of Zoning
13 Appeals for the City of Cleveland Heights
14 for October 17, 2018. Is there -- are
15 there corrections or changes or in the
16 alternative a motion to approve those
17 minutes?

18 MR. HOEN: Mr. Chair --

19 MR. ZYCH: Yes.

20 MR. HOEN: -- I'll move to accept
21 the minutes as they were presented to us.

22 MR. ZYCH: Is there a second?

23 MR. GILLIAM: I'll second.

24 MR. ZYCH: All in favor please say
25 "aye".

1 MR. GILLIAM: Aye.

2 MR. HOEN: Aye.

3 MR. ZYCH: Any opposed?

4 There are none. The minutes are
5 accepted as distributed.

6 Ms. Gates, there it is.

7 MS. GATES: Yes. Oh, thanks.

8 MR. ZYCH: We have before us a
9 single matter, Calendar No. 3370, but
10 before we begin, not everyone is a veteran
11 of these proceedings so let me explain how
12 we'll proceed this evening.

13 These hearings are quasi-judicial
14 in nature and certain formalities are
15 followed as if this were a court of law,
16 although it is not. Anyone who wishes to
17 speak about a case will first be placed
18 under oath.

19 For each case city staff will make
20 a presentation and then each applicant will
21 present his or her case stating the
22 practical difficulty for which we are being
23 asked to grant a variance.

24 The Board will then open a public
25 hearing to obtain testimony from any other

1 persons interested in the case. The
2 applicant will have an opportunity to
3 respond to any testimony from the public
4 and will address those comments to the
5 Board. And again, all comments this
6 evening are addressed to the Board.

7 The Board may then ask questions
8 of the applicant. Based on all the
9 evidence in the record, the Board may make
10 findings of fact and render its decision by
11 motion.

12 The formal nature of these
13 proceedings is necessary because each
14 applicant is asking for an extraordinary
15 remedy called a variance.

16 A variance is formal permission by
17 the City for an individual not to comply
18 with a portion of the municipal zoning
19 ordinance, which is binding on all others.

20 In making our decision as to
21 whether to grant a standard variance, the
22 Board will waive factors set forth in the
23 zoning code in Section 1115.07(e)(1) which
24 are on the screen in front of us.

25 The burden is on the applicant to

1 demonstrate by a preponderance of the
2 evidence that the literal enforcement of
3 the zoning code would result in a practical
4 difficulty.

5 Preponderance of the evidence
6 means that the applicant proves his or her
7 position is more likely than not true. The
8 applicant must demonstrate circumstances
9 unique to the physical character of his or
10 her property. Personal difficulties,
11 personal hardships or inconvenience are not
12 relevant to the Board's determination on
13 either side to grant or deny a variance.

14 This Board is the final
15 administrative decisionmaker for a standard
16 variance such as this.

17 Let me explain in a little more
18 detail what we're going to be about. We
19 begin our proceedings with a report of the
20 city staff, which will be for all of our
21 benefit. The Board may have questions of
22 city staff at that time, and I believe
23 we'll have several questions this evening.

24 Following that, the applicant,
25 under oath, will make a presentation of the

1 applicant and/or the applicant's
2 representative will make a presentation to
3 provide additional information that goes to
4 the applicant's burden to prove a practical
5 difficulty.

6 After that we open a public
7 hearing. And that's exactly what it means.
8 Everyone who wishes to speak, will be given
9 the opportunity to speak, under oath, and
10 to give us your insight and the information
11 that will be helpful to us in making our
12 decision.

13 After that the applicant may
14 respond, again addressing comments to the
15 Board. We may have additional questions of
16 the applicant based upon what we heard in
17 the public hearing and to flush out the
18 facts as we need them to make our
19 determination.

20 The Board will than discuss and if
21 appropriate take action at that time among
22 ourselves. This is a public hearing so
23 everyone is welcome to and, in fact,
24 invited to stay until the end of the
25 proceeding as the Board deliberates

1 publically and renders a decision.

2 Now, we welcome citizen
3 participation. In fact, it's gratifying
4 that the citizens find what we do of
5 interest. Sometimes we think people don't
6 think what we do is important and it
7 gratifies us and affirms us in our position
8 that the public is here. And in all
9 seriousness, it is an important part of
10 this process, that the residents of our
11 city and others with interest will share
12 their insights. It makes our decisions
13 better.

14 At the same time it's important
15 for us and remind ourselves from time to
16 time what our role is. We're a body of
17 limited jurisdiction. None of us were
18 elected to this position, so we do not sit
19 here based upon the votes of the citizens.
20 We sit here under appointment by the city
21 council and we are fulfilling a duty
22 granted -- given to us by the city council
23 to make the determination that is simply to
24 grant, deny or otherwise consider variances
25 as we've explained what that is. That's

1 all we do.

2 We come here with a lot of
3 different backgrounds and we also happen to
4 be citizens, residents of this City, but
5 our charter is limited. We have variances
6 that come before us. We do not create
7 them, we do not solicit them, they come to
8 us for determination.

9 We are given by the City a set of
10 standards, and those are the standards. We
11 don't stray from those. We believe, in our
12 experience, they're comprehensive, and the
13 City's zoning code has recently been
14 updated and revised so these standards have
15 been reviewed. This is what is relevant
16 and germane to our decision.

17 The other limitation is we are
18 not -- this is not the Architectural Board
19 of Review. We do not judge esthetics.
20 This is not the Planning Commission. We
21 don't do general city planning. This is
22 not the Building Department. We do not
23 enforce the code of the City. It's not our
24 job. We don't -- we grant or deny
25 variances simply on their merits. And it

1 is incumbent upon us in making our decision
2 that we base our decision solely on whether
3 or not an adequate record has been made and
4 it would be entirely inappropriate for us
5 to grant or deny or do anything else with a
6 variance for any other purpose beyond
7 determining and making the findings of fact
8 and conclusions we're charged with doing.
9 We have a lane and we stay in that lane.
10 It's important that we do.

11 I explain that because I just want
12 to make sure expectations are met as to
13 what we're doing tonight.

14 Now, again, this is a public
15 hearing. A manageable number of folks
16 here. This room has seen larger crowds.
17 The crowd -- the meeting last night on the
18 Top of the Hill project went till midnight.
19 We're here until the job is done. However,
20 our request is that as much as possible, we
21 discuss what's germane to this matter. And
22 this matter is the variance before us. We
23 may have different opinions of what that
24 range looks like, but the request is that
25 we discuss, and if you could be helpful to

1 this Board in making our determination,
2 that we discuss what's germane to the
3 variance.

4 I said there's a manageable number
5 of people here, however, I've been one of
6 those in these meetings, has spoken first,
7 and I try to remind myself to be mindful of
8 those who speak after me and to speak for
9 an appropriate period of time and I'll
10 leave that to everyone's judgment.

11 All right. Enough from me. A
12 couple things we need to make of record --
13 or probably more than a couple of things we
14 need to make of record. One is that I
15 received a call from Mr. Chilcote from the
16 Chilcote Law Firm at my office. And, Lee,
17 I don't remember exactly when it was. As I
18 told Mr. Chilcote then I was not at liberty
19 to discuss the merits of the matter. We
20 talked about a bit about the procedure and
21 had a pleasant conversation, but I wanted
22 to make sure everyone knew about that.
23 We're perfectly transparent in this body.
24 So we did have that brief conversation.
25 Again, I don't have the specific date.

1 Now, we have a number of matters
2 so that the record is clear and the next
3 thing we'll do is swear witnesses in, but
4 before we do that, there's a number of
5 matters we need to make of record, some of
6 which we just received, but we want the
7 record to be complete so we'll begin with
8 these.

9 The Board, you have a series of
10 e-mail that Ms. Knittel has forwarded to us
11 that Mr. Baldrige provided to her and I'll
12 describe those and then without objection,
13 we'll make them part of the record.

14 There is an exchange of e-mails
15 from July 20, 2018 in the morning between
16 Ms. Kirby, Debra Kirby, and Mr. Baldrige.
17 There is another exchange of e-mails on
18 August 27th, 2018, also between Ms. Kirby
19 and Mr. Mike Baldrige.

20 There is an exchange on September
21 7th, 2018, again, between Debra Kirby and,
22 I believe, Karen Baldrige in that
23 instance.

24 E-mails exchanged -- or maybe a
25 single e-mail from Debra and Don to Mike

1 and Karen, I believe the interested
2 parties, dated January 23rd, 2018.

3 Without objection those will be
4 made part of the record. And hearing no
5 objection, they are part of the record.

6 We have a letter dated today, that
7 I did have a brief opportunity to review,
8 but the Board has from the Historic
9 Fairmount Association to Mr. Wong and it's
10 dated November 28th, 2018 with numerous
11 signatories.

12 I'll simply make of the record
13 that one of them, Leigh and Andy Fabens.
14 Andy was a long-time partner of mine at the
15 firm then known as Thompson, Hine & Flory,
16 now known as Thompson Hine.

17 I make that disclosure not because
18 I believe it's relevant to -- and made the
19 information -- it's not a cause to recuse
20 myself, just input from a citizen who I
21 happen to know. Without objection, that
22 letter will be made part of the record.
23 Hearing no objection, it is made part of
24 the record.

25 We have an e-mail from Ms.

1 O'Donnell to Ms. Knittel and Ms. Rothenberg
2 dated November 15th, 2018 with regard to
3 historic districts and driveways.

4 And, Ms. Knittel, I assume that
5 will be -- you'll be able to address that
6 during your presentation.

7 MS. KNITTEL: Yes, I will.

8 MR. ZYCH: Okay. That's fine.
9 Without objection that will be made part of
10 the record. Without objection it is part
11 of the record.

12 We have an e-mail from David --
13 I'm going to -- boy, I hope I get this
14 pronunciation, we'll get it right, Duckas
15 or Ducas.

16 MS. ROTHENBERG: Ducas.

17 MR. ZYCH: I'll be corrected at
18 the appropriate time. Of Woodbridge Homes
19 to Hugh Fisher, Richard Wong, Karen
20 Knittel, Mike Baldrige and Karen Baldrige
21 dated today at 4:21 p.m., so the last
22 minute.

23 Without objection the Board has
24 that, it will be made part of the record.
25 Without objection, it is so entered.

1 We have a memorandum dated
2 November 28th, 2018 from the Chilcote Law
3 Firm to the Cleveland Heights Board of
4 Zoning Appeals. For the record this was
5 delivered I believe after 3:00 this
6 afternoon.

7 MS. ROTHENBERG: I think so. It
8 was after I left.

9 MR. ZYCH: All right. I will note
10 one thing from the memo -- two things, one
11 is at an appropriate time we will take a
12 break, and I apologize for that, but we
13 didn't get to see this before the meeting.
14 We'll take a break to review that so the
15 Board has it and it's considered.

16 Let me note one thing, on the
17 second page it says and I quote, the
18 applicant has failed to show that the
19 denial of the requested variance will
20 result in practical difficulties.

21 Since we haven't had a hearing yet
22 it's an interesting, I don't know, bit of
23 -- well, it's interesting that we have a
24 prediction that's made however that the
25 whole purpose of this hearing is to

1 determine whether or not the applicant has
2 made a sufficient showing, which is the
3 applicant's burden. So as of 3:00 this
4 afternoon or indeed as of 7:13 this evening
5 we do not know the answer to that question.

6 Now, we have a series of letters
7 from the Chilcote Law Firm directed to
8 various folks in the City. One by one we
9 will make those a part of the record. And
10 as to each, in the interest of efficiency,
11 I may have a question or two of staff.

12 There is a letter dated November
13 19th, 2018 from the Chilcote Law Firm to
14 the City of Cleveland Heights, to the
15 attention of Mr. Juliano, our law director.
16 A multiple-page letter with attachments.
17 Without objection this will be made part of
18 the record. Hearing no objection it is.

19 I'd like to ask a question of our
20 law director staff.

21 MS. ROTHENBERG: Can we pause for
22 one second. I didn't -- do you know who
23 left that on your -- so I have a series of
24 exhibits that were attached to the
25 memorandum or are to be attached to the

1 memorandum. Do you think that was -- did
2 you get some of those exhibits already?

3 Because it seems to me --

4 MR. ZYCH: I have not --

5 MS. ROTHENBERG: -- one of these
6 exhibits.

7 MR. ZYCH: -- but probably what I
8 will suggest that we --

9 MS. ROTHENBERG: Yeah.

10 MR. ZYCH: -- do is during the
11 public hearing, I would expect someone to
12 make mention or reference those and we can
13 figure out where they are and to what it
14 belongs.

15 MS. ROTHENBERG: Okay. Because
16 that that letter may be one of the
17 exhibits.

18 MR. ZYCH: Well, it may be in here
19 a couple of times.

20 MS. ROTHENBERG: Okay. That's
21 fine --

22 MR. ZYCH: We have a lot of paper
23 in this matter.

24 MS. ROTHENBERG: -- but can I at
25 least see what you're talking about?

1 MR. ZYCH: But let me ask the
2 question --

3 MS. ROTHENBERG: I'm sorry, so you
4 said November 19th?

5 MR. ZYCH: November 19th, 2018 --

6 MS. ROTHENBERG: Uh-huh.

7 MR. ZYCH: -- to dear Jim. Can I
8 ask a question to you about this letter?

9 MS. ROTHENBERG: Yes. I have the
10 letter in front of me.

11 MR. ZYCH: One of the matters
12 raised by the letter is a claim that the
13 variance is not properly before the Board.

14 Is it counsel's advice that based
15 on your understanding whether or not this
16 variance is properly before us at this
17 time?

18 MS. ROTHENBERG: Excuse me, it is
19 properly before you.

20 MR. ZYCH: Without objection that
21 letter is made part of the record.

22 We have a letter dated November
23 26th, two days ago, also from Mr. Chilcote,
24 the City of Cleveland Heights, to the
25 attention of Mr. Juliano.

1 Without objection that will be
2 made part of the record. Hearing no
3 objection, it is part of the record.

4 Again, a question to our law
5 director staff, there is a claim made that
6 the notice of this hearing was somehow
7 defective or insufficient.

8 Have you reviewed the notice?

9 MS. ROTHENBERG: I have reviewed
10 the notice in response to receipt of this
11 letter and it is not deficient, notice was
12 properly made.

13 MR. ZYCH: And it's your advice
14 that the notice was appropriate?

15 MS. ROTHENBERG: Yes.

16 MR. ZYCH: Thank you. We have a
17 letter dated November 26th to myself -- I
18 should say to me -- and to Ms. Briley, the
19 city manager.

20 Without objection that will be
21 made part of the record. And hearing no
22 objection it is.

23 Again, there's a claim made as to
24 the notice. I believe we've dealt with
25 that.

1 Finally we have a letter that I
2 did not see until today, but is dated
3 November 27th, 2018 from Mr. Chilcote to
4 Mr. Juliano. And a claim is made that
5 there was an impropriety in the submission
6 and approval of an electric contracting
7 permit. And a request that the City look
8 into it. In fact, it was a request that we
9 hold off doing anything until that's been
10 investigated.

11 Has that matter been investigated?

12 MS. ROTHENBERG: Yes. This
13 morning that matter was investigated under
14 the direction of the law director, Jim
15 Juliano.

16 MR. ZYCH: And what was the
17 determination?

18 MS. ROTHENBERG: The determination
19 was that there was nothing improper about
20 the permits at issue in that letter.

21 MR. ZYCH: And was a determination
22 that Mr. Loconti referred to as "Official
23 Loconti", has no interest currently in the
24 electrical contractor?

25 MS. ROTHENBERG: That is correct,

1 he has no financial interest in that.

2 MR. ZYCH: Did you check with
3 anyone to get their opinion?

4 MS. ROTHENBERG: Yes. When I
5 spoke with Official Loconti this morning
6 about this matter, he shared with me that
7 he had spoken with an public official in
8 Columbus who works for Boards & Standards,
9 his name is Rob Johnson. And I was able to
10 speak directly with Mr. Johnson on the
11 phone.

12 They have discussed this matter in
13 the past for other -- Mr. Loconti works for
14 other municipalities as well and this issue
15 has of course come up before. And he
16 assured me that there was no impropriety if
17 he proceeded as recommended, which he had.

18 MR. ZYCH: Okay. So again we
19 thank our citizens for these inquiries.
20 And I guess I haven't said that the letter
21 of November 27th, without objection will be
22 made part of the record. And hearing none
23 it is part of the record.

24 Now, before we go further as we'll
25 start receiving testimony, would anyone who

1 wishes to testify in this matter please
2 stand and be sworn in.

3

- - - -

4

(Thereupon, those people were sworn in.)

5

- - - -

6

MR. ZYCH: Is there anyone else
7 who would like to be sworn in? I don't
8 want to rush this. Did you wish to be
9 sworn in, ma'am?

10

Okay. Thank you.

11

All right. As I said, the first
12 order of business is the presentation by
13 city staff. We have a report dated
14 November 15th, 2018 as updated November
15 28th, 2018.

16

Ms. Knittel, is this the report
17 that you have submitted?

18

MS. KNITTEL: Yes, sir, it is.

19

MR. ZYCH: And to the best of your
20 knowledge, what's in there is accurate?

21

MS. KNITTEL: Yes, it is.

22

MR. ZYCH: Okay.

23

MS. ROTHENBERG: This is the --

24

sorry.

25

MR. ZYCH: Without objection, the

1 report will be made part of the record.

2 And hearing no objection it is so ordered.

3 Ms. Knittel?

4 MS. KNITTEL: Question?

5 MS. ROTHENBERG: I just want to
6 make sure -- so as you know, this is a
7 revised report that you've received --

8 MR. ZYCH: Yes.

9 MS. ROTHENBERG: -- and I had
10 asked Karen to highlight everything --
11 anything that was new.

12 Would that be helpful to the Board
13 members? Would you like to have the
14 highlighted version as well so you can see
15 what's different?

16 MR. ZYCH: I think if Ms. Knittel,
17 just for our benefit, as she goes through
18 this --

19 MS. ROTHENBERG: Excellent --

20 MR. ZYCH: -- to --

21 MS. ROTHENBERG: -- because it's
22 all part of the presentation. Okay.

23 And the -- yeah, the applicant and
24 Mr. Chilcote have been given copies
25 already, so...

1 MR. ZYCH: Great. Thank you very
2 much.

3 All right. After I spent too much
4 time, Ms. Knittel, the floor is yours.

5 MS. KNITTEL: Thank you. Okay.
6 As we know, we're here to hear Calendar No.
7 3470 about 2611 Fairmount Boulevard
8 requesting a variance to Section
9 1121.12(d)(3) to permit pavement related to
10 parking, including driveway to exceed 30%
11 coverage in the rear yard.

12 So as we always begin with
13 context, this is a single-family house
14 located in a 'AA' single-family district.
15 The 'AA' single-family zoning district runs
16 parallel to Fairmount Boulevard with
17 single-family homes along both the north
18 and south side of the road. And then as
19 you go north along Tudor there is an 'A'
20 single-family district there. Sorry, I
21 don't have a -- but I can show you. The
22 lighter color is the 'AA' single-family and
23 then as you go north on Tudor it turns into
24 an 'A' single-family district.

25 So the Baldridges acquired their

1 property in October 2017 and had been
2 working to renovate the house and grounds.
3 I thought it would be helpful to just start
4 with a few pictures of the property to help
5 us get us oriented -- actually these
6 weren't quite so dark. If you have trouble
7 seeing, let me know, we'll try to do
8 something.

9 So this is, of course, the front
10 of the house. This is a view of the
11 property from across Fairmount Boulevard at
12 the Tudor/Fairmount intersection.

13 This is the rear property line.
14 So this is the north property line and the
15 proposed driveway that we're here to
16 discuss this evening.

17 This is a view of the corner side
18 yard looking towards Fairmount Boulevard.
19 So Fairmount Boulevard is here.
20 Approximately across from the driveway on
21 Tudor looking towards Fairmount Boulevard,
22 to take that shot.

23 And then this is a close-up of the
24 rear yard showing the garage door. The
25 garage door faces the north property line.

1 parking including driveway in the rear yard
2 be 44% which is greater than the permitted
3 33%. The maximum area of pavement related
4 to parking including driveways are
5 permitted to be is 2,000 square feet. The
6 pavement in the proposed site plan is 1,847
7 square feet, meaning that the area is
8 within the limits of the code.

9 Code Section 11 --

10 MR. ZYCH: Let me interrupt just a
11 second --

12 MS. KNITTEL: Sure.

13 MR. ZYCH: -- when you say the
14 limits of the code, that is for the lot as
15 a whole?

16 MS. KNITTEL: It's code
17 conforming, right. The total --

18 MR. ZYCH: Conforming as the
19 whole?

20 MS. ROTHENBERG: No, no --

21 MS. KNITTEL: No, I'm saying that
22 the --

23 MS. ROTHENBERG: So there's two --
24 there's two things to look at for rear yard
25 coverage relating to pavement relating to

1 the driveway.

2 MR. ZYCH: Oh, I'm sorry.

3 MS. ROTHENBERG: Percentage and
4 square footage. There are two
5 possibilities --

6 MS. KNITTEL: Two standards.

7 MS. ROTHENBERG: Right. So she's
8 saying that the square footage --

9 MS. KNITTEL: In terms of the
10 maximum square footage, they're under what
11 the code says is the maximum --

12 MR. ZYCH: I apologize.

13 MS. KNITTEL: -- however the
14 percentage is higher than what the code is
15 stating the maximum percentage is.

16 MS. ROTHENBERG: That's a good
17 question.

18 MS. KNITTEL: We're going to go
19 over this a couple times, so...

20 Okay. So Code Section 1121.12(d)
21 permits rear yards to have a total maximum
22 coverage. So all structures and pavement
23 in the rear yard, total coverage of 60%.
24 The proposed site plan total coverage is
25 50% -- 54% and therefore is code

1 conforming.

2 In a 'AA' district the maximum
3 rear yard coverage area is 12,000 square
4 feet. Accessory structures not exceeding
5 three feet including sidewalks, patios,
6 have a maximum coverage of 6,500 square
7 feet.

8 This plan is showing that the
9 accessory structures, which is the patio
10 and pool area, has 437 square feet in the
11 rear yard. I think it's also important to
12 note that there is a note to -- note F to
13 Section 1121.12(d) that speaks about corner
14 lots -- well, it's not directly applicable
15 about the garage. Let me read the entire
16 sentence to you so that you hear it --

17 MS. ROTHENBERG: Read slow because
18 we have a court reporter tonight. Just
19 speak a little slower.

20 MS. KNITTEL: I'm sorry, I can
21 talk slower --

22 MS. ROTHENBERG: Right.

23 MS. KNITTEL: -- sorry. So note
24 -- I'm reviewing with you note F of Section
25 1121.12(d) which states on a corner lot a

1 garage may not cover -- may cover up to 60%
2 of a rear yard area. Total permitted rear
3 yard coverage on a corner lot is 80% of the
4 rear yard area. So it's just interesting
5 that the code has an understanding about
6 difficulties in corner lots.

7 So this is a code-conforming
8 parcel being that it's 115 feet wide and
9 has 26,796 square feet. A code conforming
10 'AA' single-family parcel is a minimum of
11 100 foot wide and has a minimum of 15,000
12 square feet.

13 So again, this is a corner parcel
14 located on the northeast corner of
15 Fairmount Boulevard and the Tudor Drive
16 intersection.

17 The house is an L-shaped -- I'll
18 have my pointer -- with a portion of the
19 house parallel to Fairmount Boulevard and a
20 wing of the house that's parallel to their
21 eastern most border of the property.

22 The house is cited so that L shape
23 is parallel to Fairmount and the east
24 property line which results in usable
25 outdoor space facing Tudor Road.

1 So a large portion of the
2 applicant's -- one second, guys. Okay. A
3 large portion of the applicant's property
4 is classified as a corner side yard by the
5 zoning code because 2281 Tudor Road, the
6 house next door is located -- has a setback
7 of 42.62 feet from the public right-of-way,
8 so we're talking about this property.
9 Whereas the applicant's house is set back
10 26.42 feet to the right-of-way at its
11 closest corner.

12 The zoning code defines the corner
13 side yard, which is Section 1103.03 item
14 119 to mean, quote, on a corner lot, the
15 yard between the principal building and the
16 side lot line adjacent to the street and
17 extending from the front yard to the rear
18 yard. So the zoning code regulates corner
19 side yards the same as front yards.

20 The garage is attached and located
21 at the northeast corner of the house. The
22 garage doors face the north property line,
23 the rear property line. The zoning code,
24 Section 1103.03 being item 122, defines the
25 rear yard on a corner lot as quote, the

1 area between the rear lot line and the
2 principal building, extending from the side
3 lot line abutting an interior lot line to
4 the side yard abutting the street.

5 So we just reviewed what a corner
6 side yard is. And so that's the yard.

7 MR. ZYCH: Ms. Knittel, I hate to
8 interrupt, but helpful, the red line, that
9 diagonal, is meant directionally to go to
10 the house to the north, correct?

11 MS. KNITTEL: Correct. Let me go
12 back --

13 MS. ROTHENBERG: Go back and show.

14 MS. KNITTEL: -- let me go back --

15 MS. ROTHENBERG: It's based on the
16 corner.

17 MS. KNITTEL: -- it is based on
18 the corner side yard definition. So you
19 see this is connecting the corner of the
20 applicant's house to the house that's
21 directly north to them on Tudor. And
22 that's how the corner side yard is defined.

23 The definition of the rear yard
24 then is the space behind the principal
25 building back to the rear property line and

1 then from the interior lot line over to the
2 -- where the corner side yard would begin.

3 MR. ZYCH: Let me ask a question,
4 while it's fresh in our minds. If the
5 property to the north, the house to the
6 north were set back the same distance from
7 Tudor as is the Baldrige's, so it would be
8 more of a direct line, that would yield a
9 smaller corner side yard and a larger rear
10 yard?

11 MS. KNITTEL: You are correct.
12 Because again, what you would do is you
13 would draw a line from the corner of the
14 houses -- whoops, I'm sorry. Don't click.

15 MR. ZYCH: Do we have any idea
16 what affect that would have on whether or
17 not the variance would be needed?

18 MS. KNITTEL: I did not calculate
19 --

20 MR. ZYCH: Okay. That's fine --

21 MS. KNITTEL: -- what that would
22 be.

23 MR. ZYCH: -- that's fine. But as
24 long as we have that mental picture of --
25 okay. Go ahead. Thank you.

1 MS. KNITTEL: So again the garage
2 is attached and it's located at the
3 northeast corner of the house and it faces
4 towards the north or rear property line.

5 The rear -- and we just reviewed
6 the rear yard definition. The rear yard of
7 the property is 4,211 square feet. So
8 again we're looking at this area.

9 Code Section 1121.12(d)(3) states
10 the maximum area and rear yard coverage of
11 pavement related to parking including
12 driveway is 30%.

13 The parking and pavement located
14 on the rear yard prior to construction was
15 not code conforming. So what we're looking
16 at is a site plan of conditions prior to
17 construction. And the square footage was
18 1,443 square feet of pavement relating to
19 parking and driveway, which is 34%. Again
20 code conforming coverage is 30%.

21 MS. ROTHENBERG: Could you use
22 your pointer --

23 MS. KNITTEL: Yes.

24 MS. ROTHENBERG: -- just to show
25 where that corner yard is.

1 MS. KNITTEL: This is -- so the
2 rear yard is, again, it would be right in
3 here. Sorry --

4 MS. ROTHENBERG: Is it the dot
5 still?

6 MS. KNITTEL: Yeah. Sorry, the
7 red line disappeared on me.

8 MS. ROTHENBERG: But it still says
9 backyard?

10 MS. KNITTEL: Yeah. So this is
11 the backyard and this would be the corner,
12 the side yard from over here.

13 So an initial plan submitted to
14 the City in June of 2018 showed the
15 pavement for the driveway and parking area
16 to be 59% of the rear yard. The driveway
17 width on this plan is 12 feet.

18 I'm mentioning that because we
19 will see as the plans go forward that that
20 width is reduced, not only in the rear yard
21 but for the total length of the driveway.

22 Plans submitted and dated October
23 10, 2018 reduced the proposed pavement for
24 the driveway and parking to 1,993 square
25 feet resulting in rear yard coverage of

1 pavement relating to parking to 47%.

2 MS. ROTHENBERG: Go back to the
3 last one. You didn't say 59%.

4 MS. KNITTEL: Sorry? Did I not --
5 I apologize. Apparently I did not say that
6 the original plan that we saw in June 2018
7 had a coverage of 59% of the rear yard.

8 Plans submitted and dated in
9 October then had a coverage of 47%. The
10 driveway width on this plan is 11.93 feet.
11 Code conforming driveways are permitted to
12 be a maximum of 12-feet wide.

13 The final revised plans before BZA
14 now were submitted and dated October 25,
15 2018. This drawing shows the original
16 driveway and parking area highlighted in
17 blue compared to the new driveway and
18 parking area.

19 So you can see this blue shaded
20 area was the original driveway --

21 MS. ROTHENBERG: I think prior to
22 construction.

23 MS. KNITTEL: -- prior to
24 construction -- sorry -- and then this is
25 the driveway that we're being asked to

1 review. And again, this is the rear yard
2 where this red line is indicated.

3 So the final revised plans narrow
4 the Tudor driveway to 10.5 feet. And this
5 again is reduced from the original BZA
6 November submission where the width was
7 11.93 feet.

8 The final revised plans to reduce
9 pavement relating to parking and driveway
10 in the rear yard by 625 square feet since
11 the June 2018 plan.

12 The final revised plan show the
13 pavement for driveway and parking in the
14 rear yard as being 1,847 square feet,
15 resulting in a rear yard coverage of
16 pavement relating to parking to be 44%.

17 Final revised plans show that the
18 total coverage in the rear yard -- and
19 again, this would be including all pools,
20 patios, sidewalks, any pavement relating to
21 driveway and parking is 2,284 square feet
22 or 54% of the rear yard. The code permits
23 a maximum rear yard coverage of 60%. So
24 the final revised plan is code conforming
25 regarding total rear yard coverage.

1 The parking area is set back from
2 the east property line more than the
3 minimum three feet required by code,
4 Section 1121.12(a)(9). This setback ranges
5 3.72 feet measured at the rear of the
6 garage to 3.58 feet.

7 The applicant's survey indicates
8 that the runoff from the property's
9 pavement will drain towards an existing
10 storm drain and that the grass area will
11 continue to drain towards Tudor Drive.

12 So these marks for those of us
13 that are not as familiar with drawings,
14 indicate the movement of water and what
15 direction they're flowing. So again, the
16 water in the pavement and the parking area
17 flows into what is the location of an
18 existing storm drain and then the water
19 will drain that way in the grass area.

20 The Cuyahoga County Green Print
21 map shows that the property slopes downhill
22 from the east property line where
23 elevations are 822 feet and 884 feet down
24 to -- it slopes downhill to the Tudor Road,
25 which is at 880 feet of elevation.

1 MR. ZYCH: If I can -- I apologize
2 for interrupting you, but the property at
3 2281, the 882 is the elevation at that
4 place?

5 MS. KNITTEL: Correct. So you'll
6 see -- sorry, this comes directly from
7 Green Print and there was no way for me to
8 enhance the lines, but you'll see from
9 this, so from 880, it's going uphill to
10 this 882. So there's a little portion in
11 here where this isn't quite 882 yet, but
12 it's moving from a height at these lines
13 where they're 882 and then at this line
14 it's at 880.

15 MR. ZYCH: Okay. Thank you.

16 MS. KNITTEL: So this circular
17 area is showing that it's at 882.

18 MR. ZYCH: Thank you.

19 MS. KNITTEL: The plans submitted
20 by the applicant show more specific
21 elevations, which do not contradict with
22 the county's general measurements, but they
23 were too difficult to read on a screen that
24 was projected. You do however have those
25 in your packets and they were on sheet No.

1 3 of the applicant's site plan.

2 But also, the applicant's site
3 plan, which we have here, but as you can
4 see you can't really read the elevations
5 too much, it does shows that the survey
6 indicates at 2621 Fairmount Boulevard is at
7 an elevation of 885 square feet, so that's
8 the property directly east.

9 2603 Fairmount Boulevard, which is
10 across Tudor Road from the applicants, has
11 a three-car garage that faces Tudor Drive
12 with drive access from Tudor Drive.

13 2280 Tudor Drive has an attached
14 two-car garage facing Tudor Road and has a
15 parking pad located in the corner side
16 yard. This is the property -- along the
17 property line shared with 2603 Fairmount
18 Boulevard.

19 So again, these are properties
20 that are across from the applicant, across
21 Tudor.

22 Again, this is just to orient
23 everybody again. This is Tudor, Fairmount
24 Boulevard. This is the applicant's
25 property.

1 The properties to the east of the
2 applicant have code-conforming rear yard
3 coverage for pavement related to driveway
4 and parking.

5 2621 Tudor Road has approximately
6 18.8% coverage. These measurements are
7 taken from the Cuyahoga County Myplace GIS
8 mapping. So proportionately that's what
9 that is.

10 2627 Fairmount Boulevard, rear
11 yard coverage of pavement related to
12 driveway and parking is approximately 28%,
13 and again this is taken from the County's
14 Myplace GIS map.

15 And just to remind you that 2627
16 is also a corner property. It's at the
17 corner of Fairmount Boulevard and Woodmere
18 Drive. The property south across Fairmount
19 Boulevard, 2612 and 2626 Fairmount
20 Boulevard, are both corner properties with
21 curb cuts to the side streets.

22 2612 Fairmount Boulevard has a
23 semi-circular drive and in the corner side
24 yard and a separate driveway and curb cut
25 extends along their rear property line and

1 then has access to their driveway.

2 2612 Fairmount Boulevard rear yard
3 coverage for pavement related to driveway
4 and parking is approximately 45.6%. Again,
5 the measurements taken from the GIS mapping
6 at Myplace.

7 2626 Fairmount Boulevard has a
8 four car garage with access from a
9 semi-circular driveway off of the side
10 street.

11 So this is a little hard to see,
12 but we were trying to look and see if
13 there's any uniformity. And there appears
14 to be no uniformity to the location of
15 drives or parking/garage areas along
16 Fairmount Boulevard between Demington Road
17 and Delamere Road.

18 You can see, you know, sometimes
19 the drives are coming off the side streets,
20 sometimes the drives are to the right,
21 sometimes they're to the left of the
22 properties. And then you can see there's
23 different locations and sizes of parking in
24 the rear yards.

25 A 1968 aerial photo of the house

1 shows that there were two driveways at the
2 site -- I'm going to zoom in a little bit
3 so we can better see. Again, let me orient
4 you, this is Tudor Drive and Fairmount
5 Boulevard. So this is our -- the
6 applicant's property. You can see that
7 there's a driveway coming off of Tudor and
8 then you can see this driveway, actually
9 with cars parked on it, that come off of
10 Fairmount Boulevard.

11 So blowing this up, it's just a
12 closer-up. Again, this is the applicant's
13 home. You can see this driveway access as
14 well as the driveway off of Fairmount
15 Boulevard.

16 Kara Hamley O'Donnell, which is
17 --- I'm referring now to the e-mail that
18 you have a copy of -- Kara Hamley
19 O'Donnell, Cleveland Heights Planner II and
20 historic preservation planner has said that
21 the 50-plus year presence of two driveways
22 and/or alterations to the driveways or site
23 conditions at 2611 Fairmount Boulevard has
24 no bearing on its listing as a contributing
25 building in the Fairmount Boulevard or

1 Euclid Golf National Register Historic
2 Districts.

3 So it is important to realize that
4 this is a property that's listed in those
5 districts.

6 So if approved, conditions may
7 include: First, if the variance is granted
8 to allow total rear yard coverage for
9 driveway, pavement and pavement for parking
10 to be no more than 44% and no more than
11 1,847 square feet as shown on the final
12 revised site plan dated October 25th, 2018,
13 which I have on the screen.

14 The second condition may be that
15 they receive a driveway building permit.

16 The third condition may be
17 approval of a landscape plan for the
18 driveway and parking area by the planning
19 director.

20 And the fourth complete
21 construction within 18 months of the
22 effective date of this variance.

23 The applicants are present and
24 they are prepared to review their statement
25 of practical difficulty and answer any

1 questions.

2 MR. ZYCH: Thank you. Before we
3 do that, anyone on the Board have questions
4 of Ms. Knittel?

5 (No response)

6 We may have questions later.

7 All right. As I explained, we're
8 now at that part of today's -- tonight's
9 proceeding in which the applicant and/or
10 the applicant's representative may come to
11 the podium and speak and address the Board.

12 We ask anyone who speaks, to first
13 give their name and address and then add --
14 and what we ask of the applicant or the
15 applicant representative is to provide as
16 much information as you can that assists us
17 in making a determination as to each of the
18 factors that go into our consideration of
19 practical difficulties.

20 So it's now the applicant or the
21 applicant's representative's turn.

22 Before we do that -- go ahead, if
23 you could introduce yourself.

24 MR. DUCAS: Yes. I am David Ducas
25 with Woodbridge Homes. And I'm

1 representing the Baldridges.

2 MR. ZYCH: Mr. Ducas, I apologize
3 if I mispronounced your name earlier --

4 MR. DUCAS: That's okay --

5 MR. ZYCH: -- with a name like mine
6 --

7 MR. DUCAS: -- I've been called
8 worse.

9 MR. ZYCH: We have --

10 MS. ROTHENBERG: Can we get an
11 address? Do we get a business address?

12 MS. KNITTEL: Yes, address.

13 MR. ZYCH: Business address?

14 MR. DUCAS: Yeah. 132 Miles Road,
15 Chagrin Falls.

16 MR. ZYCH: Thank you. We have an
17 application originally submitted October
18 10, 2018, revised November 6th, 2018.

19 Is this the applicant's
20 application form?

21 MR. DUCAS: It is, correct.

22 MR. ZYCH: And to the best of your
23 knowledge, the information contained
24 therein is accurate?

25 Correct.

1 MR. ZYCH: Without objection that
2 will be made part of the record, the
3 application. And hearing no objection, it
4 is part of the record.

5 All right. Now, it's your turn.
6 The floor is yours.

7 MR. DUCAS: Okay. I don't want to
8 be redundant and be overly repetitive of
9 Karen's comments --

10 MS. ROTHENBERG: Wait. I'm going
11 to interrupt you right there. Karen just
12 stated a series of facts and has not made
13 any arguments on your behalf, so please --

14 MR. DUCAS: I understand that.
15 Okay.

16 MS. ROTHENBERG: -- tie any of
17 those facts to your own argument. It would
18 not be repetitive to do so.

19 MR. DUCAS: Is it best to -- and I
20 apologize, I'm not an attorney, is it best
21 to follow the format of the application and
22 interject with that? Or would you rather
23 go through the application and then
24 interject?

25 MR. ZYCH: It's up to you, but

1 what we sometimes find helpful if there's a
2 general discussion you'd like to have and
3 then go through the form, tie it there --

4 MR. DUCAS: Okay.

5 MR. ZYCH: -- just to make it --
6 as you wish to make it understandable to
7 us.

8 MR. DUCAS: Yes. I think the
9 easiest thing is first to give an overview
10 --

11 MR. ZYCH: Great.

12 MR. DUCAS: -- from our
13 perspective.

14 The Baldridges purchased this
15 house -- and again, I don't want to be
16 redundant because I think I've been before
17 most of you previously with the variance
18 for the pool and the fence -- purchased the
19 house with the intent to move into it.

20 The house was a house that was in
21 foreclosure at the time owned by the bank.
22 And the property was extremely rundown. It
23 was uncared for.

24 The Baldridges came into the
25 property and obviously have invested

1 significant time and funds into bringing
2 the house back to the condition that it
3 deserves to be in.

4 I would add the first thing that
5 they did upon purchasing the house is
6 research the architect, the builder, the
7 former owners and the history of the house.
8 Because they had great interest in its
9 historical presence in its neighborhood and
10 were aware of its importance as well as the
11 other houses of import in the Euclid Golf
12 area. So that does not pass them, without
13 great note, the value of the history of the
14 house and the history of the neighborhood.

15 It was not their intent, it's not
16 their intent nor will it be their intent to
17 barnstorm into the neighborhood and move
18 without respect to the neighborhood.
19 Everything that we've done on this
20 property, we feel has been with merit and
21 in the vernacular of the existing house and
22 in the neighborhood from the design of the
23 pool fence, the design of the pool itself,
24 the design of the columns that surround the
25 pool that are consistent with the

1 architecture of the house.

2 And where we find ourselves today
3 with needing this variance for the driveway
4 is a direct result of the intent to put the
5 pool, the pool fence, et cetera, in.

6 Briefly, any pool in Cleveland
7 Heights requires that there be a six-foot
8 fence around it. That is code. The
9 Baldridges probably would have been happy
10 with something other than a six-foot fence,
11 but that's what was determined.

12 The existent driveway was shown in
13 one of Karen's overlays, goes through the
14 pool area --

15 MS. KNITTEL: If you wait one
16 second I can pull it up.

17 MR. DUCAS: Sure. Right there,
18 that's a good one. So you can see it
19 obviously impacted the presence of the pool
20 and the presence of the areas around the
21 pool.

22 In presenting our -- our design of
23 the pool and the pool fencing detail,
24 obviously the driveway had to be pushed
25 around the outside of the pool.

1 There was an early plan that we
2 had that actually moved the driveway less
3 dramatically, less of a right turn coming
4 around the pool fence, and pushed it away
5 from the pool, but not quite as
6 dramatically as you would see here, but
7 what that ended up causing was the fence
8 around the pool area then needed to be on
9 the other side of the driveway. By putting
10 the fence on the other side of the
11 driveway, that then required that there be
12 a gate, due to code, on the driveway as
13 well. So there was a discomfort I think
14 with the Baldridges with coming into a
15 neighborhood, putting up a fence, and
16 immediately throwing up a gate and saying,
17 hi, we're your neighbors, stay out. That
18 was not their intent. In fact, the only
19 reason why there is a fence around the pool
20 is because it's required.

21 So we could have done some other
22 things to probably not have a requirement
23 for a variance on the driveway, but the
24 direction it would have taken I think would
25 have been less comfortable for the

1 neighborhood, certainly less comfortable
2 for the Baldridges.

3 Where we wound up here, when we
4 initially presented -- and I don't know
5 that it's necessary to go back through, but
6 as was record, the initial presentation
7 that we had showed 57% rear lot coverage
8 for the driveway areas. I will say that
9 that wasn't set in stone and that was not
10 quite a request at the time, but it was an
11 initial stretch of the driveway, if you
12 will, with respect to the pool areas.

13 There was never an intent to -- an
14 intent to design exactly that. As we
15 stepped back and started looking more
16 closely at the driveway areas, we found
17 out, after the variance was granted for the
18 pool and the fence, we found out that there
19 was, in fact, going to be a need for a
20 driveway variance. We were not aware of
21 that at the time. But we had already
22 progressed with our pool and fence
23 construction when we found that out.

24 We came back with a presentation
25 that showed -- this was in October -- an

1 engineered drawing from Polaris Engineering
2 who had done our initial site plans, a
3 driveway that was 12-feet wide coming off
4 of Tudor with a larger radius area turning
5 into the parking pad. That area was 47%
6 coverage. Ironically very similar to the
7 house that is across the street as it
8 exists today.

9 At this point in time there was
10 some comments from a neighbor and the
11 neighbor's representative that they did not
12 like what we were presenting and the
13 Planning Board came back to us and
14 suggested -- or asked if there was any way
15 that we could reduce that area.

16 We discussed it with the
17 Baldriges -- the initial intent of a
18 12-foot wide driveway was so that a car
19 could pull into the driveway, that guests
20 could pull into the driveway and people
21 could exit the vehicle on either side
22 without stepping into the grass. And I
23 think we all know that if you have a
24 ten-foot driveway and two people try to
25 step out, somebody is stepping into the

1 grass.

2 So initially the intent was to do
3 a 12-foot driveway. It also allowed the
4 potential for emergency vehicles better
5 access to the rear property.

6 After some discussion and really
7 the intent that, you know, we didn't want
8 this to become a big hullabaloo, we
9 reduced the driveway to ten and a half feet
10 significantly reducing the overall surface
11 area in the rear property, but also
12 reducing the request for a variance to 44%,
13 which is where we are today which is 14%
14 more than what is allowed.

15 So that's sort of how we wound up
16 here. We had an approval for a pool and
17 fence site plan that included a generalized
18 driveway. At the time that that was
19 approved, we were not aware that we needed
20 a driveway variance. Had we known, we may
21 have been forced to put the gate at the end
22 of the driveway and move the fence, but
23 here we are.

24 So to address practical
25 difficulty, I'll try to go through this

1 without reading the whole thing.

2 MR. ZYCH: Take as much time as
3 you like. It is a matter of record.

4 MR. DUCAS: The circumstances
5 which create the practical difficulty are
6 the corner lot. The zoning code which
7 dictates the side lot yard, which is
8 essentially a front yard on Tudor, the
9 angle that's displayed by the north/south
10 line here that's moving from southwest to
11 northeast to the neighbor's house.

12 Obviously the Baldridges, when
13 they purchased this house -- we have made
14 no changes to the foundation of the house.
15 So the house itself sits as it has sat
16 since 1916 or 1917.

17 The location of the garage on the
18 eastern side of the property dictates that
19 the parking area would be in that
20 northeastern section of the property.

21 They bought the house because they
22 actually were charmed by the two driveway
23 entrances. They found that that was
24 extremely appealing to them. And it's
25 something that they certainly want to

1 maintain.

2 The design of the garage being a
3 rear-access garage and being on the eastern
4 side of the lot causes the need for the
5 access to be extended. If the house -- if
6 the garage was closer to Tudor, certainly
7 we would have less driveway.

8 If the house above us to the north
9 was closer to the street -- oh, super. Got
10 it. If the house to the north was closer
11 to the street, this would move this line
12 over -- and even a small amount would make
13 a big difference for our rear lot coverage.

14 So our practical difficulty arises
15 from complications that the Baldridges had
16 no impact in, and, in fact, they could have
17 -- this entire area from the back of the
18 garage forward, which is not shown, there's
19 a significant area here that they could
20 have added additions on to the house,
21 increased the footprint of the house,
22 increased the nonpermeable surfaces of the
23 house, we're sensitive to water runoff.
24 And the simple fact the benefit of this,
25 this existing site is that we -- this is --

1 this is the highest point of the
2 Baldriges' property. All water is moving
3 in this direction.

4 There's an existing drain that we
5 show located here (indicating). It
6 previously was located right here
7 (indicating). We're relocating that drain
8 to this location so that we can effectively
9 pull water in from the entire surface area
10 so that any -- the only water that is on
11 the driveway that is moving in this
12 direction (indicating), will be the area
13 over here (indicating), which would move
14 down towards Tudor or into grassy areas
15 here (indicating).

16 Going back to the statement of
17 practical difficulty, is it -- is the
18 variance insubstantial? In our opinion, it
19 is insubstantial. There are other houses,
20 as cited, the one across the street, which
21 have a greater area than we are requesting
22 of hard surfaces.

23 When we got into this project, the
24 house had as any 1916 house had -- would
25 have -- that has been neglected, lots of

1 issues with drainage. So the drainage on
2 the lot and on the house when we inherited
3 it was working very poorly. We have spent
4 thousands of dollars with water, jet water
5 sewer cameras, et cetera, moving around the
6 house judiciously cleaning and repairing,
7 digging up -- if you drive by the house
8 now, you'll see that there's an excavator
9 outside of the house. We're repairing all
10 of the exterior drain tile. Not just for
11 the footer drains, but also for the
12 downspout drains.

13 In addition, for these surface
14 areas here (indicating), we're increasing
15 the capacity of this sewer. We have
16 rerouted a sewer from the front of the
17 house that goes directly into the storm
18 sewer, around the side of the house and
19 installed a new six-inch PVC drain that
20 bypasses any of the house sewers and picks
21 up all of the drainage off of the new hard
22 surfaces, not just the driveway, but also
23 any of the pool patios. So we're
24 significantly reducing the net water flow
25 on the property. With -- and much of this

1 is not only due to the fact that the
2 Baldriges would like to have water moving
3 properly on their lot, but we also do not
4 want to impact the neighbors in any way.

5 As stated previously, the property
6 adjacent here (indicating) is higher than
7 the Baldriges' property, so naturally
8 water will move this way (indicating), but
9 we've taken great pains to place drains not
10 only here (indicating), through here
11 (indicating), but also we've added drains
12 along the side driveway which previously
13 we're not there.

14 There is a driveway that goes out
15 to Fairmount and we've added two trench
16 drains that are in this area here
17 (indicating) to pick up any additional
18 water which would otherwise have, you know,
19 sort of moved on its own in the past, but
20 we're now controlling the direction of that
21 water with drains here (indicating) and
22 drains over here (indicating). So there's
23 been great thought and consideration going
24 into how we are impacting the neighbor's
25 property with any of this concrete and hard

1 surfaces.

2 The concrete that we're planning
3 on doing here again is also not just a
4 standard concrete, it's an exposed
5 aggregate concrete, which tends to slow
6 water down a little bit, it doesn't move as
7 fast as on a smooth concrete surface. It's
8 essentially a pea-gravel aggregate that
9 after the concrete is finished it's power
10 washed and then you then see the gravel
11 coming up through it, which restricts some
12 of the flow of the water. It doesn't
13 absorb water, but it does allow the water
14 to move more slowly and has some benefit in
15 effective controlling of the movement of
16 water.

17 We don't have a landscape plan yet
18 because there's a lot of thought into going
19 into that. The Baldridges have done
20 multiple projects, all that they've lived
21 in, and I've worked with them on both of
22 those here. They're very thorough about
23 what they do with their landscaping.

24 At some point if you'd like to see
25 what we've done on the interior, very

1 thorough about what we've done on the
2 interior. Rebuilding the interior in an
3 engineer Star compliant manner. High
4 engineer efficiency spray foam insulation,
5 high-grade windows, high efficiency
6 appliances, heating systems, low-use -- low
7 water use plumbing, et cetera.

8 The same thing will occur with the
9 landscape plan, which we're not prepared to
10 present. We would present it certainly
11 before -- or in a timely manner and do so
12 in a professional manner, but we just are
13 not certain with what we want to do yet and
14 don't want to present something that then
15 becomes a mish-mosh of changes, et cetera,
16 but what I can tell you is the intent is
17 along this entire fence line at six-foot
18 intervals to plant boxwood trees, which
19 will grow up to a green barrier that will
20 be on the inside and then on the outside
21 there would be low ground cover that would
22 be interspersed with plantings along the
23 exterior.

24 How we treat this side
25 (indicating) I think is part of our

1 eventual landscape plan that we'll
2 determine, but there is a green space
3 between this parking area (indicating) and
4 the neighbor's property line here
5 (indicating).

6 The -- I'll address it because I
7 have a feeling it will come up, a comment
8 has come up that the fence that we have
9 presented is higher than six feet. And
10 what we are told that the fencing code is
11 is that the height of the fence, which
12 we've defined as approximately six feet,
13 will be six feet relative to the grade that
14 it's at. So there will be, as you can see,
15 there are landscape mounds that follow the
16 fence. And rather than just have the fence
17 sit on grass, we're providing a soft
18 mounding that will then be more conducive
19 to plantings along the complete fence line.

20 So the ultimate grade at that
21 fenced area, will probably be three to six
22 inches higher than what it is right now. I
23 know that's not relevant to this area here
24 (indicating), but I sense it will come up
25 so I've addressed it.

1 grass while turning.

2 Is 14% over 30% significant? In
3 some cases it may be, but we were already
4 beyond the 30% with the existing
5 conditions. I don't think that it's a
6 significant add to what was previously
7 there.

8 Will the character of their
9 neighborhood be substantially altered?

10 We're talking about adding 14% of
11 this total backyard in concrete. So if we
12 take 14% of this area out -- and I didn't
13 do the math on it -- it's not a significant
14 add, it's not a significant subtraction
15 unless you're trying to get in and out of
16 your garage then it becomes significant.

17 It's not visible from the streets.
18 It may be visible from the adjacent house
19 here (indicating) if you're on the third
20 floor, but other than that, it does not
21 impact the neighborhood in any meaningful
22 way.

23 Does it affect the delivery of
24 government services: Sewer, water,
25 garbage?

1 It does not in any manner. If
2 anything, restricting the size any further,
3 that additional 14%, would, in fact,
4 probably affect government services. And
5 certainly it would make it difficult for
6 the Baldridges to be able to cleanly egress
7 and ingress their property, but doing this
8 will only enhance the ability of government
9 services to approach the property.

10 Did they purchase the property
11 without knowledge of the zoning
12 restriction?

13 They did, but not only did they
14 purchase their property without knowledge,
15 but this entire area (indicating), the
16 pool, the pool fences as shown, were
17 approved without us being aware that we
18 were going to need the driveway variance.

19 Were these conditions a result of
20 the actions of the owner?

21 It's more a result of the design
22 of the existing house, the design of the
23 lot, and the city's determination of what
24 is a rear yard and what is a side yard and
25 what is a front yard.

1 If this was a non-corner lot, to
2 put it simply, this would be the extent of
3 the rear yard. So all of this property
4 (indicating) would be granted as a
5 percentage and we wouldn't even be close.
6 So really it's a function of it being a
7 corner lot.

8 You can see that this line almost
9 bisects -- not quite, but almost bisects
10 what should be considered the rear property
11 line.

12 Is the spirit of the zoning code
13 preserved?

14 We think it is. We don't think
15 that we are asking for something that is
16 out of line. We don't think that the
17 granting of this variance makes a mockery
18 of the zoning code in any way.

19 The lot in its geometry and the
20 house in its geometry and the zoning code
21 create the need for this.

22 Is any special privilege granted
23 to the applicant by the approval of this
24 variance?

25 No special privilege occurs at the

1 granting of this variance, no harm is done
2 to adjacent properties or to the community.
3 Other properties, as we've seen, enjoy
4 similar variances.

5 We would look for consistency with
6 other properties that have enjoyed the same
7 variance, assuming the code was in place at
8 the time that those houses were built.

9 I think generally -- I hope I've
10 covered most of the ground. I think there
11 were a couple other comments I might have.

12 It was mentioned earlier today
13 that corner lots are allowed a total
14 coverage -- and that would include
15 accessory buildings which we're not asking
16 for -- of 80%. We are at, approximately,
17 47%.

18 Now, we're not asking for
19 accessory buildings, but the Baldridges
20 would be allowed to fill another 37% of
21 this space (indicating) with a garage or
22 other. That is not their intent. Their
23 intent is to preserve as much green space.
24 There's significant planting areas all
25 through here (indicating), all through here

1 (indicating).

2 So if for a rear yard that is not
3 -- for a rear yard that is not a corner lot
4 -- or, no, for actually the overall
5 coverage were 2,000 feet less than what the
6 overall coverage is.

7 I think again we've seen the thick
8 stack of documents that were sent here.
9 It's not the Baldrige's intent to skirt
10 around the code, to harm their neighbors in
11 any way.

12 The Baldriges moved to Cleveland
13 Heights because they love the fabric of the
14 community. They moved from what I call
15 idyllic Chagrin Falls, which some of us
16 call the bubble, to be in a mixed community
17 where they appreciate the lack of
18 homogeneity.

19 They moved here so that they could
20 be closer to classes that they take at the
21 art museum. That the -- closer to the
22 orchestra. The things that I think mean a
23 lot to people who live in this part of
24 Cleveland.

25 And they certainly appreciate the

1 history of the community. And I know
2 there's been a letter from the Historic
3 Society or the FHA, if you will, for short.
4 We did not come into this in any way to
5 violate the intent of the FHA, to violate
6 the intent of the zoning code. They came
7 in and saw what they think is a beautiful
8 house and are doing their best to bring it
9 back to the glory that it deserves.

10 Putting a pool in required certain
11 things. And we wind up here because of
12 where we were in getting the approvals for
13 putting the pool in. That's, quite
14 frankly, why we're here.

15 Great pains have been made to
16 engineer this project in a manner that no
17 neighbors are adversely affected. And we
18 can promise that that is, in fact, will be
19 the case if this variance is approved. And
20 I'll step away.

21 MR. ZYCH: Thank you. And I
22 suggest you not go far. And you can have a
23 seat. We'll now have the public hearing --

24 MR. DUCAS: Sure.

25 MR. ZYCH: -- and you will then

1 have an opportunity to respond to anything
2 that the public may raise.

3 All right. That moves us, as I
4 said, to the public hearing. And we've had
5 a number of people sworn in and they may
6 proceed.

7 Again, the request is make sure we
8 remain as germane as much as we can to the
9 matter before the Board tonight and to, if
10 we can, avoid repetition, but again it's --
11 you're all citizens of the City of
12 Cleveland Heights and we're happy to hear
13 from you.

14 So as with the applicant's
15 representative anyone who comes, please
16 affirm that they've been sworn in and give
17 us a name and address for the record.

18 MR. CHILCOTE: I've been sworn in.
19 My name is Lee Chilcote. I live at 2322
20 Delamere Drive. Just around the corner
21 from the Kirbys --

22 MR. ZYCH: Not to interrupt you,
23 Mr. Chilcote, but I'm happy to hear from
24 you because as I noted the memorandum that
25 we received after 3:00, near the close of

1 business today, rested to some extent on
2 clairvoyance, a statement was made that the
3 applicant has not made a case. Applicant
4 didn't have an opportunity at the time to
5 make a case. He has now. So I guess it's
6 time for whatever you'd like to share with
7 us.

8 MR. CHILCOTE: I'm here on behalf
9 of the Kirbys both as a neighbor and their
10 counsel with respect to the Baldriges'
11 project.

12 As has been noted, we delivered a
13 letter to you, the Chair, and to the city
14 manager requesting a continuance for this
15 matter and that is what I tried to speak
16 with you about that you mentioned earlier
17 for the following reasons: The variance
18 that is required for this matter deals with
19 total accessory use coverage in the rear
20 yard. The Section No. is 1121.12(d)(5).
21 No notice was given of the variance for
22 this section. Instead the City gave notice
23 for rear yard parking paving, which is, as
24 has been mentioned several times,
25 1121.12(d)(3).

1 The Baldridges have not applied
2 for the variance that is required. The
3 City issued notice. It did not issue any
4 notice for such a variance and the BZA can
5 not consider a variance for which notice
6 has not been properly given. It can't
7 consider a variance for total accessory use
8 coverage because notification hasn't been
9 given.

10 The hearing notice, in other
11 words, is defective and it did not comply
12 with the code requirements. And I refer
13 you to the section that you referred to
14 1115.07(c), which requires that the nature
15 of the variance be stated in the notice and
16 it's not.

17 More important or as important as
18 that is we see the value of a continuance
19 as an opportunity for the parties to come
20 together and perhaps settle this matter.
21 As has been mentioned one of our concerns
22 is that -- is water mitigation. The Kirbys
23 Kirby have hired -- engaged an engineer and
24 they've engaged a landscaper and they're
25 prepared to sit with the Baldridges to work

1 out something that would be acceptable with
2 respect to water mitigation and privacy
3 screening for the -- with the Baldridges.

4 Now, just to make sure that the
5 record is clear, I want to go into a little
6 more detail -- and I apologize for the
7 extra time I'll take, but I need to make a
8 record, Mr. Chairman.

9 MR. ZYCH: Please do.

10 MR. CHILCOTE: The notice of this
11 meeting, the application, the staff
12 analysis, and the staff report, presented
13 this to meeting --presented to this meeting
14 and now in your record, are all based on
15 1121.12(d)(3).

16 That section, as has been stated
17 several times, deals with rear yard paving.
18 However, the City failed to identify
19 another section, 1121.12(d)(5) because the
20 staff determined that the rear yard is less
21 than the rear yard of the property.

22 Let me explain. They relied on
23 Code Section 1121.08(b). That section
24 refers to properties with vacant lots.
25 There is no vacant lot related to this

1 property and therefore that section,
2 1121.08(b), is not applicable.

3 Further the definition of rear
4 yard, a corner rear yard, which is found in
5 1103.03, No. 122, is the rear of the
6 property as it faces a major street, that's
7 namely Fairmount Boulevard, a major street,
8 less the corner side yard.

9 This has the affect -- what the
10 staff has done is by making the rear yard
11 smaller, it has reduced the impact that the
12 variance has. And we don't understand how
13 this BZA can proceed with this matter based
14 on the wrong code section.

15 The applicant needs to apply under
16 1121.12(d)(5) concerning, and I quote,
17 total maximum rear yard coverage. Which
18 has a limit of 60%. Nothing is referenced
19 in the reports, the analysis, or any
20 document currently of record. There's no
21 calculations of that required variance and
22 we don't understand how the BZA can proceed
23 with this matter since it was not included
24 in the public notice and it's not included
25 in any of the reports and not analyzed for

1 your benefit.

2 Finally, and the last point I'll
3 make, is the underlying survey is not
4 correct, it's not accurate.

5 If you look at the survey and you
6 look at the deed, you'll find in the front
7 of the property, there's a seven-foot
8 difference. The depth of this property --
9 or the width of this property is 115 feet.
10 The survey that's in their records shows
11 107 feet, but let's put that aside and
12 let's look at the side yard. Their
13 dimensions show -- the Polaris so-called
14 survey shows 11 feet, eight inches. In
15 fact, we have undertaken a computer-aided
16 design analysis of the area of the distance
17 between the closest point of the Baldrige
18 house and the property line and it's over
19 12 feet. That's not a small difference.
20 That difference would allow --

21 MR. ZYCH: Repeat to me those
22 dimensions. What are the two?

23 MR. CHILCOTE: The Polaris drawing
24 shows 11 feet eight inches and our
25 computer-aided -- our CAD calculation shows

1 it's over 12 feet, 12 and a fraction.

2 And the point of that -- and it's
3 just one example -- is that that gives more
4 green space between the Kirbys' property
5 and the Baldrige property, so that
6 plantings could be put there and privacy
7 screening can be provided.

8 So we don't understand when all
9 the calculations are based on an erroneous
10 survey how the BZA can proceed. For these
11 reasons we request -- and we did in our
12 letter -- that the BZA continue the matter,
13 allow the staff -- allow the notice to be
14 properly furnished on the right code
15 section, allow the staff report to be
16 adjusted so that it will provide for the
17 applicable analysis size, including a
18 change in the practical difficulty
19 discussion that was just had. Because
20 Mr. Ducas said that the reason that he had
21 a practical difficulty was the zoning code.
22 Well, if the rear yard is defined
23 differently maybe he doesn't have the
24 practical difficulty.

25 We know the Baldriges are unable

1 to move into their house, the interior is
2 not finished. We know that the Baldridges
3 have not listed their home in Chagrin
4 Falls, so they're not ready or able to move
5 and we think what's in the best interest of
6 the community is to have this matter
7 deferred so that the parties can sit down
8 and work out the water mitigation and the
9 landscaping which have so unsettled the
10 Kirbys. Thank you.

11 MR. ZYCH: Thank you, Mr.
12 Chilcote. A couple of points. One, I
13 don't practice mathematics for a living --

14 THE REPORTER: You've got to speak
15 up. Can you speak up?

16 MR. ZYCH: Yes. I'm sorry. I
17 apologize. I was curious about -- and I'm
18 just going to make a comment before and
19 then I've got a question for staff, there's
20 a comment that making the -- if you define
21 the rear yard smaller, that would -- or
22 defining it smaller, somehow masks the
23 coverage and decreases it, which really
24 doesn't make to me mathematic sense. We've
25 got a ratio which is numerator and a

1 denominator. If you make the denominator
2 smaller, you increase the coverage percent,
3 you don't decrease it. If anybody's got
4 better math skills than me, and most people
5 do, you can correct me, but I think that
6 the redefining of the rear yard, as
7 Mr. Chilcote suggested, would actually have
8 a different, the exact opposite effect as
9 suggested.

10 The survey, the difference between
11 107 and 115, the staff, Ms. Knittel and
12 anyone else, does that difference have any
13 material impact on the rear yard coverage
14 issue?

15 MS. KNITTEL: No, it does not on
16 the rear yard.

17 MR. ZYCH: Okay. The difference
18 -- the 11 foot eight inches to 12 foot and
19 a smidge, under either measurement would
20 the setback still be code conforming based
21 on either survey?

22 MS. ROTHENBERG: If you know the
23 answer to that. If you don't know the
24 answer, just say what we say.

25 MS. KNITTEL: I --

1 MS. ROTHENBERG: I don't want her
2 to answer a question if she doesn't know
3 the answer.

4 MR. ZYCH: Okay. That's fine.

5 MS. ROTHENBERG: So I'm just
6 making sure --

7 MR. ZYCH: We'll --

8 MS. ROTHENBERG: -- but let me
9 just -- she doesn't understand what I'm
10 saying which is "don't guess".

11 MR. ZYCH: Okay. That's fine.

12 MS. ROTHENBERG: You know, do you
13 know?

14 MR. ZYCH: We'll have to make --

15 MS. KNITTEL: No, I do not know
16 the answer.

17 MR. ZYCH: -- this Board makes
18 judgement calls all the time. Now --

19 MS. KNITTEL: I don't know the
20 answer to that, but I do know that the
21 applicant had the survey done and then the
22 surveyor came back out to their property a
23 second time and actually staked the
24 property line. So the surveyor was on site
25 at least twice.

1 MR. ZYCH: Would you characterize
2 this as a "so-called survey" or a "survey"?

3 MS. KNITTEL: No, it was a
4 reputable surveying team.

5 MR. ZYCH: Thank you. All right.
6 There's a question that has been raised
7 about the adequacy of the notice and the
8 characterization of the variance. Does
9 counsel have insight for us?

10 MS. ROTHENBERG: Yes. So this is
11 the exact question that we've looked at the
12 first time it was raised in the initial
13 letter. The code section -- I'll just --
14 so 1121.12(d)(5) talks about total maximum
15 rear yard coverage for accessory uses. And
16 it's -- it was addressed by Karen earlier
17 this evening in her report that she -- her
18 presentation, it was also in the report.
19 She did the math on that. The total
20 coverage is 54% and the total square
21 footage is 2,284. So that's a bullet point
22 that's already in the staff report. And so
23 there's a maximum coverage of 60% permitted
24 in a 'AA' and 12,000 square feet. So it's
25 under both of those, which is why the

1 variance was not required.

2 There does appear to be some
3 confusion on the neighbor's behalf about
4 where their rear yard is. I think they put
5 up that picture, right? And so the blue
6 part is suppose to be the rear yard. And
7 Karen already walked through the analysis
8 following the code. And I think citing the
9 code sections or at least reading them into
10 the record of how you determine the rear
11 yard when you're dealing with a corner lot.
12 And I know that you all know from all the
13 corner lots that we've seen over the years
14 -- and thank God Karen reads that part of
15 the code and not me -- corner lots are
16 confusing, so we understand why it's
17 confusing, but Karen reads the code and
18 thinks about corner lots for a living so
19 she could talk you through the definition
20 again if that would be helpful, but we
21 reviewed it together two days ago and I am
22 very satisfied that we read the code
23 properly and that the proper variance is
24 before you which is just the one for
25 pavement related to parking, including

1 driveways.

2 MR. ZYCH: And so we have two
3 representations of what the rear yard is --

4 MS. ROTHENBERG: Uh-huh.

5 MR. ZYCH: -- was Ms. Knittel's
6 which is on -- what is on the screen in a
7 hashed red line. And then we have the
8 drawing -- thank you, Mr. Chilcote -- that
9 is presented with, roughly, orange shaded
10 side yard and a gray shaded rear yard.

11 Ms. Knittel, which one more
12 appropriately matches the definition of
13 rear yard on a corner property?

14 MS. KNITTEL: The rear yard is
15 represented by the site plan that you see
16 on the screen.

17 MR. ZYCH: Okay. All right. And
18 was that what was advertised?

19 MS. KNITTEL: Yes, sir --

20 MR. ZYCH: -- that was what -- the
21 basis for the advertisement?

22 MS. KNITTEL: -- that's what was
23 advertised.

24 MR. ZYCH: Okay. All right.

25 MS. ROTHENBERG: We also have the

1 drafter of the code if you have any
2 questions about how to interpret it.

3 MR. ZYCH: Mr. Wong is always
4 helpful.

5 MR. WONG: Mr. Chair, I had the
6 benefit of helping author the code with the
7 law department and I would vouch -- this
8 was in 1993 when these definitions and the
9 corner side yards and all the
10 contextualism where you draw a line
11 between two buildings was created, so I'll
12 vouch for Karen's accuracy in interpreting
13 the definitions.

14 MR. ZYCH: Okay. All right.
15 Thank you. We have a request -- it's
16 unusual typically -- and it's going to Mr.
17 Chilcote -- that motions come from the
18 Board and they are done when we've
19 completed the hearing, but out of respect
20 for the request, a request has been made of
21 the Board to continue this hearing to an
22 as-yet undefined time, as opposed to
23 regular order, which is to continue the
24 consideration of the variance. I don't --
25 I'll just speak -- I'm not speaking as

1 Chair, I'm speaking as one member of the
2 Board, I don't see a basis for moving to
3 continue, but is anyone of the Board
4 wishing to make such a motion?

5 Hearing none, we don't have a
6 motion. We appreciate the request. We'll
7 continue to hear evidence and to gather
8 facts that will help us in our
9 determination, keeping the points made by
10 Mr. Chilcote in mind.

11 So we'll resume the public
12 hearing. Anyone who would wish to speak,
13 please take the podium and again give us
14 your name and address.

15 MS. TIZZANO: Hello, Mr. Chairman
16 and the Board. My name is Christina
17 Tizzano, I'm an attorney at Chilcote Law
18 Firm. The business address is 1234 --
19 12434 Cedar Road, Suite 7, and I have been
20 sworn in.

21 MR. ZYCH: Thank you.

22 MS. TIZZANO: I appear here on
23 behalf of Donald and Debra Kirby who reside
24 at 2621 Fairmount. We have prepared a
25 memorandum, which you have, and also 32

1 exhibits which include 41 photographs that
2 I'd like to submit in opposition to this
3 variance today.

4 MR. ZYCH: Do you have those?
5 Again, these were the ones that were
6 dropped off this afternoon?

7 MS. TIZZANO: Yes, sir.

8 MR. ZYCH: We take anything that
9 people want to submit. It is helpful when
10 the Board has opportunities to review them
11 in advance, and we're going to have to
12 determine because we want to be fair to
13 you, how we're going to consider these.

14 How many copies do you have?

15 MS. TIZZANO: I have one copy and
16 I provided electronic copy.

17 MR. ZYCH: Well, electronic was
18 not helpful --

19 MS. TIZZANO: Sure.

20 MR. ZYCH: -- we had multiple
21 members were away from our offices --

22 MS. TIZZANO: Yes.

23 MR. ZYCH: -- and these were only
24 delivered this afternoon, so...

25 MS. TIZZANO: Respectfully, most

1 of the materials are the iterations of the
2 site plan that has been submitted and
3 letters which you have already entered into
4 the record, so most of the additional --

5 MR. ZYCH: We'll accept it.

6 MS. TIZZANO: -- will be
7 photographs.

8 MR. ZYCH: Sorry to interrupt you.
9 Go ahead.

10 MS. TIZZANO: That's fine.

11 MR. ZYCH: So we'll accept those.

12 MS. ROTHENBERG: Mr. Chair, we
13 would also just like it to be noted for the
14 record that on Monday I reached out to the
15 Chilcote firm and asked if there were any
16 exhibits that they would want to share with
17 BZA and offer to make copies of them
18 precisely so this sort of event wouldn't
19 happen.

20 As soon as I heard that they
21 dropped off exhibits, I replied to an
22 e-mail to the firm asking that they make
23 copies of all the exhibits so you would all
24 have a copy before you.

25 MR. ZYCH: Well, we're all where

1 we're at --

2 MS. ROTHENBERG: Yep.

3 MR. ZYCH: -- and I think what
4 this is going to drive us to do -- and I
5 will apologize for those who want to stay
6 until the end, we're going to have to take
7 a break at some point, probably after the
8 applicant speaks, so that the Board can --

9 MS. ROTHENBERG: Yeah. And I do
10 have one printed out copy that hopefully
11 that will help you share as you look.

12 MR. ZYCH: And again because we're
13 open hearings we're going to have to do
14 this here.

15 MS. ROTHENBERG: Yep, open.

16 MR. ZYCH: So I apologize if we
17 bore people by reading in front of them.

18 So, I'm sorry, we can continue.

19 MS. TIZZANO: We've prepared an
20 illustration of the corner rear yard area
21 which you just discussed, and that's
22 Exhibit 27 and 28 of our materials. This
23 was prepared by Tiberiu Potinteu, who is an
24 architecture student at Cincinnati
25 University, using the CAD design.

1 He uploaded the external reference
2 of the site plan submitted by the applicant
3 and calculated the survey dimensions and
4 overlaid those for you.

5 MR. ZYCH: Do you have those in
6 physical form and also members of the
7 audience and staff can see them? I mean, I
8 stole the one copy we have, but...

9 And if you like there's a
10 microphone you can carry with you so you
11 can wander.

12 MS. ROTHENBERG: We put everything
13 on a flash drive. I don't know if they're
14 labeled as 27 or --

15 MR. ZYCH: They are. They're
16 exhibits --

17 MS. ROTHENBERG: Oh, yeah, they
18 are. You know, we can bring them up for
19 you, Christina.

20 MR. ZYCH: That would be great.
21 Thank you.

22 MS. ROTHENBERG: You said No. 27,
23 ma'am?

24 MS. TIZZANO: 27 and 28. 28 would
25 be the calculation.

1 MS. ROTHENBERG: Can I move the
2 easel so people can see?

3 MR. PORCELLI: Mr. Chairman?

4 MR. ZYCH: Yes.

5 MS. PORCELLI: It seems to be
6 there's a discussion and a debate about --

7 MS. ROTHENBERG: I'm sorry, you're
8 going to have to speak up for the court
9 reporter into the microphone.

10 MR. PORCELLI: Oh. There seems to
11 be some question about the accuracy of
12 dimensions. I'd just like to know if any
13 of the dimensions in contention have been
14 verified in the field or if everything is
15 being taken off the record copies of
16 drawings. Has anyone measured on site?

17 MS. ROTHENBERG: Wait. You want
18 us to verify what the surveyor found, is
19 that the question?

20 MR. PORCELLI: Well, if we have
21 two different sets of dimensions, has
22 anyone measured it to make sure which one
23 is right?

24 MS. ROTHENBERG: We don't have two
25 different sets. We have what the applicant

1 submitted, which was certified by a
2 reputable surveyor.

3 MR. PORCELLI: Okay.

4 MS. ROTHENBERG: And it would be
5 unprecedented for us to not to trust such a
6 document.

7 MR. PORCELLI: Okay. I was
8 getting the impression that there were
9 competing --

10 MS. TIZZANO: To clarify -- I'm
11 sorry.

12 MR. PORCELLI: Okay.

13 MS. TIZZANO: We are comparing the
14 difference between the survey presented by
15 the applicant and the legal description of
16 the property --

17 MR. PORCELLI: Okay.

18 MS. TIZZANO: -- and since it's a
19 platted property, it states 115, roughly,
20 by 232 by 115 by 232. So that's what we
21 have shown on -- on our illustrations.

22 MR. PORCELLI: Okay. Thank you.

23 MS. TIZZANO: There are other
24 issues with the site plan. David
25 Pietrantone, he's a professional

1 engineering and vice president of the
2 Riverstone Company. He visited the
3 property and prepared a report, which is
4 Exhibits 23 and 24 of our materials --

5 MS. ROTHENBERG: All right. Well,
6 let's take a moment to look at them so
7 people can see what you're talking about.

8 MS. TIZZANO: Exhibit 24 is the
9 report. This is Exhibit 23. It's a
10 certification that the Kirbys' basement has
11 not experienced water intrusion.

12 Exhibit 24 is a report prepared by
13 Mr. Pietrantone, which describes concerns
14 with the site plan.

15 If you'll compare, as
16 Mr. Pietrantone did, the difference between
17 the actual conditions of the site and what
18 is presented as existing conditions on the
19 applicants' site plan, which is No. 1 out
20 of five drawings that have been submitted,
21 you will see that there are several
22 discrepancies between what is represented
23 as existing conditions and what is actually
24 present on the site. And Mr. Pietrantone's
25 concern, as he will describe personally,

1 are that if the site is not properly
2 regraded to reflect what is shown on the
3 site plan as an existing condition, then
4 there will be serious concerns for water
5 intrusion at the Kirbys' property.

6 In addition, we've identified that
7 a catch basin that was located near the
8 garage, has been relocated and shown as an
9 existing condition in the center of the
10 proposed parking pad. And it's represented
11 as an existing condition when it has been
12 moved.

13 There's also concern regarding a
14 hole from an oak tree that has been removed
15 on the property. If it is not filled, then
16 water will enter the hole and enter the
17 Kirbys' property impacting their basement.

18 Okay. Thank you.

19 Now, I want to address the
20 applicant's statement of practical
21 difficulties --

22 MR. ZYCH: Before you do that --

23 MS. TIZZANO: Yes, sir.

24 MR. ZYCH: -- are there any other
25 exhibits in this binder you would like to

1 draw our specific attention to to assist us
2 in dealing with the facts you're bringing
3 to us?

4 MS. TIZZANO: I would call your
5 attention to the photographs that I have
6 identified.

7 MS. ROTHENBERG: Which numbers?

8 MR. ZYCH: Let's take a look at
9 them.

10 MS. TIZZANO: The photograph is --
11 the photographs are Exhibit 32.

12 MS. ROTHENBERG: This looks like
13 it's not a picture.

14 MS. TIZZANO: So, I don't know if
15 you wanted to learn about all these
16 photographs, I'm happy to tell you about
17 them.

18 MR. ZYCH: Well, you've taken the
19 time --

20 MS. TIZZANO: Yes, sir.

21 MR. ZYCH: -- and said that
22 they're important to our decision, so we
23 want to take your submission seriously.

24 MS. TIZZANO: Thank you. I do not
25 want to go through some of the violations

1 that we're speaking about though because to
2 save -- to get to the issue at hand.

3 MR. ZYCH: And the violation, just
4 for our benefit, the violations are?

5 MS. TIZZANO: Our correspondent
6 has described several violations that have
7 occurred at the property. One of them
8 being the construction of 17 piers for the
9 fence when only 11 have been approved on
10 the permit. So it's things like those. An
11 additional several hundred square feet of
12 paving then was approved and permitted,
13 so...

14 MR. ZYCH: And in what manner are
15 those -- and I just want to give you the
16 opportunity -- I want to understand the
17 record you're making. Which of those, if
18 any, are germane to the determination of
19 whether the rear yard coverage variance is
20 appropriate?

21 MS. TIZZANO: The impact on the
22 neighborhood is actually very substantial
23 here. Because there has been a lack of
24 oversight in the permitting process that
25 has caused the development to be

1 constructed and not conform to the permit.

2 So the Kirbys are very concerned
3 that if a careful analysis of the grading
4 and oversight by an engineer, here we have,
5 we have good intentions and we have
6 illustrations, but we don't have an
7 engineered drainage plan, we don't have an
8 engineered grading plan, we don't have
9 grading permits. There's no way for us to
10 feel comfortable that the construction on
11 the site will conform to the plan and will
12 protect the property next door and in the
13 surrounding community, which is required by
14 the code.

15 MR. ZYCH: And again, not to be
16 repetitive, but which of those relates
17 specifically to the rear yard coverage?

18 MS. TIZZANO: Well, there's --
19 when we analyze practical difficulties, we
20 discuss the impact on the character of the
21 neighborhood. And there's a precedent
22 being set for permitting improvements to
23 occur without oversight, and that impacts
24 the neighborhood substantially.

25 MR. ZYCH: I'll stop interrupting

1 and let you continue.

2 MS. TIZZANO: Okay. I have a
3 number of photographs. Is it necessary for
4 you to consider each photograph in order to
5 make it part of your decision,
6 Mr. Chairman, in order to save time?

7 MR. ZYCH: You've provided -- time
8 is probably the least of our concern at the
9 moment --

10 MS. TIZZANO: Okay.

11 MR. ZYCH: I speak for myself. My
12 fellow board members may not agree with me,
13 but our concern is to thoroughly evaluate
14 variances before us. And again, if there's
15 anything you'd like to show us that would
16 help us make the determination as to the
17 rear yard coverage variance, we are all
18 ears.

19 MS. TIZZANO: Okay. I guess, I
20 would just ask that you scroll through the
21 photographs and I'll describe what is
22 shown.

23 This is a photograph taken
24 December 21st. It shows a dumpster and
25 portalet at the site before any permits

1 have been requested.

2 Please scroll.

3 This is a photograph of the notice
4 which establishes the code provisions cited
5 is not for a total accessory coverage
6 variance.

7 This is a bird's eye view of the
8 property in 2014 that shows the ample
9 landscaping and coverage of green space at
10 the property.

11 This is very dark, I'm sorry, but
12 it also shows the ample landscaping and
13 green coverage at the property from the
14 Fairmount Street.

15 This is another property printed
16 from the internet around 2014. This is
17 another property showing the landscaping
18 from Fairmount Boulevard.

19 This is a picture showing the
20 landscaping from Tudor Drive.

21 This is another property photo
22 showing Tudor Drive landscaping.

23 This is showing the Tudor driveway
24 that existed prior to demolition.

25 This shows the Fairmount drive and

1 that it was landscaped and the condition
2 before demolition.

3 This is the Fairmount driveway as
4 it exists now has been removed.

5 I apologize, this -- please
6 scroll.

7 These photographs show that
8 grading has taken place at the site.

9 These photographs were submitted
10 as part of the initial variance application
11 for the pool and show the landscaping from
12 Tudor Drive.

13 MR. WONG: You can rotate those if
14 you'd like, I think.

15 MS. TIZZANO: I think we get the
16 idea. Thank you. There is a lot of
17 landscaping.

18 Again, that's submitted with the
19 application for the initial variance. This
20 is a duplicate, I apologize.

21 This is a picture of the Japanese
22 Katsura tree that sits on the property line
23 between the Baldriges and the Kirbys. The
24 Kirbys are asking that this tree be
25 preserved. During the process right now a

1 dumpster is sitting on it.

2 This is a picture of the hole left
3 by an oak tree that was removed. This tree
4 was bumped out in the fence. The fence is
5 owned by the Kirbys and the tree was also
6 owned by the Kirbys, but it has been
7 removed. And the concern is that the
8 parking paving will sit right next to this
9 hole and that if not properly graded and
10 filled, water will intrude on the property.

11 This shows you the bump out in the
12 fence and where the parking pad is proposed
13 to be.

14 This shows you that 17 piers have
15 been constructed. We also have on our
16 record the permit application and the
17 variance application approving 11 piers.

18 This was taken on November 21st,
19 the 17th pier was constructed.

20 This shows a location of a catch
21 basin that has been described as an
22 existing condition when it does not, in
23 fact, exist.

24 If you scroll down a little bit
25 more --

1 MS. KNITTEL: Oh, sorry.

2 MS. TIZZANO: -- that was the
3 original catch basin near the garage.

4 This is excavation. This occurred
5 October 28, 2018. This reveals a clay pipe
6 that's in the center of the garage believed
7 to be tied to that catch basin.

8 This was taken on October 25th,
9 2018. This depicts that the catch basin
10 near the garage has been removed.

11 Exhibit 28, this shows that the
12 pipe has been replaced. We have submitted
13 permits that have been pulled on this
14 property and there has been no drainage
15 permit for this work.

16 If you can scroll to 37, please.
17 The photos I'm passing by just show the
18 grading that's occurred at the site.

19 This is -- thank you -- this is a
20 photograph of the front steps at the
21 property. We have not seen a permit for
22 this demolition, excavation.

23 This photo shows at the rear --
24 that the front walkway has also been
25 demolished without a permit.

1 This is a Keller Williams screen
2 shot showing that the porch on the west end
3 of the building was an open porch.

4 This is a photo of the western
5 porch currently, it's now enclosed with
6 windows and doors and we have not seen a
7 permit for this work.

8 Thank you very much for allowing
9 me to present those photographs.

10 MR. ZYCH: If I can interrupt
11 again. A number of those photographs
12 appear to have been taken by someone on the
13 Baldriges' property?

14 MS. TIZZANO: I know they were
15 either taken by Debra Kirby or printed from
16 the internet.

17 MR. ZYCH: Well, no, they're
18 pictures of things like the catch basin and
19 the like, and those pictures appear to be
20 taken from the Baldriges' property.

21 MS. TIZZANO: I don't know. But
22 if you visit the second floor of the
23 Kirbys' property --

24 MR. ZYCH: If I may, when we let
25 each other finish, we can --

1 MS. TIZZANO: I'm sorry, I
2 apologize.

3 MR. ZYCH: That's okay. It
4 appears to me that photographs were taken
5 by someone who was on the Baldridges'
6 property when they took the pictures. And
7 my question is whether or not the
8 Baldridges were asked for permission for a
9 person to come onto their property to take
10 those questions -- to take those pictures?

11 MS. TIZZANO: I do not know where
12 those pictures were taken from. I know
13 that you can zoom in on a camera lens and
14 also that from the rear of the second floor
15 of the Kirbys' property, I was just there,
16 you can see the whole entire area of the
17 property --

18 MR. ZYCH: Okay.

19 MS. TIZZANO: -- but I do not
20 know. I apologize.

21 Now, I'd like to turn to the
22 applicant's statement of practical
23 difficulties.

24 Before the Board is a request for
25 a variance for parking paving that exceeds

1 30% on a site that has been under
2 construction since before permits were
3 requested. On a site where the city staff
4 has said that hundreds of square feet of
5 impervious paving between the pool and the
6 house is not part of a calculation. And I
7 just wanted to reference that area.

8 Looking at our depiction of the
9 corner side yard, the code provision read
10 by Ms. Knittel is correct in that the
11 corner side yard's calculated from the side
12 of the building to the lot line.

13 The code does not specify any
14 basis for triangulating between a nearby
15 house. Now 1121.08 does describe this
16 purpose for triangulation when you're
17 adding an addition to your house or when
18 you're building new construction and we can
19 understand why. Because a house in a
20 corner side yard, should conform to the
21 second street's house. Principal building
22 to principal building. 1121.08 does not
23 apply to accessory structures; however,
24 it's been applied here. And the result is
25 that the corner side yard has been

1 enlarged, the rear yard has been reduced,
2 and then a whole area of property in here,
3 between the house and the pool, has not
4 been calculated in any calculation. It's
5 not considered rear yard, it's not
6 considered side yard, it's not considered
7 front yard, it's nothing. How can that be?
8 The calculation of rear yard obscures the
9 total coverage requirement.

10 And we just discussed some of the
11 violations that have occurred, so I think
12 we can understand our request for
13 reasonable oversight at this property.

14 So how can we protect the
15 neighbors and the surrounding neighborhood
16 from overdevelopment from unsustainable
17 development from creating a precedent that
18 the process can be manipulated to justify
19 the end result.

20 The law requires that the
21 applicant prove a variance is necessary
22 because a literal enforcement of the code
23 would be unreasonable. So the question the
24 Board is called to consider is whether the
25 coverage limitations in the code

1 unreasonably deprive the applicant of the
2 permitted use of the property.

3 The fact is that the variance is
4 not necessary for the Baldridges to make
5 reasonable use of their lot. They are
6 requesting a variance to provide them with
7 the greatest possible benefit of their lot.

8 Consider the following: The site
9 conditions do not create the need for a
10 variance as the applicant maintains. The
11 lot is over 26,000 square feet, it's a
12 conforming lot. The staff report concedes
13 this. It's not irregular in shape or
14 character. These are examples in the code
15 and under Ohio law of unusual circumstances
16 that justify a variance based on the lot.

17 The fact is that a corner lot
18 doesn't warrant consideration by the Board.
19 A corner lot is not a special consideration
20 recognized by law.

21 The site can be beneficially used
22 without the variance based on prior use.

23 Before demolition of the driveways
24 and parking pad occurred, there were two
25 driveways and a parking pad and the areas

1 provided adequate accessibility from Tudor
2 Drive, from Fairmount Boulevard, to and
3 from the garage, and through the property.

4 The pool, fence and other
5 accessory structures could have been
6 constructed while preserving the prior
7 parking pad and driveways.

8 The applicant has created the need
9 for this variance by designing the
10 improvements including the pool and the
11 fence with large areas of grass inside the
12 fence.

13 This design caused the driveway to
14 be moved. Mr. Ducas described that. The
15 design also widens the parking pad, which
16 is another design choice. The applicant
17 states that a larger parking pad is
18 required for a turning radius. That's
19 another misstatement. There are two
20 driveways, which can be used to back up and
21 exit without a full turn around. Moreover
22 according to code 1121.12(k)(3), quote,
23 maximum coverage requirements for the lot
24 may not be exceeded to accommodate a
25 parking pad.

1 The applicant's representative
2 told you that there were other options. We
3 have prepared two options that would have
4 minimized or eliminated the need for a
5 variance. These are part of our materials
6 as Exhibit 30.

7 The original application described
8 55 feet between the rear lot line and the
9 placement of the pool. The pool was
10 actually constructed 46 approximately -- we
11 used a laser measurement from the pool to
12 the lot line. But you can see this is an
13 overlay of the existing site plan, the
14 existing conditions. The driveway would
15 have remained intact if the design placed
16 the fence closer to the pool without an
17 additional 600 or so square feet of grass
18 inside that fence.

19 There were other options. The
20 pool have could have been oriented west to
21 east, for example.

22 The applicant has not presented
23 the minimum variance necessary for
24 reasonable use and has designed a massive
25 hardscaping of the rear yard and

1 constructed more than what was approved and
2 now seeks permission to pave even more.

3 The applicant has not presented a
4 plan for pervious paving which would help
5 mitigate the water flow through the site
6 and nor has the applicant substantiated its
7 claims that storm water management will be
8 improved.

9 All we have, and he said it
10 multiple times, is their good intentions,
11 we don't have an engineered water flow
12 plan, we don't have engineered site plans.
13 And we believe that the variance is
14 substantial because it would result in a
15 90% increase in total site coverage. Put
16 another way it would be about one fifth of
17 the lot covered with impervious surface,
18 and including the house that's more than
19 40% site coverage.

20 The applicant will receive a
21 special privilege in obtaining this
22 variance. Other lots in the area have been
23 held to the code requirements for permits
24 and minimal variances.

25 Properties cited in the staff

1 report are not comparable. Garages on
2 Tudor Drive, for example, have no bearing
3 on this application. This property is
4 within a 'AA' district. Tudor is a 'A'
5 district.

6 The impact is different in
7 different districts.

8 Property, 2612 Fairmount, has been
9 cited as a comparable property. It's
10 across the street. It is a mansion. It
11 has over 33,000 square feet of land and all
12 of its coverage is actually existing before
13 the code.

14 If you wouldn't mind showing
15 Exhibit 31, please. This is a site report
16 for the record, from the county, but if you
17 could scroll down, please.

18 MS. KNITTEL: Is that it?

19 MS. TIZZANO: There's another
20 page, please.

21 MS. KNITTEL: Oh, okay. Sorry.

22 MS. TIZZANO: Thank you. This is
23 an overhead view. And I just -- I'm not
24 sure how we can calculate the site coverage
25 based on this view, but if we can go to the

1 next slide. These depict the -- these
2 pictures depict the driveways on 2621 --
3 I'm sorry, 2612 Fairmount Boulevard. And
4 as you can see they're cobblestone and
5 brick so they're pervious driveways and
6 well landscaped.

7 Again, the application fails to
8 address the total coverage limitation, so
9 granting a parking paving variance and
10 ignoring the total coverage variance will
11 be a substantial impact on this property.

12 The character of the neighborhood
13 will be impacted by the massive coverage
14 which continues to increase. We described
15 the 17 fence piers. The applicant has also
16 increased their corner side yard coverage
17 as well. And these changes should be
18 reviewed before further variances are
19 granted.

20 The Kirby's view from their
21 property will be drastically altered as
22 their rear hall and landing have direct
23 view of the parking as well as many of
24 their rooms in the backyard -- I'm sorry,
25 in the second floor. And if you compare

1 the floors, the Kirby's house actually sits
2 above the second floor of the Baldriges'
3 house, so you do not need to go to the
4 third floor of the Kirby's house to see
5 this.

6 The view is especially poor
7 considering that a lot of the landscaping
8 screening has been torn down including
9 vines and an oak tree that we described.

10 Debra Kirby and some other
11 residents will elaborate on the impact and
12 some other issues. And in conclusion, for
13 all these reasons and based on the improper
14 notice described by Mr. Chilcote, we
15 respectfully request that this variance be
16 denied. However, our memorandum does
17 describe certain conditions that would
18 protect the Kirbys including care for the
19 Japanese Katsura tree on the property line,
20 adequately engineered drainage plan on the
21 Fairmount side, including the parking pad,
22 a three-foot setback on the Fairmount
23 drive, which was not described in this
24 application either. And Ms. Kirby will
25 also elaborate on some other conditions

1 that she would like. Thank you very much.

2 MR. ZYCH: Thank you. Just a note
3 in passing, I'm married to an actress and
4 she always gets upset when you have the
5 commercials that say, real people, not
6 actors and so being a lawyer I also
7 appreciate our profession being represented
8 at the hearings and assisting in the
9 presentation, so thank you.

10 I do want to make a couple of
11 comments just because we're dealing with
12 these exhibits on the fly --

13 MS. ROTHENBERG: Yes.

14 MR. ZYCH: -- right? Exhibit 27
15 and 28, I will credit these being a DAAP
16 student from the University of Cincinnati,
17 which was the graduate school from which my
18 son, the architect, graduated. But that
19 being aside, Exhibits 27 and 28, repeat the
20 -- by shading -- a contention as to what is
21 the rear yard and what is the corner side
22 yard. And again, just so as we proceed
23 through this -- this is out of order, but
24 so is a lot of what we're doing tonight
25 because of the way the evidence has come to

1 us.

2 Does the staff have a -- from the
3 author's point of view, from the staff's
4 point of view, again, a response as to
5 Exhibits 27 and 28 and how -- whether or
6 not those correctly depict the various yard
7 components under our code?

8 MS. ROTHENBERG: So just to keep
9 our record very clean tonight, so first
10 Karen -- are you talking? Karen is going
11 to answer about 27, she's looking at
12 Exhibit 27 when she talks about it right
13 now.

14 MS. KNITTEL: Sorry. Yes, I am
15 looking at Exhibit 27. And, no, this does
16 not accurately reflect the corner side
17 yard. We define the corner side yard,
18 again, by -- as Richard had mentioned
19 earlier, we draw a line from the furthest
20 most point of the house to the next house.
21 And any property that is between that line
22 and the public right-of-way from the side
23 of the house to the rear property line,
24 that is considered to be the corner side
25 yard.

1 MR. ZYCH: Okay.

2 MS. ROTHENBERG: Then should we
3 look at 28 then.

4 MR. ZYCH: Can we look at 28 as
5 well?

6 MS. KNITTEL: Sure.

7 MR. ZYCH: Again, we're looking at
8 Exhibit 28 now. And again, the same
9 question: Does that adequately or
10 accurately under our zoning code depict
11 what are the various components of the
12 yard?

13 MS. KNITTEL: No, it does not.
14 Our zoning code, as was stated in the staff
15 report and our power point presentation and
16 staff report today, explained that the rear
17 yard is defined as the area behind the
18 principal building. And because the garage
19 is attached to the house and that's the
20 principal building and then goes to the
21 rear property line and then it would run
22 from where the corner side yard is. This
23 isn't depicted accurately in terms of where
24 the corner side yard is, but it would run
25 from the interior lot line over to where

1 the corner side yard is.

2 MR. ZYCH: Okay.

3 MS. KNITTEL: This area in this
4 nook is not considered rear yard.

5 MR. WONG: Mr. Chair --

6 MR. ZYCH: Mr. Wong.

7 MR. WONG: -- just dawned on me
8 the answer to your question way long ago in
9 this. You would deduce that the numerator,
10 denominator analogy would apply and you're
11 absolutely right. The larger the rear yard
12 would be, the smaller the impact of the
13 given pavement. So your assessment, even
14 though you're not a mathematician, you're
15 right.

16 MR. ZYCH: All right. So that if
17 we did hypothetically adopt the objector's
18 definition of what the rear yard is, the
19 coverage before us would be dramatically
20 lower?

21 MR. WONG: Right. They're
22 penalized because the big part of the
23 pavement is in that rear yard that's
24 considered a rear yard by the code that I
25 helped write. And if you add more to that

1 rear yard, that is ample green space,
2 you're going to diminish the variance.

3 MR. ZYCH: All right. Okay.

4 This is a public --

5 MS. ROTHENBERG: Mr. Chair, I'm so
6 sorry, can I just interrupt you for one
7 second because it just caught my eye
8 because it was mentioned that there --
9 something about there not being engineers
10 and I just want to make sure because it's
11 small, but those red stamps, right? I
12 mean, in the drawings submitted by the
13 applicants.

14 MR. ZYCH: Yeah, are not the
15 applicant's drawings -- oh, they are.

16 MS. ROTHENBERG: They are.
17 They're marked up, but those are the
18 applicant's drawings and those are the
19 engineering stamps, right?

20 MR. WONG: Professional surveyor.

21 MS. ROTHENBERG: Professional
22 surveyor.

23 MR. ZYCH: Okay.

24 MS. ROTHENBERG: And there's the
25 professional engineer right there --

1 MR. ZYCH: Right. Okay.

2 MS. ROTHENBERG: -- just for the
3 record.

4 MR. ZYCH: Thank you. The more
5 facts, the better.

6 MS. ROTHENBERG: Uh-huh.

7 MR. ZYCH: All right. Thank you.
8 This is I said an open hearing, so there
9 are a number of people that have been sworn
10 in and those who wish to testify are
11 welcome to do so at this point.

12 MS. ROTHENBERG: And if anyone
13 changed their mind, I would swear people in
14 more.

15 MR. PIETRANTONE: My name is Dave
16 Pietrantone. I am with the Riverstone
17 Company. I'm a professional engineer,
18 licensed in the State of Ohio. And our
19 company is a storm water specialist.

20 Mr. Kirby gave us --

21 MR. ZYCH: I apologize, if you
22 could give us your address for the record,
23 please.

24 MR. PIETRANTONE: 3800 Lakeside
25 Avenue, Cleveland, Ohio.

1 MR. ZYCH: Thank you.

2 MR. PIETRANTONE: Ms. Kirby gave
3 us a call, she was a little concerned about
4 her storm water. We came out to the site,
5 had a conversation with her, took a look at
6 what was going on and the proposed plan,
7 the existing condition plan, to give her an
8 overview of what we thought with the
9 pavement and storm water.

10 No. 1, the more pavement, the more
11 impervious surface, the more runoff you
12 have, the more it overloads the system
13 including drainage on to other properties,
14 drainage into the city storm system, that
15 for the most part, is fairly close to
16 overloaded as it is right now.

17 There are numerous things they can
18 do. You can have a hard surface, install
19 the driving surface, create a pervious
20 surface, so you don't have an impervious
21 area, the water goes through instead of
22 goes over, goes into the ground, doesn't
23 create additional storm water runoff.

24 One of our concerns is you do have
25 a catch basin in the center of the new

1 concrete parking pad. It's labeled as
2 existing. The applicant did explain
3 earlier that it's going to be a relocated
4 basin.

5 I saw nothing on the plans that
6 size that basin or show where it ties into.
7 So the Kirbys are a little concerned and
8 I'm concerned about where the storm water
9 goes.

10 I think that should be brought
11 forward and some calculations provided.
12 The amount of surface area, like I said, we
13 can go to pervious surface.

14 The last concern is the property
15 line, it was fairly -- a fair amount of
16 foliage there which helps absorb the storm
17 water. It's all been stripped, gone.
18 Where the trees have been removed are low
19 spots. We're concerned about the drainage
20 coming through that area into the Kirby's
21 yard.

22 We would suggest that that be
23 shown on a plan to provide the Kirbys with
24 some type of comfort that they're not going
25 to get storm water runoff in their land.

1 I had also done an assessment of
2 their basement, you saw the letter. They
3 do have an extremely dry basement.

4 That's all I'd like to say is just
5 that we're a little concerned about the
6 drainage. Thank you very much.

7 MR. ZYCH: That leaves the
8 microphone open for the next speaker.

9 MS. KIRBY: Hi there, I'm Debra
10 Kirby, 2621 Fairmount. I'm the adjoined
11 neighbor and this is my husband. And thank
12 you.

13 I was just wondering if you could
14 indulge me, these were the list of exhibits
15 and the photos, but we did put them on some
16 boards that will help, be able to explain
17 it rather than look like that. If you
18 could indulge us to look at our boards. Is
19 that okay, sir?

20 MR. ZYCH: That would be more than
21 fine.

22 MS. KIRBY: Oh, I really
23 appreciate that. Okay.

24 MR. ZYCH: Anything you would like
25 to do --

1 MS. KIRBY: If you can just give
2 me a minute then. Thank you.

3 MR. ZYCH: -- to help explain it
4 to us we welcome.

5 MS. ROTHENBERG: Just as you set
6 up, to the extent possible, whenever you're
7 showing something that has an exhibit
8 number --

9 MS. KIRBY: If you can take this
10 off, turn it down, off, please, I would
11 appreciate that.

12 MS. ROTHENBERG: So whenever
13 you're talking about something that has
14 been given an exhibit number, it would help
15 keep the record really clean for us, you
16 know, someone in the future to understand
17 which drawing you're talking about --

18 MS. KIRBY: Well, I don't -- what
19 I've done is taken a lot of these photos --

20 MS. ROTHENBERG: Oh, wait, stop.

21 MR. ZYCH: If you could take the
22 microphone.

23 MS. ROTHENBERG: Yeah, sorry. You
24 need the hand-held.

25 MS. KIRBY: But I'm just setting

1 up --

2 MS. ROTHENBERG: But you can't
3 talk at all unless you're talking into the
4 microphone because we're still in a public
5 meeting.

6 So the request, if possible, would
7 be to refer to exhibit numbers.

8 She's going to want to talk, so
9 she should probably have the microphone.

10 MS. KIRBY: I will, but I'm not
11 ready yet.

12 MR. ZYCH: Take your time.

13 MS. KIRBY: Thank you so much.

14 THE REPORTER: Can we take a quick
15 break?

16 MR. ZYCH: Yes. The most
17 important, as I've always known in the
18 practice of law, the most important person
19 in the room is the court reporter, and the
20 court reporter is requesting a break.
21 We've been going for over two hours.

22 Do you need five minutes?

23 Okay. We'll take a five-minute
24 break. We are off the record.

25

- - - -

1 (Thereupon, a recess was had.)

2

- - - -

3

MR. ZYCH: We'll go back on the
4 record at 9:10.

5

We've had a request, and we're
6 happy to accommodate that. We interrupt
7 Ms. Kirby's presentation so others who need
8 to leave can speak and we're happy to do
9 so. Ms. Kirby, you can resume whenever it
10 is we're done with this portion.

11

So, sir, if you give us your name
12 and address and confirm that you've been
13 sworn in.

14

MR. VOLPE: Good evening,

15

Mr. Chairman, commission members. My name
16 is Paul Volpe. I live at 2593 Fairmount
17 Boulevard. I live two houses to the west
18 of the Baldridges.

19

I'd like to start by saying

20

because it is relevant to the discussion

21

that I'd like to give, I'm going to offer a

22

bit of a different perspective. I'd also

23

like to say I requested at the break that I

24

could go. I was one of the people here

25

until midnight last night supporting the

1 legislation that finally got approved by
2 the planning commission. Talk about blood,
3 sweat and tears, but it finally got
4 approved and I'm just exhausted -- it was
5 5:00 in the morning -- so I appreciate the
6 consideration to me.

7 I want to give a little different
8 perspective here. I'm not here
9 representing the Kirbys directly. I'm
10 respectful of their situation, I'm aware of
11 it. I'm here representing my neighbors who
12 have spoken to me and the Kirbys, which
13 includes my son, my daughter-in-law, my two
14 grandchildren who live across the street at
15 Woodmere on Fairmount. Another architect,
16 John Williams, who lives right across the
17 street from the pool area and looks at it
18 every time they pull out of their driveway
19 and others, all who have expressed concern
20 over this. This is a walking neighborhood.
21 Just about everybody has got a dog. I've
22 got one. And every day, three times a day,
23 I walk my dog around and I look at what's
24 going on.

25 I just want to tell you a little

1 story, it's important -- I want to say, Mr.
2 Chairman, that I very much appreciated your
3 introduction. It was, as an architect,
4 practicing for over 40 years, I've been to
5 planning commissions, zoning boards,
6 architectural review boards, all around the
7 region, and I've heard every bit of
8 testimony and innuendo you could imagine
9 and I thought your explanation was
10 eloquent. And I completely agree that all
11 of you have a specific set of tasks and
12 charges that is different than ARBs and
13 planning commissions and so forth, yet
14 they're inner-related. You can't consider
15 zoning without considering esthetics. My
16 job is design buildings and plan
17 communities. They go together. And you
18 can't plan without an acknowledgement of
19 the total picture, and I'm here to talk
20 about that because it affects us in the
21 neighborhood.

22 Last night's hearing was a perfect
23 example of that because it was about new
24 overlay zoning that Director Wong put
25 together with his staff, but it was all

1 about esthetics. The neighborhood was out
2 talking about architecture and all kinds of
3 other things, but it was about zoning
4 because they are inner-related. So having
5 an awareness of these things is critically
6 important.

7 What I'd like to say is I've in my
8 house -- I've owned my property for over
9 three years, I've lived in my house for
10 over two. It's a new home. I'm going to
11 talk about it briefly and why it relates to
12 our concerns and what I just said.

13 As I told you, I don't know the
14 Baldriges. We -- over a year ago, my wife
15 and I started to see work going on. We
16 knew it was a foreclosed property. We were
17 delighted, it looks like it was being done
18 beautifully and -- you know, copper
19 flashings and great windows and it was
20 wonderful, no reason to complain, then we
21 started to see a big hole getting dug.
22 What's going on here? Are they putting in
23 a swimming pool? Okay. It's a little
24 space. Are they putting in a swimming
25 pool? I guess. I asked around and I found

1 out that they were. And what's it going to
2 look like? We know it has to be enclosed
3 with a fence.

4 These are things that one concerns
5 themselves when you live in the Fairmount
6 Historic District, okay? And again, I'll
7 talk about my relationship with that and my
8 responsibilities as a homeowner.

9 Well, the more I learn, the more I
10 realized that variances were granted and --
11 oh, by the way, my wife and I never got
12 notice that there was a public hearing in
13 front of the zoning board. To the best of
14 my knowledge, I don't think the Kirbys got
15 notice either. And, in fact, I don't know
16 anybody that got notice about a public
17 hearing held for these variances.

18 Okay. So I was able to procure
19 the drawings that were submitted for the --
20 I don't know if it was a fence or a pool.
21 I'm told everything was approved, but then
22 when I read the minutes its says "fence".
23 I talked to the chairman of the
24 Architectural Review Board who is an
25 architect and said, what did you approve?

1 And the ARB said a fence, not a pool.

2 Okay. Well, but I'm told in this
3 complex and very difficult situation, that
4 everything was approved by the building
5 commission or the consultant, Mr. Loconti.

6 Okay. So what is it? Is it good?
7 Well, I'm watching these big fat brick
8 piers go up. It was a little unusual. And
9 there are 17 of them and the drawing shows
10 11. Well, okay, maybe that doesn't affect
11 you, but it was supposedly on the drawings
12 that you received with which you granted a
13 variance that I'm told included the pool
14 but was only a fence, okay? So what is
15 going on here? Its confusing to me.

16 It looks awful. It looks like a
17 cemetery. 17 big brick piers on this
18 little space. It's awful.

19 Okay. Well, it's got to go back
20 to ARB, okay? It's got to. I know we're
21 talking about just a piece of concrete in
22 the back in the driveway, but why wasn't
23 that piece of concrete presented with the
24 so-called pool or the so-called fence? Why
25 was this all piecemealed together and we

1 all have to sit here and try and
2 rationalize it and then listen,
3 respectfully, to Mr. Ducas from Chagrin
4 Falls. He doesn't live next to this, I and
5 others do. I and others respect process
6 and procedure which it doesn't seem to was
7 followed here.

8 If these folks want this little,
9 tiny variance for a driveway then maybe
10 they should go back to ARB and everything
11 they did wrong with an incomplete and/or an
12 accurate set of drawings completely
13 revised.

14 The property was never staked.
15 There was never any strings put on, that
16 should have been. Trees were cut down,
17 vegetation was removed.

18 You asked, did you go on the
19 Baldridges property? Well, somebody from
20 the Baldridges, I don't know who, went on
21 the Kirby's property and cut down their
22 trees and their vegetation. It's one thing
23 to walk on it, it's another thing to
24 destroy it and then make them pay some
25 money to do it.

1 two driveways? Maybe some consideration
2 should be given to exchanging paving and
3 adding more landscaping that respects the
4 Kirbys next door.

5 I will end with this, over three
6 years ago I wanted to build a house for my
7 wife and I to have into our old -- older
8 age than I am now, okay? We wanted to live
9 in Cleveland Heights. We lived in Little
10 Italy for 17 years. We finally found a
11 vacant lot that was an extra lot to a big
12 Tudor house next to where I live now. So
13 my realtor said, if you buy the house, you
14 can get the lot, but you're going to have
15 to subdivide it. So I contacted then Mayor
16 Stephens and Director Wong and I said,
17 would you support building a house on this
18 lot that was once subdivided to have a
19 house but in the early 1900s, 1928 when
20 they built the Tudor, those people bought
21 that lot somehow and it was a big wooded
22 lot, okay? Perfect for a house, it would
23 continue the rhythm of the street. I was
24 told two things, I was told by the mayor,
25 Paul, you need to build a house that fits

1 in. I know you're a modernist, you want to
2 build a modern house, but it better fit
3 into this historic neighborhood. Okay. I
4 didn't go forward until I accepted the
5 conditions.

6 And Director Wong said to me, you
7 know this is a 'AA' district, Paul, and
8 variances aren't going to be well received,
9 right, Mr. Wong?

10 MR. ZYCH: Excuse me, all comments
11 are to be directed to the Board.

12 MR. VOLPE: All right.
13 Mr. Chairman, that's what I was told, okay?
14 I designed my house, I did detailed
15 drawings. I was asked to tear down as few
16 trees as possible. I surveyed every tree.
17 Riverstone Engineering surveyed on the
18 property. I marked them, I made sure I
19 didn't touch a neighbor's tree. I only
20 took down what I said I would. I submitted
21 every color, every detail, every dimension,
22 every paving calculation that I was asked
23 or told to submit and I didn't have one
24 variance.

25 Now, I don't understand why I

1 would be held to those standards and these
2 folks who are spending far more money than
3 I spent on my little house, wouldn't be
4 held to the same standards.

5 Is this what we expect for our tax
6 paying citizens that live in this
7 community? Thank you, sir.

8 MR. ZYCH: Mr. Volpe, thank you.

9 - - - -

10 (Clapping from audience member)

11 - - - -

12 MR. ZYCH: There will be no
13 demonstrations. We are not a movie
14 theater. Mr. Volpe, Thank you.

15 We have a gentleman approaching.
16 If you would, as with the prior witnesses
17 give your name and address and affirm that
18 you've been sworn in.

19 MR. KOOL: My name is Jim Kool. I
20 have been sworn in. I live at 2750
21 Fairmount Boulevard.

22 MR. ZYCH: Thank you, sir.

23 MR. KOOL: My background is much
24 like yours. I served on the planning
25 commission for several years. And I happen

1 to serve during the time that the Green
2 Initiatives were put into the codes.

3 The Kirbys, knowing my experience
4 -- background, asked me to look at the
5 process that we went through to get to the
6 point where we are tonight. And I looked
7 at everything from the notification
8 process, inspections, all through to this
9 point tonight. And found a lot of gaps, a
10 lot of omissions. And I articulated those
11 as best I could to the city council last
12 week.

13 I wanted to talk about and make a
14 constructive comment, if you put up the
15 picture of the entire --

16 MS. ROTHENBERG: From her
17 presentation or an exhibit?

18 MR. KOOL: From your presentation.

19 MS. ROTHENBERG: Okay.

20 MS. KNITTEL: You want a site
21 plan?

22 MR. KOOL: Yeah, this one will do
23 I think. The full site plan is the one I
24 want to look at.

25 MS. KNITTEL: All right. So,

1 has been a debate tonight about whether we
2 can draw that line based on an angle over
3 to the other property or whether it's based
4 on a code that has to do with having a
5 building extended on the current house or
6 whether it's the hardscape as you see here.

7 But from a practical standpoint
8 what we need to understand is where is the
9 water going to go no matter what? You
10 would have to deal with that, whether it
11 was a house extension or whether it's
12 hardscape. So I don't know the answer to
13 what that debate was, that's something for
14 you to consider.

15 But just from my limited
16 engineering background, if I look at this,
17 I look at it wholistically, the whole
18 surface, and I ask myself, why does it
19 matter that the western side of the
20 property is two feet lower than the eastern
21 side of the property if all the hardscape
22 is level? Where is the water going to go?

23 You're considering a driveway
24 tonight only because they drew the line the
25 way they did. And if you can write these

1 codes this way as I found in the
2 notification process and the lack of detail
3 to the inspection process and so on and so
4 forth, what I would recommend, aside from
5 my final recommendation is that we
6 reconsider how we do these things.

7 This should be looked at in total.
8 One catch basin for all of that hardscape.
9 You're considering the driveway today, but
10 think about this, where is all of that
11 water going?

12 And these calculations are very
13 interesting. Just look at this picture and
14 tell me that if you consider all the
15 hardscape including the driveway, that
16 that's 30% of the grass, the total
17 backyard. Forget that slanted line, just
18 practicality, look at that. Does that make
19 any sense to you? It's more like 90%
20 coverage and we've got one drain and a
21 couple of arrows around that drain and some
22 arrows up at the right where there is a
23 drainage problem. The engineer said that.

24 So here's my practical solution to
25 this problem, I've tried to listen to both

1 sides here and I think from a practical
2 standpoint, both parties should want a
3 more-detail engineering analysis of the
4 storm water overflow on this project. More
5 so than this. More so than words. That
6 can be done. I don't think it takes a lot
7 of time, I don't think it necessarily takes
8 a lot of money. And I would think the
9 Baldridges would value that just as much as
10 the Kirbys. The Baldridges don't want
11 money into their new beautiful home, which
12 I admire them for doing, and I'm glad
13 they're doing that. The home was in
14 desperate need of an owner like them.

15 I can't speak to the architecture,
16 but that's, I think, why I would recommend
17 that you postpone this -- the construction
18 of this driveway temporarily until an
19 engineering analysis can be made and both
20 parties then can be reasonably satisfied
21 with a proper inspection that they've got
22 the water contained on this site. Thank
23 you.

24 MR. ZYCH: Thank you.

25 At some point we want to get back

1 to Ms. Kirby, but if we're accommodating
2 peoples' schedules.

3 MR. FISHER: Hi. I'm Hugh Fisher.
4 I've been sworn in. I reside at 2514
5 Fairmount Boulevard. I am also the
6 president of the Historic Fairmount
7 Association. I had submitted a letter to
8 the Board earlier.

9 It's an informal organization, but
10 it's been in existence for 20 years. And
11 my job as the president is to make that the
12 folks in the historic district on
13 Fairmount, which essentially goes from
14 Cedar to close to Lee Road, aware of what's
15 going on with projects and things of
16 interest, and we got enough concern over
17 this project that I wrote the letter and
18 there's 45 individuals who signed it
19 residing at about 29 addresses. So there's
20 a lot of concern on the street about the
21 impact of the project.

22 I'm thrilled that the Baldridges
23 are investing in this property. I'm
24 thrilled that they're apparently continuing
25 to do historical research on it. I

1 actually did the initial research for them
2 and sent that to them, so I'm thrilled that
3 they're continuing that. We welcome them
4 to the neighborhood, though it might not
5 seem it to them, but we all invest and
6 continue to invest significantly in our
7 very large historic Fairmount homes, so
8 we're happy about that.

9 We like to see projects that are
10 well planned and -- oh, and the other piece
11 of background is that I and my wife, Deanna
12 Bremmer Fisher, are responsible for -- we
13 did all the work to have Euclid Golf placed
14 on the National Register of Historic
15 places. So the integrity of the
16 neighborhood is of great importance to me
17 personally and to a lot of people as well.

18 And so our concern is -- other
19 people have said it -- is in the totality
20 of the project. That what we would expect
21 to see and what we would expect the City to
22 require is a complete plan as resolved as
23 soon as possible early on. That includes
24 landscaping and all of the impacts of the
25 variances that are going to be asked for.

1 In my opinion this particular --
2 the practical difficulty in this particular
3 -- with this particular variance was
4 created by the applicants -- was actually
5 created by the previous variance, so --
6 with the pool and where it wound up and the
7 fence. And that concerns me greatly.

8 I don't have a problem at all with
9 variances being granted because development
10 needs to be done, but my concern is that
11 this variance is being considered
12 discretely when it was actually caused by
13 the previous variance granted by this
14 Board. So that concerns me greatly. And
15 that's it.

16 MR. ZYCH: Thank you. Mr. Fisher,
17 as in an aside, I should chat with you at
18 some point, Tom Harvey got me -- and
19 somewhere in my office I have it, a
20 wonderful history of the Golf District.

21 MR. FISHER: My wife and I wrote
22 it.

23 MR. ZYCH: You did? Okay. It was
24 fascinating. Thank you. So you already
25 have that.

1 Who is -- Ms. Kirby --

2 MS. KIRBY: I think I get to go
3 now.

4 MR. ZYCH: -- welcome back.

5 MS. KIRBY: Okay.

6 MS. ROTHENBERG: And just for the
7 record, say your name one more time,
8 please.

9 MS. KIRBY: My name is Debra Kirby
10 and I live at 2621 Fairmount. This is my
11 husband. We own the property next door.

12 Would you mind putting up the full
13 site plan, please, that shows all the
14 driveways, everything.

15 MR. ZYCH: I think you went by it,
16 didn't you?

17 MS. KNITTEL: I'm sorry, I'm going
18 too fast.

19 MR. ZYCH: Is that it?

20 MS. KIRBY: That's existing
21 conditions. I'd like to see the site plan.
22 I think it's drawing No. 3. Nope, that's
23 only the corner.

24 MS. KNITTEL: I have the drawings.
25 Let me just go ahead and pull them up.

1 MS. KIRBY: Fine, if you -- yeah,
2 you know what, just do it from yours.
3 That's fine. That's perfect actually.

4 MR. ZYCH: And we can zoom in as
5 necessary.

6 MS. KIRBY: Is that 3?

7 MS. ROTHENBERG: Yeah. Let me --

8 MS. KIRBY: We did submit all the
9 various photos and things, but it's very
10 hard to communicate by looking at this
11 photo, look at that photo without having
12 them in context, so I would really
13 appreciate it if you could indulge me a
14 little bit that I put them on boards and so
15 I can relate them to each other --

16 MR. ZYCH: Sure.

17 MS. KIRBY: -- so I can explain
18 the story. And, honestly, it's really,
19 really very complicated.

20 First of all, I have to say that
21 we found out about this by searching on the
22 internet. The City sent the notice to the
23 owner who lived in our house ten and a half
24 years ago, so of course we didn't get it.
25 And I even had been calling regularly to

1 Vesta Gates because we own the fence and
2 they've been using the fence as the
3 property line.

4 So every time I came home,
5 something was gone, something was gone, and
6 I was afraid I was going to come home and
7 my fence gone, so I kept touching base with
8 Vesta, who was wonderful.

9 And I found this on the internet
10 by accident on September 14th and the very
11 next morning I called and I couldn't get
12 anybody in the City to talk to me.

13 I saw the site plan and it was
14 clear, it was very, very clear that --
15 well, let's look at it here. This is what
16 I called the builder's sketch because this
17 is the non-engineered drawing. I mean, all
18 of us can get a pen and pencil and make
19 lines and put them on here. This was done
20 by Woodbridge Construction I do believe and
21 presented. It was not engineered.

22 This was presented as part of the
23 Architectural Board of Review because there
24 was an approval for a fence. What was
25 presented was this was in the packet, but

1 the notice? I do. I said, well, who did
2 you send it to? And she said, oh, I was
3 given by the building department to send it
4 to Alfred and Helen Stanley. They lived
5 here ten and a half years ago. They're in
6 Canada. And I said, well, what? And she
7 goes, yeah, I thought it was kind of weird.
8 I thought maybe you rented from them or you
9 lived there because I knew you were at the
10 property. And in addition, this thing is
11 presented, our names are right here and yet
12 the notice didn't come to us.

13 Okay. Fine. Legally it's past 60
14 days and as Liz said, okay, we did this
15 notice, it was published July 5th in the
16 Sun Press. We don't get the Sun Press --
17 and actually I tried to buy it the other
18 day and look for this notice, I couldn't
19 find it anywhere -- I couldn't find it in
20 our regular like Dave's or Heinen's or
21 whatever.

22 So here's this drawing, I see this
23 and I'm like, wow, something is kind of
24 wrong here, this is making me nervous. So
25 I e-mailed the City, I tried to call the

1 City. Kara kindly did call me back and
2 said, okay, yes, we'll give you a
3 three-foot setback. I said, wait a minute,
4 that's not enough.

5 So I had to hire a lawyer in order
6 to get the City to talk to me. So that
7 weekend I showed this to a lawyer and he
8 says, well, we need to go to city council.
9 We go to city council on the 17th -- it's
10 my husband's birthday that's why I remember
11 -- and so they apologize for being ignored,
12 et cetera, and said, okay, we want the
13 planning staff to meet with you.

14 So we have a meeting that Friday.
15 In the meantime, I walk into the building
16 department and said, can I have all the
17 permits? So I got them. There were six.
18 Six. They started January 26th. The first
19 one I think might have been the one for
20 demolition and then there was one from
21 Tri-County Electric and there was -- the
22 last one was the pool permit in July.

23 So I'm reading all these permits
24 and I'm noticing some things about them.
25 So then the next day we go into our meeting

1 and it was so contentious, so adversarial.
2 I'm thinking this is my city, this is my
3 city, I'm a taxpayer. We've lived here in
4 our home ten and a half years. So I'm
5 thinking, what the heck?

6 So nobody is really kind of
7 listening. And poor Richard and Karen
8 didn't even get to say anything. Kara
9 didn't get to say anything really. And
10 then the meeting ends and nothing is
11 discussed about -- because I thought we
12 were going in and I'm saying, well, wait a
13 minute here, you know, first of all, the
14 fence -- they've got the fence as a
15 property line, it's not. I own the fence
16 and it's on our property, it's not on the
17 property line. And, second of all, let's
18 talk about some of the stuff. Well,
19 there's no discussion about that.

20 So then what happens is as we're
21 leaving the meeting I'm told by Elizabeth,
22 and we don't want to hear from you until
23 October 10th when they have to file for the
24 variance. Because they had just sort of
25 talked about having a variance and they

1 wanted to put them on the earlier meeting
2 in September and we're like, wait a minute,
3 they missed the deadline. So then they
4 said, okay, they'll have to go in the
5 November meeting and October 10th is the
6 deadline. We don't want to talk to you
7 until October 10th. This is my city, okay?

8 So then I'm trying to get -- you
9 know, following up and asking information
10 and asking questions and I'm told, you've
11 hired a lawyer, we can't talk to you. Then
12 if you want anything, you've got to write a
13 request from the State of Ohio.

14 Okay. So we do the information
15 request from the State of Ohio.

16 So I'm going to read to you -- I
17 was at the Cav's game on Wednesday night
18 and I got this e-mail from my city from a
19 guy named Nathaniel Hall, who I guess is in
20 a law firm in the city, who now I guess as
21 of October 23rd, he's added to the
22 assistant law director thing, and here's
23 what it says -- because I had -- you know,
24 we had to file these information requests
25 to get any -- because I wanted to get the

1 ABR -- I read in the minutes and it says
2 pictures are presented and then I'm seeing
3 a driveway. I wanted to see, well, how --
4 what are the design standards for the
5 driveway, so I just did e-mails asking
6 under official Ohio code section.

7 So none of the pictures ever
8 showed up, which is amazing to me because
9 today everybody is being so specific, but
10 the ABR pictures of fences that got
11 presented by Mr. Ducas, just disappeared
12 and nobody knows where they are. They're
13 mentioned in the record, they influenced
14 the decision of fences near the property.
15 Well, were they in Tudor 'A' district or
16 were they fences on 'AA', Fairmount, but
17 they've disappeared.

18 Now, everybody is being careful
19 today with us, but I wanted information and
20 those pictures have disappeared.

21 The other thing that came up is in
22 response to my question about -- to Richard
23 and Karen is I'd like -- can you explain,
24 you know, the driveway design. So, what I
25 got back was what Mr. Ducas had submitted,

1 some code sections saying this 25 radi for
2 the turning, blah, blah, blah, and I'm
3 looking at this and it doesn't have a
4 reference on it, so I see the code number
5 and I Google it. Santa Monica, Marin
6 County, standards for driveway design,
7 turning radi for new residential
8 subdivisions.

9 The second one, Georgia Department
10 of Transportation, turning radi, entering
11 highways in the State of Georgia.

12 The third document, 30, 40 pages,
13 it was an abstract presented at a symposium
14 in October of, I don't know, 1992 or
15 something in Washington and it was asking
16 questions about what are the issues for
17 driveways in the future.

18 So I had asked for that, so I got
19 that. And I e-mail back and said, can you
20 please explain this? How does this apply?

21 So this is what I get on Wednesday
22 night as my e-mail, Dear, Mrs. Kirby -- and
23 this is the attorney from some law firm in
24 town, Nathaniel Hall -- Dear, Mrs. Kirby,
25 the City of Cleveland Heights is in receipt

1 of your message dated November 21 regarding
2 the City's response to your public records
3 request. We provided all documents that
4 are responsive -- the pictures still have
5 disappeared -- the remaining questions
6 posed in your correspondence are requests
7 for information, not documents. Nothing in
8 the Ohio Public Records Act or any
9 additional law requires municipalities to
10 compile information in response to a
11 request for same. See State Ex Rel White
12 versus Goldsberry 85 Ohio, blah, blah,
13 blah. So this completes your request.

14 So the bottom line is I'm glad I
15 finally get to be heard by somebody that is
16 involved in this decisionmaking. Because
17 as a citizen of Cleveland Heights trying to
18 have a dialog when this -- when we spoke up
19 before city council and then had the
20 meeting and then they decided that all this
21 now needs a variance, then we knew, okay,
22 this is what we're discussing, this.
23 Perfect time to sit down with the City, sit
24 down with the Baldriges and the City and
25 say gee, what do we think about this? How

1 can everybody work together? Perfect time,
2 but no, don't show up until October 10th
3 and get that kind of letter when I try to
4 do a dialog. So I have a lot to say
5 tonight and I'm really sorry that this
6 situation got created and I think -- I
7 mean, I'm really sorry and I think you guys
8 probably want to go home, but we need to be
9 heard because this is not how a citizen --
10 we didn't expect a citizen of Cleveland
11 Heights would be treated this way -- and by
12 the way, this is where we are right here,
13 I'll show you the picture of that later.

14 So, anyhow, I show up on October
15 10th at 4:30 and the application has
16 already been submitted, et cetera. And I
17 said, well, can we just get a copy? Well,
18 it's not 5:00 yet. They have until 5:00.
19 I said, well, it's on your desk. Well, I
20 haven't stamped it yet. I mean, on and on
21 and on. The bottom line is of course they
22 didn't give it to me that day.

23 So they had to wait until they
24 reviewed. And it's like you can give it to
25 us and it doesn't -- it's not reviewed yet,

1 we know that, you've got ten days to
2 review. So anyhow that went on and on. So
3 everything would get delayed.

4 So our ability to get information
5 to address this and understand where's the
6 engineering, what's been done? I mean, the
7 permits turned out to be easy because there
8 is a database online, but guess what,
9 there's more than six permits filed for
10 this property so there's no permits for
11 anything that's happened after the pool.
12 And the pool permit was filed by Designer
13 Pools.

14 Designer Pools did the pool, the
15 pool. They've been offsite for months and
16 yet all this stuff is still going on and
17 being built.

18 So that's what I just want to say
19 to start so I do hope you'll indulge and
20 understand because everybody is talking all
21 around this and nobody is saying you've got
22 a development -- the Baldridges -- and I'm
23 glad they put those e-mails in there --

24 MR. ZYCH: If you could address
25 your comments to us, please.

1 MS. KIRBY: -- because July 9th --
2 July 9th I was talking to them because --
3 we'll get to that later -- the landscaping
4 that they all took down and aren't going to
5 pay for, I was trying to get it done. So
6 I'm talking to them on July 9th, they
7 didn't say they had a variance hearing
8 coming up. Nobody said anything about
9 that.

10 So then the Friday, I'm about to
11 start a paint job, I signed a contract for
12 a paint job, he had a deposit they had to
13 get it done by July 31 in the contract so
14 it's Friday, July 20, and so I thought you
15 know what, they're moving so much dirt
16 constantly and my -- it's 18 feet away, my
17 house from where they're moving dirt and
18 doing all this stuff, I better just e-mail
19 them because they're starting Monday. And
20 guess what, he -- Mike e-mails back, oh,
21 I'm so sorry, we're digging the pool on
22 Monday, you better not, there will be lots
23 of dirt flying. Well, that's the first I
24 knew of a pool. And by then it was already
25 approved.

1 And so basically then -- I still
2 didn't know it was approved, I still didn't
3 know, I didn't find out until September.
4 So then when I find out it's approved, then
5 the City decides that this is -- this part
6 is not approved, so we've been trying to
7 have a dialog and we haven't been able to.
8 We actually invited the Baldriges to a
9 meeting and they did meet with Lee and
10 Christina. I was in Boston with medical
11 treatments for my son so I couldn't be
12 there, and we explained our concerns about
13 the landscaping protection, my trees and
14 things they've taken down, drainage and
15 setback.

16 And Mr. Ducas said, oh, we can
17 give you three foot setback, we can. And
18 then when they did the drawings they
19 didn't.

20 So here's where nobody is talking
21 about -- I'll show you this because even in
22 the City's -- even in the City's
23 presentation did you see a picture of this
24 side of the property and my house? No, you
25 didn't. Nobody is talking about -- let me

1 get the -- nobody in this whole project is
2 considering -- ah, what happened? Oh,
3 well, there it goes.

4 This is us here. And our screened
5 porch which is over 30-feet long and goes
6 all along there is 18-feet away from the
7 fence. And literally I can stand right
8 there and do the pointer and right to their
9 window here to this now enclosed mudroom,
10 it's 29 feet. So that's where we are.

11 So everything that's happening
12 here really affects us. And that's our
13 fence. So nobody is talking about any of
14 this. Everybody is talking about all this
15 other stuff, but all this is ripped up.

16 So this is the before. And can
17 you see this? This is -- this is us. This
18 is our property. We have a large Tudor, a
19 large three-story Tudor with a ballroom on
20 the third floor. We have a big grand
21 staircase and a two and a half story foyer
22 and landing and we can see everything,
23 absolutely everything.

24 We get out of our bedroom, walk
25 onto our landing and the landing is just

1 big open, big huge windows two and a half
2 stories, and guess what we look -- the
3 first time I step out, I look right at the
4 parking pad. I look right at that. We go
5 down our steps, I see it. If we go up the
6 back staircase, you turn the corner to go
7 down, you turn, there's the big door, glass
8 door, and the whole porch on our second
9 story.

10 But our house is higher than them
11 in the first place, but literally we're on
12 our screened porch right there, our
13 screened porch is higher too. If we're
14 standing on our screened porch, we can see
15 right over the fence and see this whole
16 parking pad back here.

17 So for anybody -- I mean the
18 Baldridges have never been in my home,
19 Mr. Ducas has, he came in because I asked
20 him to look at our screened porch because I
21 thought when he's doing -- rescreening
22 their porch, he can rescreen ours. So he
23 walked -- when he walked in the front door,
24 walked to the screened porch and walked
25 out. So they don't know and they can't say

1 that I'm not affected and nobody can see
2 us, but here we are right here and that's
3 the driveway right there.

4 And this was our front yard. See
5 all those trees right there, that was our
6 front yard. And -- okay. While we're at
7 it, see these are all the before pictures
8 of all the greenery. Like they didn't look
9 good when they came up sideways, but this
10 is their -- the 2611, this is where the
11 pool is right now. See all this, all this
12 green space, the Tudor driveway, all this
13 is holding water, it's not just looking
14 beautiful and parklike, it actually holds
15 water.

16 And this tree -- see on this plan,
17 see this green tree right here, it's
18 literally right on the property line, see
19 it right there, that's a Japanese Katsura
20 tree. That was planted by the owners of
21 our house 40 years ago. A landscaper in
22 Girard had gone to Japan and came back. We
23 have a Japanese Katsura tree. We had a
24 beautiful climbing Japanese Hydrangea that
25 was on our property on their side of the

1 fence with this big of a trunk climbing up
2 and it came up to the top of the fence and
3 it went the whole length of 30 feet of our
4 fence with all these beautiful, beautiful
5 flowers and things.

6 Another one is in the back on our
7 stone, the original stone patio. It goes
8 all the way up our chimney. I mean, they
9 say I should take it off, but it's too
10 beautiful.

11 The third thing we have is a
12 Japanese maple and that's like just over
13 the fence right here in our stone patio.

14 But anyhow, so we -- this is our
15 tree, it grew, so it's not on the property
16 line. So now we co-own it with the
17 Baldridges. Well, guess what they did?
18 It's gone. And I'm sorry, but the City has
19 no right, absolutely no right to just wipe
20 off trees that belong to us. We showed
21 them -- that's the first thing we went to
22 the City and said. They got -- this for
23 sure literally just says the trees are on
24 the property line, there's two bump outs,
25 so they ignored that. We told the City.

1 And what they told us what we were
2 specifically told by planning, oh, we don't
3 get involved in boundary disputes. This
4 isn't a boundary dispute. This is a
5 development that you're reviewing and
6 you're letting these people use the fence
7 as the property line and it's not.

8 And I said, well, where we came
9 from in Richmond, Virginia, and I know
10 other jurisdictions whether it's Beachwood
11 or whatever, they require before you start
12 digging, before any permits are issued you
13 stake your property. That protects
14 everybody else. So anyhow they didn't
15 stake the property.

16 So -- where's my landscape plan?
17 Sorry here. Here it is. Okay. So, you
18 know, Mr. Ducas can stand here and say, oh,
19 we have respect and they respect the people
20 and this and that and talk about buildings.
21 Respect is of people. It isn't respecting
22 bricks and mortar. It's respecting your
23 neighbors, human beings who own something,
24 have an investment. I mean, our home is
25 very special to us.

1 And here's what happened, see all
2 this here now, see all that beautiful
3 greenery gone. See, this one holly there
4 that's circled, that's all that's left.

5 Because on December 21st of last
6 year three landscapers -- actually two, I
7 guess, hired by the Baldridges came over
8 ten feet into our property and took it all
9 down.

10 See this beautiful big wall, it's
11 mature -- it just cost us \$12,000 to
12 replace it. I mean they deny
13 responsibility, said it's the landscaper's
14 fault. I mean, the poor landscaper, I
15 mean, he's a guy in his 30s, he's got two
16 kids, he's got three tax liens on his
17 house, he didn't have a license to even
18 work in Cleveland Heights, he has no money,
19 no equipment, no relationships with
20 nurseries. He tried, he came up with six
21 Hemlocks and he planted them wrong so it
22 cost us another \$1,000 to fix six Hemlocks.
23 But six Hemlocks look like six rocket ships
24 that landed in the middle of this
25 beautiful, beautiful -- I mean it had

1 Rhododendrons, it had Ash trees, it had two
2 Dogwoods, it had everything else.

3 Well, yes -- see it's all this
4 area in yellow, they took it all down and
5 refused to pay for it still.

6 So anyhow -- so, yes, I'm sorry,
7 that is not part of this, but this
8 landscaping plan, to hear them say right
9 now, oh, we'll just build it now, we'll do
10 it nice. I'll show you other properties
11 the Baldriges have done, they have good
12 taste, they'll make it nice, nuh-uh, that
13 is not happening.

14 And I'll tell you what, one
15 example is when they presented this fence,
16 there were boxwoods, another time there
17 were Hornbeams, now it's back to boxwoods.
18 There's no control of what they're doing
19 and that is not right.

20 If they put this driveway in
21 without the three-foot setback and without
22 anything planned, when -- yeah, when is
23 somebody going to say, okay, by the way,
24 now let's do a landscaping plan and what
25 leverage does anybody have after the

1 fact -- oh, we want to think about it.
2 They bought the property last October,
3 they're building all this stuff, they have
4 time to think about landscaping other than
5 landscaping that's going to beautify their
6 own pool.

7 So, you know, people can come in
8 here and all talk, but what we're saying
9 and we want people to hear is the actions
10 and the City has let this happen because
11 it's for some reason not talking to us and
12 I don't understand why.

13 So the landscaping plan is very
14 significant here. And I actually met with
15 a tree preservationist with our landscaper.
16 And the important thing for here is that
17 now we've spent 12 grand and put all these
18 -- all these really tall Dogwoods and
19 Burning Bushes and all that to try to
20 connect -- it was an ark and there's a big
21 empty hole in this ark of mature plantings.

22 The landscaper said it's very
23 important that there be low shrubs here
24 that do not fight for light because these
25 things are brand new planted now and they

1 need light. So a landscaping plan with low
2 stuff in here is very important.

3 The second thing is this tree
4 needs to be preserved. Right now there's
5 two, not one, two dumpsters almost as big
6 as this room each, sitting on this tree.
7 It has been totally brutalized with
8 branches broken.

9 We've already started a tree
10 preservation plan on our side of the fence
11 to feed it. In fact, there's a letter in
12 the -- that we sent from our -- Derickson,
13 he and his son, they're both arborists with
14 two different associations, he's taken care
15 of our trees for years. He took care of
16 the Barnes' trees on this property who
17 lived there a while back.

18 But anyhow so we started the
19 feeding on this to protect this, but his
20 letter will say, this soil has been so
21 compacted now, particularly -- I mean, you
22 have this huge site to put two dumpsters,
23 you can't stick them -- you have to stick
24 them right on top of the roots. So that's
25 for there.

1 And then the screening for the
2 HVAC. That actually have a maple -- I
3 mean, an oak tree right here that's left.
4 And, I mean, the tree preservation plan --
5 I know, Richard, in lots of the cases I've
6 read, you've required tree preservation
7 plans. I mean, you're known for that, so
8 that should be done.

9 And then this our oak tree, which
10 see this, that's our property. See that?
11 That's the tree. That's actually from
12 their submittal, they took it down. Here
13 it is right here as well.

14 So, and then toward the back here,
15 there's probably -- in one place there's
16 four inches where the fence is, in another
17 place it's almost as much as eight inches
18 to 12 inches. And what they were were,
19 they match what was on our side of the
20 fence, they were really tall rose bushes
21 and a bunch of other things. So they
22 provided screening here, so at least when
23 we were in our house and standing on our
24 screened porch or the back porch we had
25 screening here. We have two beautiful big

1 trees here.

2 So all that is really important
3 and to say, oh, yeah, we'll do it, let's
4 just get this driveway thing done, I don't
5 understand what the big rush is. The house
6 isn't ready. Their house isn't on the
7 market, why is this being bulldozed when
8 we've been ignored -- we didn't get notice
9 then we've been ignored since we found out
10 about it on September 14th. Why can't
11 somebody call halt here? It just doesn't
12 make sense.

13 So -- okay. Now, I've got to look
14 back on my notes.

15 MR. ZYCH: Take your time.

16 MS. KIRBY: But, you know, one
17 thing I've got to say, all -- we're just
18 reasonable people. All we want is to say,
19 okay, you've done all this already, let's
20 just -- work with us on the landscaping
21 plan and work with us on the drainage and
22 hire an independent engineer. Well, guess
23 what, instead they hire outside legal
24 counsel to answer my questions about design
25 and stonewall us. I don't think that's a

1 good use of the City money and our taxpayer
2 money.

3 Why an independent engineer
4 couldn't be brought in, they used to do
5 that. Who literally can look at this,
6 engineer it. I would like our engineer to
7 look at it, too. Because right now, I
8 don't trust much of anything.

9 Let's go back to -- and the lack
10 of trust relates to -- actually I'm going
11 to get some water.

12 Mr. Zych, you asked a couple very
13 good questions and I actually had them to
14 write right away -- to answer right away.
15 The first one was, well, what the heck
16 difference does any other violation or
17 anything that happened affect this?

18 MR. ZYCH: Well, that's not
19 exactly how I put it, but you can
20 paraphrase it that way.

21 MS. KIRBY: Pardon?

22 MR. ZYCH: I said that's not
23 exactly what I asked, but if you wish to
24 paraphrase it, feel free.

25 MS. KIRBY: Well, was the general

1 gist just kind of like to code or other
2 violations, what do they really have to do
3 with this variance, I mean is that fair?
4 Is that kind of what you --

5 MR. ZYCH: Proceed. I'm not going
6 to quibble. Go ahead.

7 MS. KIRBY: But, I mean, roughly
8 was that what you were --

9 MR. ZYCH: Not really, but go
10 ahead.

11 MS. KIRBY: Okay. So anyhow, I
12 mean, here's the thing that we're talking
13 about here, we get this plan and right on
14 there it had existing catch basin. Well,
15 you know, there wasn't an existing catch
16 basin there, there wasn't. There, in fact,
17 was one over here.

18 And, yes, I did take those
19 pictures, but, yes, I do own the property
20 that's on that side of the fence that I
21 have to get to. And, yes, I have been
22 there with preservationists. And, yes, I
23 have been there with tree people. And,
24 yes, I have been there because Ms.
25 Baldrige asked me to cut down some dead

1 branches from ours, coming over there.
2 And, yes -- and, yes, Mike Baldrige has
3 said come in any time, walk in the house,
4 see everything, it's beautiful, we're so
5 proud of it. I haven't walked in the house
6 but I have been on the property.

7 But in addition, I've got to tell
8 you, each week there's at least three or
9 four contractors that are on my property.
10 There were surveyors, there were -- today
11 there was a concrete truck in the front
12 yard and the guys were over on like right
13 where my trees were being planted, plus
14 they dumped a whole bunch of stuff. We're
15 constantly having to move the stuff off our
16 property. So, yes, I was there, I did take
17 pictures and those are the reasons.

18 But anyhow, so we start with the
19 -- so we get this plan and everybody is
20 saying, oh, you don't have to apply -- hire
21 an engineer, just let Polaris do the
22 engineering -- oh, by the way, I want to
23 address Elizabeth's comment. See this
24 certification and see what it's for, March
25 2018, the 26th day. Same exact -- this is

1 -- this is the same drawing and the same
2 certification and the same existing
3 conditions, the same. It's been there --
4 the survey was done in March and it still
5 shows up existing conditions. That is the
6 concern.

7 And once we started complaining
8 about storm water, all of a sudden this
9 existing drain shows up which wasn't there.
10 It was there. Now, it's -- this is the
11 clay drain under the garage then now all of
12 a sudden there's blue pipe. Well, what it
13 relates to is you should get permits when
14 you're doing work and when you're doing
15 something with drainage. Because if you
16 get a permit, then somebody says, oh, is
17 this the right size? What's the
18 calculation? Can this carry it?

19 And more importantly -- I mean, we
20 have a drain just like this in our yard and
21 we get them blown out every four or five
22 years by AC Plumbing. Well, one year it
23 got stuck and they couldn't get it out
24 because they said it was tree roots, that
25 happens in Cleveland Heights. So what they

1 did is they redirected two drains -- two
2 downspouts to a different drain. Well, I
3 don't know if that's -- I don't know if
4 anybody knows if that drain works. And if
5 that's what he really is connecting to why
6 -- you have to get a permit, then somebody
7 inspects it, an engineer reviews it, and
8 then you know that when it's connected, the
9 pipe's the right size, where it's being
10 connected or if it's going down the
11 driveway, that's what you know.

12 So my concern -- my husband and I
13 just feel that the permits that haven't
14 been received or the inspections that
15 hasn't been done -- I mean, a fence -- a
16 builder's sketch of a fence with 11 -- 11
17 posts -- and you see them on the drawing,
18 they're 2x2 foot wide. See them down
19 there? This drawing that they submitted
20 shows 16. Here's -- right here there's 17
21 actually.

22 So the inaccuracy in these
23 documents is really, really concerning.
24 The lack of permits is concerning. And
25 we're looking to trust people who literally

1 haven't gotten every permit for whatever
2 reason and haven't gotten inspections for
3 whatever reasons and trust them -- trust
4 them to just do this and then trust them to
5 come up with a landscaping plan later. I'm
6 sorry, we're citizens of this City, this is
7 not right.

8 Okay. So let's go to some other
9 things here about accuracy. This is, I
10 guess, what was submitted as a plan as part
11 of your -- the ABR and CBA. We have
12 circled in red everything that has changed
13 on that and where it's striped in red,
14 that's added impervious surface.

15 So guess what? When we got the
16 calculations, when you do that calculation,
17 you're over 33 -- you're like 34%. So
18 guess what, there's a big variance sitting
19 there, but they got it, they built it, it's
20 there.

21 So when Mr. Ducas says, oh, an
22 extra 13% back here is insubstantial, it
23 isn't because they already got the extra
24 10% over here and they don't have to go
25 back.

1 I mean, look at these masonry
2 walls. ABR approval? No.

3 Permitting? Oh, I talked to the
4 building inspector I called him and I said
5 -- this is before people were told -- this
6 was a couple days before the City got the
7 vibe that they're suppose to say, "I'm
8 sorry, we cannot talk to you, you have
9 hired an attorney." Or the other line is,
10 "we're aware of the project, we cannot
11 discuss it."

12 So anyhow before that happened,
13 Rick Loconti answered the phone and I said,
14 well, where is your -- where's their ABR
15 approval? Where's their permits? It's
16 brick steps and it's masonry walls. He
17 said, they don't need it. I said, why not?
18 He said, everything in there is approved.
19 The drawings stamped on the back. I said,
20 well, I've got a copy of the building
21 permit and the four or five other pages are
22 stamped, but this one isn't. And then he
23 says, well, I don't stamp every page.
24 Well, you stamped four out of five, not
25 this one.

1 But anyhow, so he started
2 screaming at me. So anyhow if you had --
3 but that was apparently, that's in the pool
4 permit. So all this is in the pool permit
5 because the drawing is attached although
6 the front page doesn't say "retaining
7 wall", "deck", "steps". Nothing. All it
8 says is "pool". It doesn't say "other
9 work", it says "pool" by Designer Pools.
10 This other work has been done by, it looks
11 like Woodbridge's crew and his Amish team.

12 So here you are, all these things
13 have expanded. This is a violation of that
14 coverage ratio there and you wonder why we
15 are concerned to give 1% over 30% back
16 here.

17 Oh, the other thing is, let's talk
18 about the other thing, the grading -- can
19 you guys see this? These were photos that
20 were presented -- we put them together.

21 MR. HOEN: I could actually see it
22 better when it was back there.

23 MS. KIRBY: I'm sorry.

24 MR. PORCELLI: It's too close.

25 MR. HOEN: I can't see over the --

1 MS. KIRBY: Okay. We put them
2 together and kind of organized them.
3 Because when you see them, it's like
4 looking at a photo album when it doesn't
5 have scenes like "Christmas" or
6 "anniversary" marked down.

7 So this is, as you say, the front.
8 And this was all the stuff that came down
9 here, by the way. And there's the -- what
10 it was, but this is my side over here where
11 we live. See this right there? That's the
12 Fairmount driveway.

13 Now, the existing conditions say
14 those are the grades. Well, look at all
15 those little holes and all that stuff all
16 there. That is not the same as March 26th
17 and yet it's presented as existing
18 condition. There it is again.

19 Okay. Now this is -- this is what
20 got presented for the ABR and BZA meeting.
21 I mean, that's a backyard, that looks like
22 grading to me. They ripped out a driveway.
23 It says "do not disturb", "do not grade",
24 "do no move earth." No permit. That got
25 all done before there was even an ABR or a

1 BZA approval.

2 And that's the Tudor driveway as
3 it is there, but there's the Tudor driveway
4 there. So what our engineer said in his
5 report, this needs to be all regraded and
6 brought up to the grades that are shown.
7 They're looking at grades from March 26th
8 and putting arrows. Well, the water is
9 going this way. Well, it isn't. And where
10 you've got the great big hole for the tree,
11 it's definitely going down that hole.

12 So these are all what that side of
13 the site looks like. This is the front
14 yard. And that's the whole front porch
15 stoop, whatever, got taken off. And they
16 actually took out all the stuff from the
17 front of the -- around the house and that's
18 also -- now, this is -- this has got to be
19 put up higher because this is not working
20 very well -- and I don't really care if
21 this looks so unprofessional, it's
22 information I'm trying to get to you and I
23 want to be sure I can, okay? Do you mind?

24 MR. ZYCH: Please continue.

25 Although those are now having been referred

1 to are part of the record, so we'll need to
2 retain all of those pictures, correct?

3 MS. KIRBY: Pardon?

4 MS. ROTHENBERG: Yeah, I couldn't
5 get a straight answer about whether or not
6 they want them as part of the record.

7 MR. ZYCH: All right.

8 MS. KIRBY: Everything has been
9 submitted. Yes, we would like them,
10 everything to be part of the record. Every
11 letter that's presented, every photo --

12 MS. ROTHENBERG: We're just
13 talking about the boards.

14 MS. KIRBY: That we took pictures
15 of them so you can have them. And
16 basically we have them tonight, but we can
17 give you pictures of them, digitally.

18 All they are is an accumulation of
19 the things that already got presented, just
20 organized.

21 MR. ZYCH: But, Ms. Kirby, if I
22 can, until -- we'll need to maintain
23 possession of the boards --

24 MS. KIRBY: That's fine, you can
25 retain and then I'll just pick them up

1 after we get -- whatever. Because I'd like
2 to maintain this information.

3 MR. ZYCH: Well, they will be
4 preserved, but we need to have an accurate
5 record in case there's any further
6 proceeding, so --

7 MS. KIRBY: But I mean a digital
8 picture --

9 MR. ZYCH: Ms. Kirby, if I may, if
10 I may?

11 MS. KIRBY: -- of that won't work?

12 MR. ZYCH: We will retain the
13 physical exhibits --

14 MS. KIRBY: Okay.

15 MR. ZYCH: -- if there is
16 something that can be substituted for them
17 that everyone is satisfied with, then we
18 can return them, but because this has
19 become part of the sworn record, we will
20 need to maintain the physical boards --

21 MS. KIRBY: That's --

22 MR. ZYCH: -- and then deal with
23 it later.

24 MS. KIRBY: I fully understand,
25 that's fine. I just thought a digital

1 picture of the board would be -- you know,
2 take up less room. But that's fine, I'll
3 be happy to do that.

4 Okay. So here we are with how --
5 so the grading plan for this area is what
6 we think is important. That they have to
7 pull a grading permit. That was not in the
8 conditions. The conditions is get a
9 driveway permit.

10 Well, if they go and pour a
11 driveway on this stuff right now, there's
12 definitely going to be a storm water
13 problem. So the first thing is they have
14 to get a grading permit and the grading
15 permit needs to be shown to an engineer and
16 looked at. And we'd like our engineer
17 there. Because he said in his report this
18 -- I mean, you're only talking about, you
19 know, a nine to ten-foot driveway and if
20 the things are off a half an inch or six
21 inches, it's going to go in the wrong
22 direction.

23 The only thing they said they're
24 providing on this site are two trench
25 drains on this side. There's nothing else

1 going for this driveway. And they
2 literally say in their variance
3 application, these will be asphalt or
4 concrete because nothing else can be
5 plowed.

6 Well, my friend, Donna Leary
7 Nowak, on Edgehill, they put in a round
8 driveway and you made them, middle of their
9 driveway had to be permeable brick.

10 So why does the staff let a report
11 come in that says nothing else can be
12 plowed? The driveway across the street,
13 the 2612, the mansion, which they were
14 comparing the 46% to -- I don't know if you
15 know that it was Al Ratner's home, you
16 know, we're right across the street, they
17 take up two lots. So their frontage is 165
18 feet.

19 Second of all, Ruth -- I talked to
20 Ruth this morning and she said make sure
21 everybody understands, this was original to
22 the house. When the house was built, all
23 these gardens were there, the driveway was
24 there, and it's brick. It has 12-inch
25 drains running through the whole thing, and

1 in addition the other part is cobblestones,
2 the half circular thing.

3 So, first of all, that's a mansion
4 covered with one of the most magnificent
5 gardens in all of Cleveland. And you can't
6 see her parking pad -- I think we have --
7 do we have pictures of -- are they in this
8 thing? Can you find what number and we'll
9 pull them up?

10 So, you know, the staff can talk
11 about things like percentages and numbers,
12 but the reality is their's is 46% coverage
13 is the most beautiful mansion with the most
14 gorgeous coverage and you can't see it
15 whereas this is a totally different story.

16 Okay. So now the other things
17 that are inaccurate. The columns, we've
18 talked about those.

19 Okay. Right there. Okay. All
20 original to the house. And see this brick?
21 And Ruth says 12-inch drains along their
22 whole -- this brick driveway.

23 MR. ZYCH: Which exhibit number
24 are we looking at?

25 MS. KIRBY: Pardon me?

1 MR. ZYCH: Which exhibit number
2 are we looking at for the record?

3 MS. KNITTEL: It's Exhibit No. 31.

4 MR. ZYCH: Exhibit No. 31. Thank
5 you.

6 MS. KIRBY: Okay. Now, let's talk
7 about something else that I thought I
8 heard. I thought that Mr. Ducas said by
9 the time we found out we had to get the
10 variance for the driveway, we had already
11 done the construction.

12 September 23rd, 2018, it's only a
13 pool, there's not a single column. Even if
14 there's a footing that was poured there,
15 the meeting was on September 21st, so
16 basically I think on September 23rd
17 everybody knew that they had to go back for
18 the variance.

19 Even if they had poured footings
20 in those two or three or four days or
21 whatever or started to dig the trenches,
22 oops, we've got to get a variance, we
23 better not spend all the money and put in
24 pillar number nine, ten, 11, 12, 13, 14,
25 15, 16, 17 because we've got to get a

1 variance and what if this variance is not
2 approved because of the fence?

3 So, I just -- we need to be really
4 transparent here about exactly the facts.

5 Now here is a picture -- this is
6 October 13th, okay? So this picture is
7 also in our -- do you have the one with the
8 columns? With the circles around the
9 columns from September 23rd?

10 So, yes, on September 23rd -- I
11 mean, October 13th, October 13th, which is
12 three weeks after knowing -- then -- now
13 you start to see concrete going up. The
14 concrete foundation -- and this is -- these
15 yellow lines show where the driveway is
16 going to go, the relocated driveway.

17 Well, if you know you have to get
18 a variance to relocate the driveway why
19 would you put those there?

20 MS. KNITTEL: 31?

21 MS. KIRBY: So -- did you find
22 them? Did you find what number it is?

23 MS. KNITTEL: I'm sorry, if we
24 could just wait a minute and I'll get the
25 exhibit she's looking for.

1 MS. TIZZANO: It's number 32.

2 MS. KNITTEL: Okay. 32 and --

3 MS. TIZZANO: Photo No. 22. I

4 don't --

5 MS. KIRBY: Yeah, see, this works.

6 MS. KNITTEL: Yeah, no, we're
7 fine. I'm sorry, 22? I'm going to scroll
8 down -- oh, I see, it's got numbers at the
9 top up here, too.

10 MS. ROTHENBERG: Oh, yeah.

11 MS. KNITTEL: Let's see if I can
12 do this, to go a little faster, guys. 22
13 -- there we go, 22.

14 MS. KIRBY: 22, that's 32.

15 MS. ROTHENBERG: So that's 18 --

16 MS. KNITTEL: Oh, I was looking up
17 -- I'm sorry. Oh, I see.

18 MS. ROTHENBERG: That's okay.

19 MS. KNITTEL: Sorry, I was going
20 by --

21 MS. KIRBY: No problem. It's no
22 -- that's -- okay. Keep going.

23 MS. ROTHENBERG: That's 22, go up.

24 MS. KNITTEL: Go up?

25 MS. ROTHENBERG: That's 22, she

1 said 22, that's 21.

2 MS. KIRBY: No, it's --

3 MS. KNITTEL: Right there --

4 MS. ROTHENBERG: She wanted 22.

5 MS. KIRBY: Okay. This is the
6 one, Christina. Look at the picture, this
7 is the one --

8 MS. ROTHENBERG: Oh, my God.

9 MS. KIRBY: -- with the columns
10 there, with the circles up the driveway,
11 not the number of columns, this one right
12 here.

13 Well, anyhow, that's okay, I don't
14 want to waste any more time, but so here's
15 the bottom line, here you have now three
16 weeks later, you have the foundation and
17 you have the concrete, the pillars aren't
18 finished. So now -- this is what I want to
19 talk about -- can you go ahead and put the
20 full site plan up --

21 MR. ZYCH: Can I interrupt you for
22 a moment, Ms. Kirby, just schedule wise,
23 we've got, again, respect the court
24 reporter --

25 MS. KIRBY: Pardon?

1 MR. ZYCH: I said we need to
2 respect the court reporter who's recording
3 this. How much longer do you anticipate
4 going?

5 MS. KIRBY: I don't think too much
6 longer, this is just a key thing, honestly.

7 MR. ZYCH: No, no, look, I'm not
8 trying --

9 MS. KIRBY: I won't --

10 MR. ZYCH: -- I'm not trying to
11 shorten what you're doing, I just want to
12 make sure if we need to take another break
13 for the court reporter --

14 MS. KIRBY: Oh, okay.

15 MR. ZYCH: -- depending on how
16 much longer you would like to go.

17 MS. KIRBY: If you can just maybe
18 hold it. Okay. So see this drawing here
19 --

20 MS. ROTHENBERG: I can't shut it
21 off, I'm sorry.

22 MS. KIRBY: Excuse me?

23 MS. ROTHENBERG: I'm just talking
24 to the court reporter.

25 MR. ZYCH: She's speaking to the

1 court reporter.

2 MS. ROTHENBERG: I'm sorry, I
3 can't shut off the fan. So if you could
4 speak into the microphone, that would
5 probably help him.

6 MS. KIRBY: Oh, I'm sorry.

7 Okay. Can you go ahead and put up
8 the submittal, Sheet 3 --

9 MR. ZYCH: I had a question,
10 again, for the interest of the Board and
11 the court reporter, rough approximation of
12 how much longer you're going to be taking?
13 It's up to --

14 MS. KIRBY: Maybe 15 minutes.

15 MR. ZYCH: All right. We're going
16 to take a short break then.

17 MS. KIRBY: Okay. That's fine.
18 Thank you.

19 MR. ZYCH: We're off the record.

20 - - - -

21 (Thereupon, a recess was had.)

22 - - - -

23 MR. ZYCH: Ms. Kirby, you still
24 have the floor.

25 MS. KIRBY: Okay. Thank you, very

1 much. I won't be too much longer.

2 I want to introduce into the
3 record. This is a new exhibit, it came
4 today. It's from Howard Hanna, from the
5 manager of the Cleveland Heights office
6 basically saying, to whom it may concern:
7 Water intrusion of a property can have an
8 adverse impact on value and marketability.
9 The State of Ohio requires all sellers to
10 complete a residential property disclosure
11 form when selling a property. Section D of
12 the State of Ohio property disclosure form
13 asks the seller to disclose to a buyer
14 about water intrusions, do you know of any
15 previous or current water leakage, water
16 accumulation, excess moisture of defects
17 including, but not limited to, below grade
18 basement or crawl space. Please feel free
19 to contact me. It's signed by the manager,
20 Gwen Bradley, of Howard Hanna, Cleveland
21 Heights office.

22 I just wanted --

23 MR. ZYCH: If I may for a second,
24 if I may for a second --

25 MS. KIRBY: Pardon?

1 MR. ZYCH: -- we would obviously
2 need to see it --

3 MS. KIRBY: Yeah, I'm going to
4 give it to you all. She just gave it to
5 me.

6 MR. ZYCH: How many copies do you
7 have?

8 MS. KIRBY: That's the only one,
9 but I can print it out, it's a digital
10 copy.

11 MR. ZYCH: We've been inundated
12 with last-minute exhibits -- we'll take
13 them.

14 Can you explain how this came to
15 be? I mean, it says, "to whom it may
16 concern." Was this something that was
17 requested of Howard Hanna or did they just
18 do this on their own?

19 MS. KIRBY: My realtor came to me
20 and said, you better do something about
21 this project next door. You better make
22 sure you speak up because if you get water
23 in your basement, it's going to affect your
24 -- whatever.

25 So the manager of the Cleveland

1 Heights office called me and she did that
2 to present to the commission.

3 MR. ZYCH: Did you request her to
4 do that?

5 MS. KIRBY: I asked her if she had
6 an opinion and if they would be willing to
7 put it in writing and they said yes.

8 MR. ZYCH: Did you ask if Ms.
9 Bradley could appear in person?

10 MS. KIRBY: Yeah, I did. And her
11 daughter had some kind of concert tonight
12 so she couldn't.

13 MR. ZYCH: When did you ask her?

14 MS. KIRBY: Well, she called me
15 yesterday. When she called me yesterday
16 and said I'm the manager of the office.

17 MR. ZYCH: I'll pass this among
18 the board and without objection we'll make
19 it part of the record. Please continue.

20 MS. KIRBY: So, I guess the thing
21 about the water is in a year from now, if
22 we have water in the basement, it will
23 affect our property value.

24 No. 2, remediation. Then you know
25 what happens when you have any insurance

1 claim with water, for three years your
2 rates go up, et cetera, et cetera. So we
3 know that now is the time to address the
4 water issue, not a year and a half from
5 now.

6 Now, the last thing about creating
7 hardship, you can see where the pool is, it
8 is 21 feet from the coping of the pool to
9 the fence. 21 feet.

10 Now -- these aren't exactly right
11 because the columns are -- anyhow, this was
12 -- this was an attempt to say is there a
13 way that this can be mitigated? And so
14 based on the stuff on CAD, based on where
15 the pool is, exactly the last row of
16 fencing right there, just got moved to
17 where the next column is, which is
18 literally 15 feet.

19 So 15 feet loss of grass right
20 here would create the scenario. This is
21 close to the existing driveway and this
22 one -- the pool permit has the pool cited
23 at 55 feet. That's where the pool permit
24 has it cited. It got built here, which --
25 whatever.

1 site contractor, which was Escape
2 [phonetic], it was Alex Guenther, and he
3 actually testified for her on all of her
4 variances, her and John. And they got
5 multiple variances.

6 And he said -- I mean, he pulled
7 out the file and went through everything,
8 he had to get a fence permit even though he
9 got ABR and BZA approval. He had to get
10 permits for all the things they did.

11 So allowing this to just happen so
12 quickly, makes us very nervous. And what
13 we care about now is keeping this to a
14 minimum. Something like this -- you know,
15 if it's 29, 30, 31, 32%, I mean, Mr. Ducas
16 said they could get it down. I think
17 there's another code provision that you
18 can't exceed -- you can't enlarge a parking
19 pad in order to get a variance. And this
20 actually exceeds the parking -- the former
21 parking pad by 184.5 square feet.

22 So even to get a variance, you
23 can't go over the maximum. That's what the
24 code says, but I'll leave that to the
25 lawyers.

1 really, really appreciate it, so thank you.

2 MR. ZYCH: Ms. Kirby, there's no
3 reason to apologize. As I said at the
4 beginning, we exist to decide these matters
5 that are of importance and we like the
6 information --

7 MS. KIRBY: Well, thank you. And
8 I think there's one more -- I know you all
9 said, okay, if the rear yard gets bigger --
10 can I have that one second?

11 The point is when you define the
12 yards like this -- and I think when
13 Christina talked about it, what she was
14 explaining is based on the way they've
15 decided to define "rear yard", this one
16 doesn't get counted as anything.

17 This is just like free -- oh, it's
18 free space, you can cover it 100% with
19 impervious stuff, okay? Well, that's kind
20 of what's happening here, but when the rear
21 -- the yards are defined -- I mean, I can't
22 believe the code really wanted that to be
23 left out.

24 So the bottom line is that's the
25 rear yard and, yes, the denominator gets

1 bigger but the variance is for total
2 accessory use coverage, which is 66%.

3 So anyhow, that's why -- I'm just
4 saying because you guys question how it
5 changed with the numerator and denominator,
6 that's the explanation. It's not a parking
7 variance, it's a different -- but I
8 understand that you all decided what it is,
9 I just didn't want you to think that we
10 were like stupid and not understanding the
11 change in numerator, denominator, but thank
12 you very much and we really appreciate it.

13 MR. ZYCH: Thank you.

14 MS. ROTHENBERG: I just have one
15 request before you sit down, Ms. Kirby. If
16 you could stack all of the things that are
17 a part of the record now in one place so it
18 doesn't get lost in the shuffle of --

19 MS. KIRBY: Yes, I'd just like to
20 take a digital photo of everything before I
21 leave.

22 MR. ZYCH: Yes, that would be
23 fine.

24 MS. ROTHENBERG: That's fine.

25 MS. KIRBY: Thank you.

1 MR. ZYCH: All right. Is there
2 anyone else who wishes to testify?

3 (Unintelligible)

4 MS. RAJKI: Yeah, I did not get
5 sworn in.

6 MR. ZYCH: Well, then you have to
7 -- hold on -- hold on, you need to be sworn
8 in before you testify.

9

- - - -

10 (Thereupon, the witness was sworn in.)

11

- - - -

12 MR. ZYCH: If you could approach
13 the microphone and give us your name and
14 address, please.

15 MS. RAJKI: Joyce Rajki, 2328
16 Stillman Road.

17 We heard this story when we came
18 to the council meeting last week for
19 another purpose and then we got interested
20 in it and came back tonight. It seems to
21 me that there needs to be some procedural
22 changes to the planning, building, these
23 various departments that these people -- I
24 never met them before last week -- that
25 these people had to go through to get to

1 this point. It's sort of a waste of time
2 for people here because something should
3 have been done differently earlier. And I
4 think Mr. Kool, who left already, made some
5 kind of a comment at the council meeting
6 last week about this, that maybe something
7 better be looked into on this because the
8 gigantic waste of time and money for very
9 talented people on all sides of this issue.
10 Thank you.

11 MR. ZYCH: Thank you, ma'am. Is
12 there anyone else who wishes to testify?

13 Well, you'll have an opportunity
14 but this is --

15 (Unintelligible).

16 MR. ZYCH: Yes, sir. Give us your
17 name and address for the record, please.

18 MR. POTINTEU: Good evening chair
19 members and chairman of the Board. My name
20 is Tiberiu Potinteu. If you have any
21 questions, you can address me as TB. It's
22 easier that way.

23 Earlier today it was mentioned --

24 MR. ZYCH: Your address, please.

25 My address is 8222 Tilby Road in

1 the City of North Royalton, Ohio.

2 MS. ROTHENBERG: Could you spell
3 your name.

4 MR. POTINTEU: First name is
5 Tiberiu. T as in Tom, I as in Ignatius, B
6 as in Bob, E as in Edward, R as in Richard,
7 I as in Ignatius, U as in Ulysses. Last
8 name Potinteu. P as in Paul, O as in
9 Octavus, T as in Tom, I as in Ignatius, N
10 as in Nancy, T as in Tom, E as in Edward, U
11 as in Ulysses.

12 MR. ZYCH: Thank you, sir.

13 MS. ROTHENBERG: Thank you.

14 MR. POTINTEU: Earlier today it
15 was mentioned that there was a student from
16 the University of Cincinnati who attended
17 the College of DAAP. I am that student.
18 I'd like to keep my testimony extremely
19 brief, I only have two points that I'd like
20 to make.

21 The first point is that in the
22 academic scene debate is encouraged. It's
23 important to speak both sides and to argue
24 and to have your point made. I would like
25 to say that anyone who had the, I would

1 say, privilege, I hold myself in high
2 honor. Anyone who's had the privilege of
3 teaching me knows that I am meticulous and
4 deliberate.

5 And I want to affirm today that
6 the drawings that were submitted to the
7 City were not in any way deliberate or
8 meticulous.

9 The first point which was
10 mentioned many times today was the fact
11 that on the drawings which --

12 MS. KNITTEL: Do you want one of
13 the drawings again?

14 MR. POTINTEU: Yes, the ones that
15 you presented today.

16 MS. KNITTEL: Oh, okay. Sorry.
17 They just instructed me to put something
18 else up there.

19 MS. ROTHENBERG: Sorry.

20 MS. KNITTEL: That's okay. One of
21 these?

22 MR. POTINTEU: Yes. Can I have
23 the laser pointer? Right here. 107
24 recorded, 107 calculated. I took the pdf
25 into Auto CAD. I cannot alter the pdf in

1 any way. I scaled it, I checked three
2 times. That line is not 107 feet. It is
3 115 feet. The drawing is 115 feet. And on
4 the submitted drawing to the City, it is
5 labeled as 107.

6 The inaccuracies of these drawings
7 need to be addressed --

8 MR. WONG: Excuse me, sir. The
9 survey has a mark on it at 7.98 feet from
10 the corner and there's a notation called
11 the cord. The cord is 7.98 feet from the
12 dimension 107.02, and that gives you the
13 total dimension 115.

14 MR. POTINTEU: I understand.

15 MR. ZYCH: Mr. Wong, just so I
16 understand, so what you're saying is the
17 drawing is, when you take into account the
18 legend and the other features, it is indeed
19 accurate?

20 MR. WONG: Right. It's surveyor
21 speak. Architects don't normally speak
22 that.

23 MR. ZYCH: But so what you're
24 saying is this is an accurate
25 representation of --

1 MR. WONG: It is. They use cords.

2 MR. PORCELLI: There's actually a
3 small radius at the end of that straight
4 property line.

5 MR. WONG: Yeah, there's a little
6 bend to that little end piece at 7.98 feet.

7 MR. ZYCH: Okay.

8 MR. POTINTEU: Continuing on. The
9 second point was mentioned today that if
10 the denominator increases, then the number
11 -- the overall end sum decreases. Logic of
12 math.

13 What I would like for the Board to
14 acknowledge is the rate of change of that
15 denominator. If the rate of change of the
16 denominator is smaller than that of the
17 numerator, then that does not necessarily
18 mean that the end number is smaller. It
19 can very much mean that the end number is
20 actually bigger than what we originally
21 started with.

22 MR. ZYCH: Let me ask a question
23 in that regard. If -- I'm going to test
24 Mr. Wong, my mathematical understanding --
25 if you hold the numerator constant and

1 increase the denominator, the resulting
2 ratio of fraction is indeed smaller,
3 correct?

4 MR. POTINTEU: In that particular
5 scenario, yes.

6 MR. ZYCH: Okay. Please proceed.

7 MR. POTINTEU: Can you please
8 bring up drawing 28, please.

9 MR. ZYCH: 28 we're talking about?

10 MR. POTINTEU: Yes.

11 MR. ZYCH: Had we had copies.

12 Well, that's photograph 28. They
13 don't have tabs. All right. Anyone else
14 on the Board want to look at this as well?
15 Please proceed.

16 MR. POTINTEU: I would like to say
17 that just looking at the calculations, the
18 area that was calculated, based on the
19 drawings that were submitted, yes, the
20 denominator increased, but the rear yard
21 includes what is behind the house. The
22 numerator did not stay the same.

23 MR. ZYCH: Isn't -- I'm sorry,
24 isn't the numerator, the non-changing
25 coverage presented by the driveway that is

1 contained within what the code defines as
2 the rear yard, that's the numerator. Are
3 you saying that that changes in any regard?

4 MR. POTINTEU: Yes.

5 MR. BROOKER: Mr. Chair?

6 MR. ZYCH: Yes.

7 MR. BROOKER: The point that he's
8 making and --

9 MS. ROTHENBERG: Speak up so the
10 court reporter can get you, Denver.

11 MR. ZYCH: Yeah, if you could
12 speak into the mic and speak louder,
13 please.

14 MR. BROOKER: As I understand
15 it -- and you're right in terms of parking
16 and driveway coverage, that numerator stays
17 the same. But what doesn't stay the same
18 is the total impervious coverage of the
19 site. Because now you have to add
20 additional patio and terrace area to the
21 number. And there's the contention in the
22 whole case.

23 MR. ZYCH: Right. But then again
24 that depends upon what they define the rear
25 yard to be --

1 MR. BROOKER: Right.

2 MR. ZYCH: -- which is different
3 then what our code defines it to be.

4 MS. ROTHENBERG: Uh-huh.

5 MR. BROOKER: Right.

6 MR. ZYCH: Please proceed.

7 MR. POTINTEU: I would like to
8 thank the Board for their time. Thank you.

9 MR. ZYCH: Thank you. And I
10 appreciate it. And by the way, best of
11 luck at DAAP, it a fabulous school.

12 MR. POTINTEU: Thank you so much.

13 MR. ZYCH: All right. Is there
14 anyone else who wishes to testify?

15 With that the public hearing is
16 closed. We will then have the applicant or
17 the applicant's representative to have the
18 opportunity and have been waiting patiently
19 -- let me say one thing, I understand that
20 it's difficult for people to come and
21 testify in these settings, particularly
22 with regard to their neighbors, it is not
23 easy, and we take it for granted because we
24 get used to it, hearing it so often. And
25 so whether it's the applicant or the

1 neighbors or others, we certainly
2 appreciate, you know, the difficult
3 circumstances that it presents us, but you
4 don't have to worry on our behalf, we
5 voluntarily do this, we signed up for this
6 duty and we're happy to do it.

7 So, Mr. Ducas, you have been quite
8 patient and quite a lot has been said, so
9 if you would like, please come to the
10 microphone -- you've already identified
11 yourself for us -- and feel free to address
12 any of the comments that have been made.
13 And just again, if you can address all
14 comments to the Board.

15 MR. DUCAS: Okay. Again, thank
16 you. David Ducas, Woodbridge Homes. And I
17 will do my best if -- I'm going to try to
18 just bullet point some things rather than
19 have an in-depth discussion. Some things
20 need to be addressed, some things we won't
21 address, and some things are just -- I'll
22 discuss that are just kind of the nature of
23 the relationship that apparently has
24 dissolved despite the Baldridges attempts
25 and otherwise.

1 The -- and I forgot her name, but
2 the female attorney who represented them,
3 made a couple comments. First of all, all
4 these CAD demonstrations that were
5 supplied, we have had no opportunity to
6 view those. And I thought that there was a
7 protocol for submitting things that gave
8 both parties the opportunity to review
9 those.

10 So the veracity of these to me,
11 whether they're correct or not, has to be
12 questioned. And with respect to that,
13 we've been lambasted about the poor
14 drawings that we presented, the builder's
15 sketch, which by the way was done on a CAD
16 system. It was done in an overlay of the
17 surveyor's drawing as well, so it was not
18 just randomly drawn.

19 We've been provided from Polaris,
20 a civil engineering drawing that has civil
21 engineering stamps and surveyor's stamps.
22 They provided, again, last-minute
23 questionable drawings that don't seem to
24 reflect the understanding of the code.
25 That with all respect to Tibie -- as I

1 believe that's what he asked us to call
2 him -- are done by an architecture student
3 who has how many years of practice in the
4 field? And clearly didn't have an
5 understanding of the basic concepts of site
6 plans and surveys with respect to the
7 chords, tangents, and missing measurements
8 that they felt we did not include.

9 They discussed multiple times that
10 based on their assessment, the rear yard
11 area has actually increased. Well, if it's
12 actually increased and the enumerator, the
13 -- according to the way we understand the
14 code I guess, the way we were told the code
15 works, they've increased all the way to the
16 side lot line minus the side yard. We
17 don't need a variance. And I believe
18 Mr. Chilcote actually said that we don't
19 need a variance in one of his documents.
20 He's claiming that we maybe don't need it
21 based on accessory usage, but I haven't
22 done the numbers, but I'm guessing that the
23 same would apply for the variance that
24 we're requesting if we apply their method
25 of rear yard. And what actually represents

1 the rear yard, it's a straight line across
2 the back of the garage.

3 Lots of pictures were taken on
4 site. At the end of September we clearly
5 asked that they do not step on the site
6 anymore.

7 It's very obvious, regardless of
8 the position you take on their property,
9 that many of these pictures were taken
10 without the permission of the Baldridges.
11 They were done -- taken by trespassing and
12 there's no other way about it.

13 And what I find immensely -- well,
14 stressing, quite frankly, is a member of
15 the Bar addressed you and said she didn't
16 know where those pictures came from.
17 Perhaps she didn't, but Mrs. Kirby clearly
18 said she was on the property and took the
19 pictures.

20 I would find it hard to believe
21 that an intelligent person, member of the
22 Bar, was not aware of that. And I would
23 add that she was under oath when she said
24 that.

25 We feel that regardless of the

1 conditions that ultimately come out of this
2 and any potential future meetings, we would
3 like the opportunity to investigate the
4 basement at the Kirby's house. While they
5 have said that Riverstone has deemed it to
6 be dry, I don't think that's good enough.
7 He's a representative of them representing
8 their interests.

9 Mrs. Kirby, if you do your
10 research, has a litigious background and
11 has sued multiple parties for amounts
12 consistently of \$25,000. We would like to
13 make sure that the basement is in fact dry
14 and we would go on record requesting that.

15 At no point have we denied
16 discussing landscaping with the Kirbys. At
17 no point have we denied discussing any
18 amount of this project with the Kirbys.

19 I think that the Baldriges were
20 absolutely shocked when what seemed to be a
21 cordial relationship terminated with Mrs.
22 Kirby having her attorney fire off a series
23 of letters demanding various results,
24 investigations, et cetera, from the City.

25 The Baldriges have in no way

1 shrugged off discussing landscaping or the
2 other items. Instead after doing their
3 best to be a great neighbor -- and whether
4 or not that's denied, I'll talk about that
5 in a minute -- letters from attorneys
6 suddenly showed up without any effort to
7 have an open neighborly discussion. So if
8 you want to talk about how people are
9 treated, Mrs. Kirby, I would think about.

10 MR. ZYCH: If you could direct
11 your --

12 MR. DUCAS: I'm sorry, I
13 apologize. Addressing some of the
14 pictures. The clay pipe, catch basin,
15 discussion of an existing catch basin and
16 pictures that show a, what is otherwise a
17 location for that catch basin. There was
18 an existing catch basin. The driveway has
19 been torn out to prep for future driveways.
20 Also the grade had to be cut lower so that
21 the catch basin could be lower because that
22 -- its existing condition, the catch basin
23 was at a higher level which we didn't feel
24 was suitable for catching the amount of
25 water that was necessary for the parking

1 pad. So the catch basin was removed.

2 You will see in one of Mrs.
3 Kirby's pictures or one of her attorney's
4 pictures, there's a picture of a clay pipe
5 and a green pipe coming out from under the
6 garage. That is, in fact, the outlet where
7 the catch basin would go, but it was capped
8 off and removed during the construction
9 process so that it wouldn't be damaged
10 during the process.

11 So it is, in fact, an existing
12 drain. Their pictures would show -- I
13 don't know if we -- I don't want to waste
14 your time going into the pictures, but they
15 show a picture where there is a round --
16 approximate 24-inch round cast iron grate
17 up against the left side of the garage as
18 you're facing the garage. That certainly
19 would not be the location where the drain
20 existed. And you can see that if you look
21 at your pictures, you will see the grate is
22 loosely sitting on gravel.

23 So that never was the location of
24 the drain. The drain was located there.
25 It's simply being lowered and as a result

1 it was capped off temporarily.

2 I've been building homes for 27
3 years. We build in every community in the
4 area. We've worked with many engineers,
5 many architects. I've paid Paul Volpe
6 large sums of money to do a multifamily
7 project. We have never had a drainage
8 permit. And I'm not sure that Cleveland
9 Heights offers a drainage permit. Perhaps
10 it's something that I'm not aware of, but
11 multiple times a comment was made regarding
12 us avoiding or not paying for a drainage
13 permit. I don't believe one exists and
14 correct me if I'm wrong.

15 MS. ROTHENBERG: You're not wrong.

16 MR. DUCAS: We've talked about
17 impervious materials. I understand green
18 building, we've done many conditions where
19 we've done front yard parking over Geo-Hex,
20 which is a plastic item that grass will
21 grow through, but allows you to
22 periodically park cars on it. Can't plow
23 it.

24 Cobblestones would be a great
25 concept, but concrete at approximately --

1 and even the concrete we're doing which is
2 a more expensive version of it with the
3 exposed aggregate is going to be a maximum of
4 about \$7 per square foot. Cobblestones
5 installed are going to be anywhere from \$12
6 to \$18 to \$25, depending on the product.
7 So we're talking about tens of thousands of
8 dollars of additional cost to do
9 cobblestones. I get that Al Ratner could
10 afford to do that, but we're all not Al
11 Ratner.

12 Also with respect to impervious
13 surfaces, we are providing a significant
14 amount of drainage. If I can -- laser
15 point. A comment was made that this was
16 the only drain (indicating) and there were
17 two drains, as Mrs. Kirby pointed out,
18 along the Fairmount access driveway. First
19 of all, let me add that we didn't need to
20 add the Fairmount access driveway drains.
21 They did not exist before, there was no
22 drainage there. And apparently the Kirby's
23 basement is dry.

24 You'll also see that that driveway
25 is a foot and half lower than their

1 property, which is adjacent to it. So
2 water typically doesn't flow uphill. So
3 we've added two trench drains alongside her
4 property -- alongside the driveway that
5 abuts her property that previously weren't
6 there.

7 The entire pool area has
8 three-inch trench drains that are
9 continuous along all of the hard surfaces.
10 And all of these hard surfaces on those
11 drain sides slop to those trench drains.

12 So in this particular case, there
13 is approximately 80 feet of linear trench
14 drain that collects the water that is
15 coming off of these hard surfaces.

16 So they established -- or for the
17 record said that this is the only drain and
18 then made light of the fact that we've
19 actually added two additional trench drains
20 alongside the driveway that didn't exist
21 previously. So we really are making an
22 effort to mitigate any water and we're
23 going overboard to do so.

24 This is the drawing that we've
25 prevented -- presented to the City. It

1 shows the grades. If we don't build it per
2 the drawing, we're in violation of our
3 permit. I get that. We are happy to have
4 a City engineer or a certification post
5 construction, which many cities require, to
6 have somebody come out and verify the
7 grades that we've established. We call
8 that an "as-built". We're happy to do
9 that.

10 We're also happy to provide prior
11 to the installation of any of these
12 surfaces here that fall under the variance
13 area, we're happy to provide a landscape
14 plan that's approved by the City, and we're
15 happy to show that plan to the Kirbys.

16 They've discussed screening along
17 this side of the fence (indicating). There
18 was never anything on this side of the
19 fence previously that extended the fence
20 line. It was overgrown. If you look at
21 pictures of the fence, you'll see the fence
22 is in terrible disrepair and that brings me
23 to this point.

24 When the Baldridges first bought
25 the property, there was cordial

1 conversation between the Baldridges and
2 Mrs. Kirby -- and I'll do my best to
3 paraphrase, I hope I'll get it right, I'm
4 paraphrasing. I met her multiple times,
5 there were multiple discussions, but she
6 made the comment -- well, let me back up.
7 Before the Baldridges even closed on the
8 lot, Mrs. Kirby had a large tree on this
9 side of her driveway (indicating), lower
10 down here (indicating), significant tree.
11 It fell over in a windstorm or a rainstorm
12 and it fell across the Baldridges'
13 property, it fell across the driveway. At
14 any rate, she called the Baldridges -- and
15 this was before they closed on the property
16 and said the tree fell down across your
17 driveway, when are you going to clean it
18 up. That was the phone call.

19 Mike arrived on the job -- or the
20 property before he even closed on it and
21 said, oh, well, it's your tree, wouldn't
22 you, she goes, no, no, no, the rule is if
23 my tree falls on your property, it's your
24 responsibility. So Mike said, okay, we're
25 coming in, we want to be good neighbors.

1 you guys going to fix that fence? This
2 comment was made to the Baldridges because
3 the fence was in terrible disrepair.

4 We have multiple e-mails
5 discussing the fence as belonging to the
6 Baldridges. And it's in writing so if
7 that's needed at any point, we all have
8 those correspondence between the Kirbys and
9 the Baldridges indicating that the fence
10 belongs to the Baldridges.

11 When the trees were taken down on
12 the Baldridges' property, many of which
13 were dead, many of which were diseased, all
14 of the trees were flagged, and pictures
15 previously exhibited showed that those
16 trees were flagged. Those trees were
17 flagged for several weeks before they came
18 down as we waited for Vancuren Tree to come
19 and take the trees down. During that
20 period of time many discussions were had
21 with the Kirbys and the Baldridges. At no
22 point in time was the oak tree that has the
23 little -- right here where the fence steps
24 around (indicating). At no point in time
25 was it discussed that the tree shouldn't

1 come down. That tree as well as an
2 adjacent tree, had been dropping limbs onto
3 the Baldridges' property because of their
4 poor condition.

5 Previously there was a tree that
6 was cut down that did significant damage to
7 the Baldridges' house, it was clearly on
8 the Kirby's property, it was on the far
9 side of their side of the fence. That tree
10 was cut down at some point before we became
11 involved. And this tree which was
12 approximately right here (indicating), was
13 left towering above the fence, just the
14 stump.

15 With all these trees being marked,
16 Mrs. Kirby said, hey, can you guys have
17 your tree guys take that stump down as
18 well? Not a problem, we're happy to do
19 that, we've got the guys here. Oh, and I
20 talked to your tree guys about taking
21 another tree down, but they can't do it
22 because they said it had to be done -- it
23 had to be listed on the quote before they
24 came out so blah, blah, blah, blah, it
25 couldn't happen.

1 Nothing was ever taken down that
2 wasn't flagged. Nothing wasn't taken down
3 that was taken down with the full knowledge
4 and with discussions with the Kirbys. Say
5 for the fact that a landscaper was hired to
6 remove -- keep in mind this house was
7 abandoned for about three years. Overgrown
8 bushes, absolute mess. We had a landscaper
9 go in and he sent some guys in to basically
10 demo all the old scrub, plus most of the
11 stuff that was demoed around the house was
12 up against the house. There were water
13 issues in the basement we needed to take
14 care of so we were going to be excavating
15 that area anyway. So that stuff was
16 removed.

17 Somehow these guys foolishly went
18 onto, it seemed to me like it was about
19 eight feet, the Kirbys say it was more, the
20 number is irrelevant, they went onto her
21 property and they took down some of her
22 bushes and there's no question about that.
23 We were aghast at it, we felt terrible, and
24 we immediately made movement for the
25 landscaper to make remedy of that.

1 We have e-mails, many of which are
2 between the landscaper and Mrs. Kirby
3 discussing what needs to be done to resolve
4 it.

5 Whether or not Mrs. Kirby is
6 satisfied with what happened and how and
7 why she said she spent \$12,000 more, I
8 don't know. Because the landscaper who
9 wasn't quick to move, I'll admit that, to
10 remedy the situation, finally had e-mails
11 that say that he had remedied the situation
12 with Mrs. Kirby. So why that is brought
13 up, I'm not really sure, but there is
14 documentation from her that indicates that
15 it was remedied. And I didn't see any
16 pictures of the trees that were planted,
17 but they're not bottle rockets.

18 A picture was shown of the
19 dumpster and a port-a-john that were placed
20 on our lot prior to construction in
21 December. I just checked with my
22 accountant and my check for demo was sent
23 on December 8th for the demolition permit.

24 I appreciate Mr. Volpe's comments,
25 I don't agree with them. He is a

1 modernist. He certainly wouldn't enjoy the
2 columns that we've provided that are
3 consistent with the house. Perhaps he
4 would enjoy more modern assembly. We
5 wanted to do something that was looking old
6 and consistent with the house.

7 I would also argue that his house
8 is tremendously inconsistent with the
9 neighborhood, and while he'll disagree with
10 that -- and he's done some great work in
11 the area and I've hired him to do work --
12 his house to me, it's surprising that the
13 HFA has not come up with issues regarding
14 the house because it's tremendously
15 inconsistent with the fabric of the
16 neighborhood.

17 Comments were made that the hard
18 scape is currently not level. That
19 everything doesn't drain properly right
20 now. We're in a construction site. We
21 have heavy machinery moving through gravel
22 driveways and dirt.

23 Comments were made regarding
24 dumpsters sitting on her tree. There are
25 not dumpsters sitting on her tree. There

1 are dumpsters that we use to remove debris
2 that are sitting on the Baldridges'
3 driveway, not on her property. If the root
4 system goes underneath the Baldridges'
5 driveway, there's really not much we can do
6 about that.

7 Comments were made regarding
8 what's the rush that we need to get a
9 solution tonight. The Baldridges' house
10 isn't on the market they say. They haven't
11 sold their house yet, the house isn't done.
12 Our painters are finishing the house in the
13 next week or so, after that we just need to
14 finish our hardwood floors. Countertops
15 are in. Plumbing needs to go in and
16 finished lighting. The Baldridges were
17 shooting to get in before Christmas. I
18 don't know that that will happen, but we
19 were shooting for general completion by
20 that date.

21 Whether or not their house is on
22 the market is none of your business. It's
23 not relevant --

24 MR. ZYCH: Please address the
25 comments to the Board.

1 MR. DUCAS: It's none of your
2 business either. It really isn't.

3 MR. ZYCH: I appreciate that.

4 MR. DUCAS: Their house has been
5 shown at least seven times off the market
6 and that's the way it will be sold. They
7 will not need to list it, so that's
8 irrelevant.

9 I'm going to skip over some of
10 these comments.

11 Comments were made regarding the
12 process, what I can only do as a builder is
13 I can only -- I can only attend to the
14 process that I'm asked to by the City, and
15 that's what we've done. We've had no
16 notices, we've had no violations. We've
17 tried to dot our Ts and cross -- or dot our
18 Is and cross our Ts -- it's getting late, I
19 apologize -- we've done what we were asked
20 to do.

21 Comments were made regarding the
22 pool and the fence and the fence and the
23 pool and a different contractor built the
24 pool. My understanding is that the process
25 that the City has is when a pool is issued

1 because a pool permit requires a fence
2 permit, that it is issued under the same
3 scope. As a result, we don't have an
4 individual fence permit. A fence permit in
5 itself if you don't have a pool comes from
6 the zoning department I believe if it's
7 just a standard fence, but our fence permit
8 was under the guise of the pool permit
9 which was offered. And whether or not the
10 same contractor builds it, I don't believe
11 is relevant.

12 I'd be interested to, under oath,
13 find out if the manger of Howard Hanna
14 preemptively called Mrs. Kirby, as she
15 said, as opposed to being asked to write
16 the letter. Obviously we all want a dry
17 basement and obviously a dry basement helps
18 sell a house. I don't think that's a
19 surprise. I don't think anyone is going
20 out on a limb saying that. I thought it
21 was poignant that she was asked whether or
22 not she solicited the letter.

23 I'll finish just by reiterating
24 again, we provided engineer drawings, we've
25 got a drainage plan. Ours are done by

1 stamped engineers and civil engineers and
2 not by a student who obviously didn't
3 understand some basics of surveying.

4 We are happy to provide a
5 landscape plan by a landscape architect
6 that identifies the concerns. We're happy
7 to share that with the Kirbys. We're happy
8 to agree to that, which might be the code
9 anyway, prior to any of that driveway work
10 going in. We're also happy to provide
11 as-built engineering drawings from the
12 survey that show what we build.

13 I'm not sure what else we can ask
14 other than the Baldridges would like to
15 continue moving forward with this project.
16 Would like to be able to put the driveway
17 in and not come back for additional tries
18 at a variance when, again, we think we're
19 subject to the lot, we're subject to the
20 design of the house and we are subject to a
21 pool and a fence, which were approved. And
22 that's it. Thank you very much for
23 listening.

24 MR. ZYCH: If you can hold on.
25 Members of Board, any questions of Mr.

1 Ducas?

2 MR. BROOKER: There were
3 statements made that the pool and the fence
4 as installed or in process of being
5 installed are different from what was
6 approved by ARB and permitted.

7 MR. DUCAS: I don't -- there's a
8 comment made regarding the pool being in a
9 different location. The pool was always in
10 precisely the same location that it's in.
11 The columns are different. The columns in
12 essence are the same. They reflect the
13 same nature of the fencing. The fence
14 panels, the initial -- initial drawing --
15 if you -- do you have the initials
16 submitted in that one? No. The initial
17 drawing of the overhead showing the fence
18 columns showed columns that were spaced
19 inconsistently in terms of their nature
20 along Tudor. So there was 16-foot spaces
21 and then there was about an 11, 9. The
22 columns were spaced inconsistently along
23 the driveway in terms of their distance.

24 I'd argue first that making them
25 consistent is more consistent with the

1 fabric of the area and the nature of the
2 old Cleveland Heights' houses rather than
3 not consistent in spacing, but the problem
4 was the fencing product that we had
5 purchased turned out that instead of
6 16-foot panels, they were supposed to be
7 eight-foot panels at 16 feet and then
8 there's columns, intermediate columns,
9 between those panels. It turns out that
10 the spec dimension is actually -- didn't
11 include -- we thought that the column was
12 an additional spacing in addition to the
13 eight-foot panels, and, in fact, it was
14 part of the eight-foot panels. Therefore,
15 the way we had spaced the columns, the
16 panels wouldn't reach the columns. So we
17 had to bring the columns slightly closer
18 together.

19 Well, when we brought them
20 slightly closer together, that suddenly
21 left some gapping. So rather than have
22 inconsistent spacing on the columns as was
23 shown, we made them consistent. That is
24 correct.

25 MR. BROOKER: Thank you.

1 MR. PORCELLI: I did have a
2 question. Was there any thought given to
3 having the drive from Tudor come in at
4 other than a 90-degree angle to Tudor, more
5 on a diagonal as the original driveway was?

6 MR. DUCAS: Absolutely. As I
7 mentioned -- let's see if we look at the --
8 if you look at the area that we have here
9 (indicating), this could absolutely have
10 been brought in to this point here
11 (indicating), but keep in mind this
12 property is, is turning. It's moving in
13 this direction (indicating).

14 So if we would have pulled the
15 footers out of these columns, these ones
16 here (indicating) to move them, first of
17 all, it would have changed the footers for
18 all of these columns. Because now this guy
19 (indicating) ends up right here
20 (indicating). And now we've got
21 inconsistent columns. So now we've got to
22 tear out the footers or re-pour the footers
23 for all of these columns.

24 The other issue is we have a slope
25 that goes in this direction (indicating).

1 If you look at these gradient lines, these
2 lines here (indicating) --

3 MR. PORCELLI: Uh-huh.

4 MR. DUCAS: -- you'll see the
5 slope actually follows this driveway
6 (indicating). If we brought the -- so, if
7 we brought this driveway closer down here,
8 we'd have a much more aggressive slope
9 coming out of the garage to turn, it would
10 be very difficult to catch that water
11 because it wants to now go over this edge
12 too quickly.

13 We also, as I mentioned earlier,
14 we could have kept something in tighter and
15 put the fence on the other side. What the
16 Baldridges didn't want per what Mrs. Kirby
17 said, moving the fence 15 feet, which is
18 pretty dramatic, puts the fence at seven
19 feet off the pool.

20 Imagine a six-foot high fence
21 seven feet off your pool. Aesthetically
22 it's -- that would be something to complain
23 about architecturally.

24 MR. ZYCH: Any other questions?

25 Thank you. And again, I want to

1 thank everybody who has -- no. Mrs. Kirby,
2 there is no more --

3 MRS. KIRBY: Excuse me, I've been
4 defamed --

5 MR. ZYCH: There is no more --
6 Mrs. Kirby, there is no more testimony.
7 We're completed. Everyone has had an
8 exhaustive attempt -- opportunity to speak
9 and so we are completed with the testimony.

10 MRS. KIRBY: Can I even go on
11 record just saying I've never filed a
12 lawsuit in my life and many other things he
13 just said were completely untrue? Because
14 this is a record. I've never filed a
15 lawsuit in my life and that's defaming
16 someone to say they're litigious besides so
17 many other factual things that were totally
18 incorrect.

19 MR. ZYCH: Thank you, we
20 appreciate that. We have -- the Board has
21 the record before it and part of our job is
22 to weigh that record, but thank you.

23 All right. Now, it's up to us.
24 The Board has the matter. Let me begin by
25 saying this. We've got a lot of factual

1 issues before us that have been presented.
2 From my point of view, the good news for
3 the Board is virtually none of them have to
4 do with the variance that's before us. We
5 are happy to have heard them, we enjoy the
6 color -- and I mean that in all sincerity
7 -- to get the background in how this -- how
8 the matter comes to be. But, again, we are
9 not a body that can issue citations for
10 building violations. We do not consider
11 aesthetics. I'm sorry Mr. Volpe is not
12 here. We have been told repeatedly that
13 aesthetics are not a concern and certainly
14 is not among the factors that the city
15 council has left for us to decide.

16 What we have before us is a
17 request to exceed the maximum parking and
18 driveway surface in the rear yard and
19 that's the matter before us. Other
20 information is useful, but not necessarily
21 determinative or germane to our decision.

22 That being said, again, I do want
23 to sincerely say we appreciate everybody
24 for the time they have taken. This is what
25 we do. And sometimes meetings are short

1 sometimes meetings are long. This is one
2 of the long ones. We understand that
3 timely.

4 Typically what we'd like to do is
5 have a motion that we can discuss.

6 Is anyone on the Board prepared to
7 make a motion?

8 MR. HOEN: Mr. Chair.

9 MR. ZYCH: Mr. Hoen.

10 MR. HOEN: Would you
11 (unintelligible)?

12 MR. ZYCH: Yes.

13 MR. HOEN: I defer.

14 MR. BROOKER: Regarding Calendar
15 No. 3470, Michael and Karen Baldrige, 2611
16 Fairmount Boulevard, I move to grant the
17 application for the variance to Section
18 1121.12(d)(3) to permit pavement related to
19 parking, including driveway, to exceed the
20 maximum 30% coverage in the rear yard.
21 After reviewing the application and other
22 submissions, hearing the evidence under
23 oath, the Board finds and concludes:
24 Special conditions/circumstances exist
25 which are peculiar to the land/structure

1 involved which are not generally applicable
2 to other lands/structures in the same
3 zoning district, in particular: The corner
4 lot condition and the associated zoning
5 code definition of a rear yard area for a
6 corner lot greatly reduces the rear yard
7 area compared to similar-sized non-corner
8 properties.

9 The variance is insubstantial and
10 is the minimum necessary to make possible
11 the reasonable use of the land/structure
12 as demonstrated by fact that: While the
13 area of pavement for the driveway and
14 parking area exceeds the 30% zoning
15 maximum, the total rear yard coverage of
16 54% is less than the code maximum 60%. The
17 area of driveway and parking in the rear
18 yard is less than the maximum 2,000 square
19 feet permitted.

20 The essential character of the
21 neighborhood would not be substantially
22 altered as the result of the variance. The
23 added paved area associated with the
24 expanded driveway and parking area from the
25 existing condition is 404 square feet.

1 Less than one and a half percent of the
2 total property area.

3 The variance would not adversely
4 affect the delivery of any government
5 services.

6 The spirit and intent behind the
7 zoning requirement would be observed and
8 substantial justice done by granting the
9 variance because the overall rear coverage
10 is less than the allowable.

11 If granted, the variance should
12 have the following conditions. The
13 variance is granted to allow total rear
14 yard coverage for driveway pavement and
15 pavement for parking to be no more than 44%
16 and no more than 1,847 square feet as shown
17 on the final revised site plan dated
18 October 25th, 2018.

19 Receipt of a driveway building
20 permit.

21 Approval of a landscape plan for
22 the driveway and parking area by the
23 planning director.

24 Complete construction within 18
25 months of the effective date of this

1 variance.

2 And I've also added adequately
3 engineered site drainage, protection of the
4 Japanese Katsura tree.

5 ARB approval of any changes to
6 previously approved drawings.

7 MR. ZYCH: Do we have a second?

8 MR. GILLIAM: I'll second.

9 MR. ZYCH: Mr. Gilliam. Is there
10 any discussion among the Board?

11 There being none, all those in
12 favor please say "aye".

13 MR. BROOKER: Aye.

14 MR. GILLIAM: Aye.

15 MR. HOEN: Aye.

16 MR. PORCELLI: Aye.

17 MR. ZYCH: Aye.

18 Opposed? The variance carries.

19 And, again, we thank everyone for
20 their attendance and participation.

21 Is there any old business?

22 MS. KNITTEL: No, sir, there is no
23 old business.

24 MR. ZYCH: Is there any new
25 business?

1 MS. ROTHENBERG: I have new
2 business. I do have very -- if you'll
3 indulge me, I'm as tired as you are so --

4 MR. ZYCH: We've indulged --

5 MS. ROTHENBERG: I know, but it's
6 11:20 so why not stay for a couple more
7 minutes. This is my last BZA meeting. I'm
8 moving on to perhaps greener pastures.
9 Maybe they'll be browner and I'll regret
10 all my decisions, but I mean what an
11 appropriate way to end, right? With a four
12 -- almost a four and a half hour meeting.
13 And I just want you to know even when it
14 goes over four hours, this is one of the
15 highlights of working here is being your
16 attorney. And I actually think it has been
17 a real honor to serve you and it's one of
18 the things I will miss most about leaving
19 here, so thank you, thank you for being so
20 great.

21 MR. ZYCH: I'm sorry, Ms.
22 Rothenberg, we didn't know that before, we
23 would have done something appropriate.
24 Now, your service, let me tell you, was
25 something we greatly value --

1 MS. ROTHENBERG: Thank you.

2 MR. ZYCH: -- your counsel and the
3 entire staff have always said this, we have
4 a cracker staff that does a wonderful job
5 that makes our job easier. And you have
6 been terrific in dealing with some of it,
7 especially this case, some of the legal
8 issues we've had to deal with, but your
9 counsel has always been valuable and wise
10 and timely and that's all we can ask so
11 thank you and the best of luck.

12 MS. ROTHENBERG: Thank you so
13 much, Tom.

14 MR. ZYCH: Any other new business?

15 MS. KNITTEL: I just wanted to
16 mention that there was a piece of
17 information that was sent to us and shared
18 with you via e-mail regarding the Top of
19 the Hill Project. And if any of you would
20 need a paper copy of that, we're happy to
21 make that available to you. We don't, at
22 this point, know or anticipate that that
23 project is going to come to the Board of
24 Zoning Appeals, but it was requested that
25 that letter be sent on to the Board, so

1 that was done via e-mail.

2 MR. ZYCH: That's terrific. And
3 that's my neighborhood, so...

4 MS. KNITTEL: And just for
5 informational purposes, we do not have an
6 agenda in December so we do not have a case
7 that was submitted.

8 MR. ZYCH: All right. Well, then
9 the happiest of holiday seasons to
10 everybody --

11 MS. ROTHENBERG: Happy New Year.

12 MR. ZYCH: -- and we stand
13 adjourned at 11:23.

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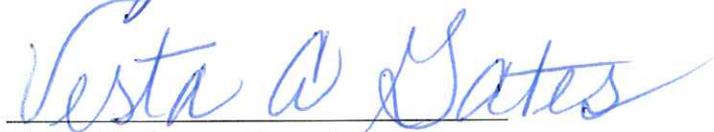
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There being no further business to come before the Board, the regular meeting was adjourned at 11:23 p.m.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'T. Zych', written over a horizontal line.

Thomas Zych, Chair

A handwritten signature in blue ink, appearing to be 'Vesta A. Gates', written over a horizontal line.

Vesta A. Gates, Secretary