

ZONING BOARD OF APPEALS

CITY OF LIVONIA

MINUTES OF SPECIAL MEETING HELD TUESDAY, FEBRUARY 16, 2021

Due to COVID-19, a Meeting of the Zoning Board of Appeals of the City of Livonia was held online via Zoom on Tuesday, February 16, 2021.

MEMBERS PRESENT:

Gregory G. Coppola, Chairman
James M. Baringhaus, Vice Chairman
Timothy J. Klisz, Secretary
Christopher N. Boloven
Lisa E. Fraske
Michael A. Testa
Joel D. Turbiak

MEMBERS ABSENT:

None

OTHERS PRESENT:

Michael E. Fisher, City Attorney
Frank Hershey, City Inspector
Janet M. Seewald, CSR-5079

The meeting was called to order at seven p.m. Chairman Coppola explained the Rules of Procedure to those interested parties. Each petitioner must give their name and address and declare hardship for appeal. Appeals of the Zoning Board's decisions are made to the Wayne County Circuit Court. The Chairman advised the audience that appeals can be filed within 21 days of the date tonight's minutes are approved. The decision of the Zoning Board shall become final within five (5) calendar days following the hearing and the applicant shall be mailed a copy of the decision. There are four decisions the Board can make: To deny, to grant, to grant as modified by the Board, or to table for further information. Each petitioner may ask to be heard by a full seven (7) member Board. Seven members were present this evening. The Secretary then read the Agenda and Legal Notice to each appeal, and each petitioner indicated their presence. Appeals came up for hearing after due legal notice was given to all interested parties within 300 feet, petitioners and City Departments.

_____(7:00)

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APPEAL CASE NO. 2021-01-01 (Tabled on January 5, 2021): An appeal has been made to the Zoning Board of Appeals by VPA 275, LLC, 46925 West Road, Wixom, MI 48393, on behalf of Lessee STMicroelectronics, Inc., 19111 Victor Parkway, Livonia, MI 48152, seeking to erect an additional wall sign on the south elevation while maintaining an existing wall sign on the west elevation and ground sign. This zoning district allows for one wall or ground sign for a single tenant building.

<u>Number of Wall Signs:</u>	<u>Total Wall Sign Area:</u>
Allowed: One	Allowed: 16 sq. ft.
Proposed: Two	Proposed: 75 sq. ft.
Excess: One	(28 sq. ft. each wall sign, 20 sq. ft. ground sign)
	Excess: 60 sq. ft.

The property is located on the west side of Victor Parkway (19111), between Seven Mile and Pembroke, Lot. No. 024-99-0003-005, OS Zoning District. Rejected by the Inspection Department under Ordinance 543, Section 18.50F(a), "Sign Regulations for Office Services Districts."

Coppola: Do I have a motion to remove this from the table?

Baringhaus: Mr. Chairman.

Coppola: Vice Chair Baringhaus.

Baringhaus: Thank you. Motion to remove Appeal Case Number 2021-01-01 from the table.

Turbiak: Support.

Fraske: Support.

Coppola: I've got a motion by Vice Chair Baringhaus, supported by Mr. Turbiak. All in favor?

Board: Aye.

Coppola: All opposed? Seeing none, okay. Mr. Hershey, do you have anything to add? You're on mute, Mr. Hershey.

Hershey: I'm Sorry. Not at this time, Mr. Chairman.

Coppola: Thanks. Any questions for the Inspection Department? I'm not going to throw a stone at you, Mr. Hershey, because I'll probably do that about three or four times tonight. I have a question for Mr. Fisher. The last time we tabled this due to what was perceived to be a requirement laid out in an approval back in 2005 by Council that any additional signs need to come before the Planning Commission and Council before coming back to us for approval. It looked like there was some research done and determined that was needed. Can you just, for the record and for the benefit of the Board, just a quick summary of the research, what it found and why we're back today?

Fisher: The quick version is that the Planning Department looked back into their files and saw that the back in 2005 signs were approved by the Planning Commission and Council for essentially the same location and size that is before the Board tonight.

Although the second sign, the one that is actually before the Board tonight, was never in fact erected or installed as far as we can tell. The Planning Department felt like it would be redundant for them to go back and approve it again. And so they've kicked it back to the Board, I guess you can say.

Coppola: Right. So, from that perspective of the review, that approval by the Planning Commission and Council is still in effect?

Fisher: Correct.

Coppola: Any questions for Mr. Fisher? Okay. I'm going to -- I see you, Mr. Vinstra. Is there anybody else? I'm going unmute you here. Try to.

Vinstra: I believe there's a representative from ST, Kevin Gagnon.

Coppola: Okay.

Gagnon: I'm online. This is Kevin Gagnon if you can hear.

Coppola: So, Mr. Vinstra, why don't you start. Name and address, please, for the record?

Vinstra: Yeah. Mark Vinstra from Sign and Graphics. Address 5340 Cherlane Drive, Clarkston, Michigan 48346.

Coppola: Thank you. Mr. Gagnon, your name and address?

Gagnon: Kevin Gagnon. Address related to this matter is 19111 Victor Parkway, Livonia, Michigan.

Coppola: Thank you. So, who is going to take the lead?

Vinstra: I will start. So, coming back from what we're doing before, I don't know if you guys have additional questions or comments, but we see that there were two wall signs that were approved by the Planning Commission. I just -- I want to maybe go back to a little bit on the location, we had talked about that some. So, Infineon used to be in this building; they moved about a quarter of a mile up the street into a new building, same zoning. They have two wall signs and a ground sign. Their two wall signs are basically for the sole purpose of 275 traffic from where they're positioned and where Victor Parkway is located. Their ground sign is for people coming into the building. So, that's just a matter of reference, I'm not saying anything positive or negative towards that, that's just a point of reference. So, our two signs that we're looking at doing, the second wall sign we're looking at putting on, its real sole purpose is for people on Seven Mile to be able to help locate this building. If you come off of 275 heading north and you get off the ramp, currently there are trees between the building and Seven Mile on the angle when you're looking at that building and they obstruct the current wall sign from that position. So, if you turn and if you're heading east on Seven Mile from coming up off of 275, this second wall sign is going to drastically improve peoples' visibility of knowing where STMicro is located and knowing to turn at that stoplight to get in there. And then the ground sign, of course, will bring them into the parking lot. So, that's just a little more information on reasoning on that second wall sign. We had talked about it before, talked about a lot of this before, so I don't to go into too much detail. I think I'll let you guys -- if you want to -- talk to Mr. Gagnon a little bit about some of the specifics you were asking about ST that I couldn't really answer the last time.

Coppola: Okay. Mr. Gagnon, are you from ST or are you from the building?

Gagnon: No. I'm with STMicroelectronics.

Coppola: Why don't you -- just for the benefit of the Board -- tell us a little bit about STMicro and give us your kind of -- your position on the extra sign.

Gagnon: So, ST -- I've been our site manager here in Livonia for about 20 years. We're now in our third location in Livonia. We have progressed between the Seven and Eight Mile corridor to three different locations over the last 25 years that I have been with the company. And really so who we were, we're a semiconductor manufacturer. Think of us as kind of an Intel. Infineon, ironically enough, is one of my biggest competitors, but we're amongst I think a handful of semiconductor companies that Livonia has along the 275 corridor there. We're an office of about 50 people. I'm active in the community. We support all kinds of other things. I'm a Livonia resident, graduate of high school, Churchill High School in 1984. So, for me, being in Livonia, I select our office locations. I've selected the last two and it's been important for me to remain in Livonia. And I think just the addition of the sign -- I was aware of the variance in the past, I've gotten the support from the company to invest in the additional sign on the outside of the building. I think it's good for ourselves and a good way to represent that on the building is fully in line with what the City expects to keep up the image that we -- I think we have. Again, I was a Livonia resident for many, many years. I'm still a Farmington Hills resident. We'd just like to seek the Board's approval to maintain this variance so we can continue with some more beautification there at the site and help our customers to locate our facility a little bit more easily and give a little bit more brand awareness as well, frankly speaking, with Seven Mile traffic that the sign will also be visible to regardless of whether they're coming to do business with us or not.

Coppola: What exactly does STMicro do in that building?

Gagnon: So, we're a sales office location primarily for our company. We're a semiconductor manufacturer, so think of an Intel kind of a company. Computer chips. You read a lot of about computer chip problems in the news right now. ST is one of those companies that's in the throes of that. So, we have sales, we have marketing, we have quality, we have applications lab, highly technical workforce. Mostly engineer professionals. And then, of course, there's sales resources, inside and outside sales resources at the site as well.

Coppola: How often do you have visitors?

Gagnon: Well, given the COVID constraints it's a little tricky.

Coppola: In the normal world, how often do you have visitors?

Gagnon: Daily. Daily. Daily.

Coppola: Okay. Any questions?

Baringhaus: Mr. Chairman.

Coppola: Vice Chair Baringhaus.

Baringhaus: Yes. Just a couple questions for you. First of all, there's a pylon sign at

Seven Mile and Victor Parkway. Do you have any plans to add identification for your business to that location?

Gagnon: No.

Baringhaus: Also, the current location of the sign facing Seven Mile, do you think -- there are a number of trees lining that side of the property. Do you feel that sign will serve the purpose given the fact you do have a number of tall trees in front of it?

Gagnon: I believe we have -- there's a location on the south side of the building there that will serve adequately considering the current trees that are there.

Baringhaus: Thank you.

Gagnon: My pleasure.

Boloven: Mr. Chair.

Turbiak: Mr. Chair.

Coppola: Mr. Boloven.

Boloven: Question back to Mr. Gagnon. Vice Chair Baringhaus just asked regarding that monument pylon sign at Seven and Victor Parkway. Why is that not being considered to add signage to that?

Gagnon: So, given the choice between the two -- we've got some fixed money to spend here, and for the cost that I've been given for this year to spend, I've elected to make the choice to pursue the building sign as opposed to kiosk sign. We also have the ability to light that building sign in the evening so it gives us better visibility in the evening hours as well. And then additionally, when you're finally making that turn into Victor Parkway from Seven Mile where you get really good visibility to that kiosk on the corner there, by that time as well you've got good line of sight to our ground sign that's there by our entrance. So, I don't think from that vantage point having additional signage on that kiosk would be as advantageous as the signage on the building exterior wall.

Boloven: Do you have the option to add to that sign?

Gagnon: My understanding is no but I would defer.

Vinstra: Our understanding is no as well. I can't say that with 100 percent certainty, but from what we have understood it's for another section of the development that's back on Victor Parkway.

Boloven: Thank you, Mr. Chair.

Coppola: Mr. Turbiak I believe had a question, right?

Turbiak: Yes. Thank you, Mr. Chair. Through the Chair to Mr. Gagnon I believe would be the best suited to answer it. You said you have visitors daily. Have you -- are you aware of any complaints of any of your visitors coming northbound on 275 exiting eastbound that are having difficulty locating the building?

Gagnon: We have received input, yes, from customers in the past related to that.

Turbiak: Okay. That's all. Thank you, Mr. Chair.

Coppola: Thanks. Anything else?

Baringhaus: Mr. Chairman.

Coppola: Vice Chair Baringhaus.

Baringhaus: Yeah, just one question regarding the proposed wall signs. I understand they are LED illuminated, correct?

Vinstra: Correct.

Baringhaus: Are those signs on any timer? So, in other words, will they be -- at some point when will they be turned on, and do you have a schedule where they will be turned off at night?

Vinstra: I believe they are on timers. Mr. Gagnon, do you know the schedule that they to go on and off?

Gagnon: So, we do have a timer system for the parking lot lights, and I also believe it encompasses the two signs that we have now. And my site manager, facilities manager, basically we've got a manual timer mechanism inside the building that we adjust with dusk and dawn essentially.

Baringhaus: So, they are on timers, they're just manually adjusted --

Gagnon: Correct.

Baringhaus: -- for the season? Okay. Very good. Thank you.

Coppola: Anything else? Seeing that there's none, is there anybody in the audience that would like to speak for or against this petition? You can raise your hand by pressing the raise your hand button just so I know. Seeing none, do we have any correspondence?

Klisz: We have no letters.

Coppola: Okay. At this point I'll provide the petitioner with any last comments or statements.

Vinstra: Nothing additional from me. I think we discussed this in pretty good detail at the last meeting, and then I think you got some extra excellent information from Mr. Gagnon today that you were looking for from last time.

Coppola: All right. Mr. Gagnon, anything you would like to state?

Gagnon: I greatly appreciate the opportunity to address the Board, and I'm hopeful that we'll receive your support. Appreciate your time.

Coppola: Thank you. I'm going to put you two on mute while we close the public portion and take the Board's comments. I'm going to start with Mr. Boloven.

Boloven: Thank you, Mr. Chair. I would be in support of this as presented. I looked at the minutes from the Planning Commission as well as Council. I did have that confusion on whether or not this did have to go back, but it seems like this was analyzed back in 2005 and approved for the second sign which was never taken advantage of, so they're basically acting on the approval that was never acted on back in 2005. The hardship I get. I wish I would know if that pylon sign you could add to it because that would make the argument stronger if you couldn't add to it. But with that being said, I see the hardship and I'd be in support of this.

Coppola: Thank you. Mr. Testa.

Testa: I'm also in support of this. I see the hardship because of the location and the traffic on Seven Mile also coming off of 275. I agree it's hard to see the existing sign and this new sign will help. I'm also in support because it matches with what else -- the other businesses in the area have very similar sign packages.

Coppola: Thank you. Mr. Turbiak.

Turbiak: Thank you, Mr. Chair. Yes. I was actually very strongly opposed to this at certain points of my research including when this first came before us, but I have changed my opinion. I can be in support of this. I didn't think that the argument that it'll help improve sight along Seven Mile really held any water because although that location is on the west side of the building, you know, this new sign is going to be seen by the same audience, if you will. The point that really tips it over for me is that northbound traffic heading from 275 heading eastbound that's -- that's -- that's -- that's what really makes sense and makes the case. I also recall when I reviewed this last time that there was evidence in our packet mentioned from one of the minutes that that obelisk right there at Seven and Victor Parkway was not -- was not available for this site for the same reasons that was mentioned by I think it was Mr. Vinstra that, you know, belongs to another group that this property does not belong to. So, since they're not part of that group then they can't get on this obelisk. And also, Mr. Testa -- I can't remember the other point that he made that I also agree with. Oh, that the precedent has basically been set for buildings in this area as far as sign packages because of the visibility from 275. You know, additional signs have been in the past been permitted or granted, I should say. So, for all those reasons, I will be in support.

Coppola: Thank you. Vice Chair Baringhaus.

Baringhaus: Thank you. Basically one of the advantages of the property is the landscaping and the location, however, the hardship for the property too is also the landscaping and location because of the trees screening the building. I found that a lot of times when you're looking for the building you'll see the signs but you're already past Victor Parkway. I think the additional sign will correct the situation. And to Mr. Boloven's point, they did have approval for that sign but they did not take advantage and are electing to take advantage of installing this sign today. So, based on that, I will support the variance. Thank you.

Coppola: Thank you. Ms. Fraske.

Fraske: Yes. I'm in support for all of the reasons that have been discussed already. I -- there's really nothing else to say. I agree. I'm in support.

Coppola: Thank you. Secretary Klisz.

Klisz: And I will agree, and all the reasons that have been given are great. My reason is actually more of a legal reason which is I guess if we denied them they can probably just go back and do it anyhow because they already had permission. And as Mr. Fisher told us, they don't lose permission. So, is it really ours to choose? Well, we have the case and we're giving it to them so that's fine based on hardship and whatnot. But I think legally they're entitled to it regardless but I'll be in support.

Coppola: Thank you. I too will be in support for all the reasons that have been stated earlier. Just from my -- just to -- from my perspective, the head of the citizens approved it because Council's approved it or at least given it support, the Planning Commission has given it support, and I think just in the correction from my perspective is that the approvals that the Council and Planning Commission provided were subject to approval of the Zoning Board, so this process had to occur for them to put that up. But again, I'm in support of this. I think the hardship has been proven, and again, with the support of the Council and the Planning Commission, it makes sense to proceed. So, I'll go ahead and open up the floor for a motion.

Upon motion by Testa and supported by Fraske, it was:

RESOLVED: APPEAL CASE NO. 2021-01-01 (Tabled on January 5, 2021): An appeal has been made to the Zoning Board of Appeals by VPA 275, LLC, 46925 West Road, Wixom, MI 48393, on behalf of Lessee STMicroelectronics, Inc., 19111 Victor Parkway, Livonia, MI 48152, seeking to erect an additional wall sign on the south elevation while maintaining an existing wall sign on the west elevation and ground sign. This zoning district allows for one wall or ground sign for a single tenant building.

Number of Wall Signs:

Allowed: One
Proposed: Two
Excess: One

Total Wall Sign Area:

Allowed: 16 sq. ft.
Proposed: 75 sq ft.
(28 sq. ft. each wall sign,
20 ft. ground sign)
Excess: 60 sq. ft.

The property is located on the west side of Victor Parkway (19111), between Seven Mile and Pembroke, Lot. No. 024-99-0003-005, OS Zoning District. Rejected by the Inspection Department under Ordinance 543, Section 18.50F(a), "Sign Regulations for Office Services Districts," **be granted for the following reasons and findings of fact:**

1. The uniqueness requirement is met due to the corner location on a busy road. The location backs up to 275 and is surrounded by similar properties with similar signage.
2. The denial of the variance would have severe consequences for the petitioner due to the challenge of having clients locate the building as well as the lack of branding on the building itself from Seven Mile and Victor Parkway.
3. The variance is fair in light of its effects on neighboring properties and is in the spirit of the Zoning Ordinance due to no opposition from neighboring property owners and the overall signage proposed is

consistent with other properties in the area.

4. The granting of this variance will not adversely affect the purpose or objective of the Master Plan because the property is classified as Regional Commercial under the Master Plan and the proposed variance is not inconsistent with this classification.

FURTHER, this variance is granted subject to the following conditions:

1. Petitioner agrees to stay in compliance with the conditions provided by the City Council on November 12th, 2005 which includes that the wall sign shall not be illuminated beyond one hour after the building is closed.
2. Install the proposed sign as presented.

ROLL CALL:

AYES: Testa, Friske, Baringhaus, Boloven, Coppola, Klisz
Turbiak
NAYS: None
ABSTAIN: None

Klisz: Passes seven to zero.

Coppola: All right. Unmute you guys real quick. Mr. Vinstra, Mr. Gagnon, your petition has been approved for the sign. The two conditions are that this approval is still subject to the conditions that were enacted by the City Council in their December -- sorry, not November -- December 12th, 2005 resolution and that you are going to go ahead and install it as presented. Any questions?

Vinstra: No, sir.

Gagnon: No.

Coppola: Thank you, Mr. Gagnon, for staying in Livonia and being a resident and your business being a great corporate citizen. We really appreciate you guys being here.

Vinstra: Thank you.

Gagnon: Thank you, Mr. Chairman, and the Board. Appreciate your support.

Coppola: All right. Next case, Secretary Klisz.

APPEAL CASE NO. 2021-02-06: An appeal has been made to the Zoning Board of Appeals by Bryan Garchar, 36549 Ann Arbor Trail, Livonia, MI 48150, seeking to construct an attached garage addition and maintain an existing accessory building (i.e.: shed), resulting in excess garage area.

Attached Garage Area:

Allowed: 720 sq. ft.

Proposed: 949 sq ft. (addition: 334 sq. ft,
shed: 194 sq. ft)

Excess: 229 sq ft.

The property is located on the south side of Ann Arbor Trail (36549) between Dowling and Newburgh, Lot. No. 126-01-0753-006, R-1 Zoning District. Rejected by the Inspection Department under Ordinance 543, Section 2.10(6), "Definition of Miscellaneous Terms; Garage, Private."

Coppola: Anything to add, Mr. Hershey?

Hershey: No, sir. Not at this time.

Coppola: Any questions for the Inspection Department? I have one clarification, if you would, Mr. Hershey. Hopefully if not you then Mr. Fisher. So, when does a shed get included as part of the measurements of a garage and when does it not? So, kind of let me pose a question at you a little bit different way: If the petitioner didn't have a shed and he came in with a petition to add garage space that was within the 720 square feet, in other words just came for a permit, you would allow that, I would assume, because that's within -- then he came later for a shed, would he be allowed to have that shed? I'm trying to understand why the shed in this case is approved as part of the garage and how it works.

Hershey: So, the issue with this one is he's over the 720 square feet allowed on a half acre. Once you go over the 720 square feet, the shed is no longer allowed. His addition on his garage puts him at 35 square feet over the 720, that's the reason for the shed being removed -- or added into the square footage.

Coppola: So, let me ask -- I think I understand. Let me ask the question one more way. So, if he had his house built and the garage was 720 square feet and that was the way it was built, 10 years later he came back and said "I want to put a shed in." The answer would be, "No. No shed."

Hershey: No. He would be allowed to have a shed as long as he's not over 720. When you go over the 720 square feet, you can go up to 1,000 square feet it's written, but no out -- no extra accessory buildings on the property. So, the addition will put him over 720 which then the shed is no longer allowed.

Coppola: Now I understand. Okay. Thank you.

Hershey: You're welcome.

Coppola: Any other questions? Mr. Garchar, I'm going to unmute you. You're unmuted. Mr. Garchar, your name and address, please, for the record?

B. Garchar: Bryan Garchar. 36549 Ann Arbor Trail, Livonia, Michigan.

Coppola: Mr. Garchar, do you have any anybody else with you today?

B. Garchar: I do. I have my wife here. Her name is --

Coppola: Why don't you give her name and address just in case she wants to talk she can speak.

B. Garchar: Sarah Garchar. 36549 Ann Arbor Trail.

Coppola: That's it. So, there's two -- I see two other people are also on in the meeting. Those aren't representing you or part of your group?

B. Garchar: That's correct.

Coppola: Okay, Mr. Garchar. Why don't you tell us a little bit about what you're trying to do here. I'd like to understand particularly what the hardship is.

B. Garchar: Okay. I'll state the hardship as I'm planning on -- my daughter will be driving in a couple years, and at that time I would plan to have three cars which I currently, obviously, don't have the room to store inside. Quite a few years ago shortly after we moved in I had an incident with one of my vehicles when I was parked outside overnight and the tires were damaged so I had to replace both those tires. So, since then as much as we can, we parked the cars inside the garage. And I hear a lot about other neighborhoods when people leave their cars out, cars getting broken into, catalytic converters being stolen, items stolen out of cars, just miscellaneous issues like that. And we're on a busier road, so it's a lot of exposure just from people driving by. So, my preference is to keep everything -- especially overnight -- in a garage and out of harm's way.

Coppola: I told you, Mr. Hershey, I would do that. I was muted. What's in your shed right now?

B. Garchar: My shed has a riding lawnmower, I have two motorcycles, a four-wheeler and bicycles, so it's pretty much full. And that's another thing, I guess the reason why I'm asking for a little more than just the minimum three-car storage is because our current two-car garage -- once you get the two cars in there there's not really room for anything else so that's why I want a little bit of extra space on the addition just so that I have the ability to store something next to the car. And my shed -- one of the other hardships is the shed -- because the lot is so deep, the shed is 160 feet from the back of the house. So, it's quite a ways out there. I don't have electricity run out there, so just for convenience sake it's nice to have some additional storage space on the garage close to the house.

Coppola: Thank you. Can you tell me a little bit about the materials specifically in regards to how they will interact with the existing facade and materials?

B. Garchar: Yes. So, my plan -- the house currently, I don't know if you have all had the chance to review the packet that I put together. If not, I don't know if there's a chance I could -- can I share my screen at all or --

Coppola: We all have the packet that you presented in front of us.

B. Garchar: So, the house as it stands now is partial brick, partial vinyl siding. So, my plan is to match the siding and just do the siding on the additional garage. Same color

to match the current siding, same style, the height of each step and match all that to the best that I can. Same with the roofing materials, architectural shingles, same color. That's the plan. I definitely don't want anything that looks out of place and I want it to blend in. And if you remember looking at the way I have it oriented is it's -- I have it set back about five-and-a-half feet. That's because on that corner of the current garage there's brick that wraps around, and I just thought it would look a little nicer and look more like it was naturally built, supposed to be built like that, to set it back so that there was a that transition there.

Coppola: All right. Questions?

Baringhaus: Mr. Chairman.

Coppola: Vice Chair Baringhaus.

Baringhaus: Yes. Mr. Garchar, who'll be constructing the garage?

B. Garchar: I'll be subcontracting like the concrete and block work. I plan on doing the framing. I have experience as a -- working for a construction company prior to being in my current career. I would contract out the roofing and the rest I'd do myself, so the siding and the framing. I think I have it in the packet I'd be doing trusses, so prebuilt trusses for the roof.

Baringhaus: And then describe the utilities in the proposed structure.

B. Garchar: Utilities would be just electrical, couple outlets, obviously lighting and garage openers for both garage doors and exterior lighting just on the front. Currently, there's a water spigot on the side of the garage so that would stay. That would actually be on the side of the new addition. And that's it.

Baringhaus: And then when would you plan on starting construction?

B. Garchar: In the spring. That was kind of my plan is to pretty much once the ground thaws and the weather seems somewhat consistent to start the concrete work so that I can do the framing over the summer and before next winter have it all enclosed so I don't have to do any work outside and expose the construction to any weather for an extended period of time.

Baringhaus: And then what would be the impact on you if we asked you to remove the shed on your property?

B. Garchar: Well, that shed cost me about 8,000 dollars. I'd lose some of that additional -- that storage space. I would be able to move some of that in the garage, but with a car parked in there I wouldn't be able to store all that stuff. That shed was built to code, so it has the rat wall. It has a poured foundation and it was built -- and I built that to kind of like what the maximum was allowed at the time. And it's only maybe 10 or 12 years old, so it's in really good shape and it would just be a shame. And I guess my argument is that it's so far back in my yard, it's just you won't see it from the front of the house especially once the addition would be on from the house.

Baringhaus: And then just to confirm the dimensions, it's 16 by 12?

B. Garchar: The shed is, correct.

Baringhaus: Okay. Very good. Thank you very much.

B. Garchar: Thank you.

Klisz: Mr. Chairman.

Coppola: Secretary Klisz.

Klisz: Thank you. To the petitioner, are you -- have you had any discussions with your next-door neighbor, the Lipinskis about this project?

B. Garchar: He asked me about it. I haven't directly went to him and proposed what I was --

Klisz: Because we have your packet, and what you're not going to see is the letter that they wrote. I'll just kind of read you a section of it here. It says "It would make it impossible for my wife and I to exit our vehicles. His side yard where he wants to extend his two-and-a-half-car garage faces my driveway. His proposed extension would come within several feet of my driveway." Obviously, very concerning to at least me that they're claiming that it would be impossible for them to exit their vehicles if we allowed this addition. Can you explain what they're talking about there?

B. Garchar: Well, first of all, this is not what the variance I'm asking for, so I'm with the allowance to the property on the side of the house so I'm allowed to go up to -- I think it's either five or six feet and at the minimum it's eight feet from the property line. The property line is right along -- as I understand -- right along the edge of his driveway. It's unfortunate that that's -- that his property is set up that way, but there's no car door that's more than eight feet and there's plenty of room. I mean I understand currently they may step into our grass when they're getting out of the car, but I don't see -- there's -- towards the front there's nine feet of width once the addition would be there, and toward the back it goes down to eight feet. So, my -- the other issue that I wanted to prevent was that I'd be able to get a riding lawn tractor to the front of the house and still have that space to go around the addition to access the front of the house and I believe that I have that. Because I'm zoned R-1, I think it's five feet that I'm allowed to go, but I'm giving him an extra three feet on top of that.

Klisz: Thank you.

B. Garchar: Thank you.

Turbiak: Mr. Chairman.

Coppola: Mr. Turbiak, you had a question?

Turbiak: Yeah, thank you, Mr. Chair. Through the Chair to the petitioner, how tall is your current garage door?

B. Garchar: My current garage door is seven feet.

Turbiak: And it looks like you're asking for two eight-foot garage doors. Is that correct? And why eight foot?

B. Garchar: That is correct. And the thought was just that if some day when I retire maybe I get a van or something and I'd do some traveling. I just wanted to -- because I

have this opportunity to go a little bit higher just for some allowance. And even like taller trucks, sometimes you can't pull those into a standard garage seven foot high with some of the vehicles nowadays. So, just wanted to have some leeway there. And if I ever decided to sell the house, just an additional selling point, I guess.

Turbiak: I see. Do you currently drive a commercial vehicle for your daily business?

B. Garchar: I do not, no.

Turbiak: Do you plan to do any business out of this garage addition?

B. Garchar: No, I don't. I have a full-time job and I don't plan on adding to that.

Turbiak: I see. Thank you. Do you have a basement and how large is it? Is it the full footprint of your home which is about 1,600 -- 1,600 square foot?

B. Garchar: It is a full basement, correct.

Turbiak: Okay. And are any trees that need to be removed in the process of this addition?

B. Garchar: No, they won't.

Turbiak: Okay. And do you currently have a fence upon the property line with the neighbor that was mentioned earlier and can you describe where that fence starts and stops and what new attempts you might be adding and where that would go?

B. Garchar: Yeah. And I have that in the drawings that I submitted. Yeah, I would like to move that section of fence. Obviously, some of it will need to be taken out to allow for the garage.

Coppola: That's on page 18 of the petition.

B. Garchar: So, currently along the side of the house the fence is six foot from the side of my house, and once it gets to in line with the back of the house it takes a jog to line up with the property line in the backyards of both houses. So, I would like to move that out an additional 10 feet just to have that run parallel with the outside of the new garage addition because I like to have that garage door on the back and it would be in the way of that.

Turbiak: Okay, yeah. I see the part where it jogs where it's even with the back of your existing house. That is -- that jog is not currently impeding anything that your neighbor does, right? I mean it's on the property line, it's nowhere near his garage -- or his car door would open, right?

B. Garchar: Correct. Because it's -- yeah. It's kind of in line. I don't -- you'd have to look at like a satellite view.

Turbiak: Right.

B. Garchar: But it's along his garage, which his garage is set back --

Turbiak: Right.

B. Garchar: -- detached.

Turbiak: Okay. And are you going to put any kind of a man gate on that portion of the fence that you're relocating? You had mentioned that you wanted to drive your riding lawnmower around the side of the house. I mean obviously you could drive it through the two garage doors. But how do you plan to get it around that side or would you take it around the other side of the house?

B. Garchar: No. Currently, I do have a man gate on that side of the fence.

Turbiak: Okay. That wasn't in the package.

B. Garchar: Yeah. It's right in the corner closest to his property.

Turbiak: Okay. Let me just flip back to my notes.

B. Garchar: And that wouldn't change. It's like --

Turbiak: Right. I see that. So, that gate would remain in the same location? Is that what you're saying?

B. Garchar: Correct.

Turbiak: Okay. That's clear enough for me. Yeah, so I notice that your fence is not on the property line there, and obviously from what I'm hearing it also wasn't on the property line prior to this proposal. Why is that? Typically -- and did you have to get variance for that? Because it's my understanding that typically a fence would have to be on the property line unless they're going around some obstruction like a mature tree or a telephone pole. How is it that you got that fence off the property?

B. Garchar: Well, this is -- this was kind of an issue when we built. So, the way it is now is how I had wanted to do it in the first place and that's what I was proposed. I didn't get a variance, but my neighbor signed off and agreed to that because of the issue that he stated where he doesn't want it right up against his driveway. That would impede with just accessing his vehicles and allow for that interference. So -- and really, I didn't want it all the way out there. I just wanted it so that we can get to the man door on the side of the current garage and have that access. And I just picked six feet just because that's kind of what we needed just to walk in and out. And at the time I did that I didn't have the gate. I only had the one gate, so I had to be able to get the mowers in and out through there.

Turbiak: Okay. You've answered all my questions, Mr. Garchar. I appreciate it. Thank you, Mr. Chair.

B. Garchar: Thank you.

Boloven: Mr. Chairman.

Coppola: Mr. Boloven.

Boloven: Question for Mr. Hershey. Just so I understand from Chairman Coppola's questions to you, if the petitioner were to reduce the proposed attachment by 35 feet -- so he's proposing 334 additional square feet. If he reduced it down to 299 we wouldn't be here today?

Hershey: Exactly.

Boloven: So, question to the petitioner: Is that something you are willing to do to reduce the attached garage by 35 feet in order to save that shed that's in the back?

B. Garchar: So, I thought I was going over by 200 some square feet. That was my understanding.

Boloven: My understanding is is once you're -- after listening to Mr. Hershey, once you go over 720, you're then allowed to go up 1,000 square feet but you're not allowed a detached shed, a detached garage. But if you stay under 720, you can keep the shed. So if you lower down your plans from 334 down to 299, you're within compliance.

Coppola: Correct.

Boloven: Is that correct, Mr. Hershey?

Hershey: Yes, sir.

Coppola: It's about a foot and a half I think off the garage.

Turbiak: Mr. Chair.

Coppola: Mr. Turbiak, Mr. Boloven's got it first. I don't think the petitioner has answered the question.

Boloven: Yeah. I'd like to hear the petitioner's answer to that. If that's the case, as I'm hearing Mr. Hershey, are you willing to lower down your attachment down to 299?

S. Garchar: This is his wife, Sarah Garchar. We had some confusion as far as how this worked. If it was just 35 feet, I think yes, totally we would be willing to do that. We were confused as to what the maximum square footage was. It was kind of a chicken and egg thing. Like if we had not had the shed we would be able to have a larger square footage on the garage, but something about having an outbuilding makes it a smaller amount that you're allowed with the attached garage. But I'm very unclear as far as that. So, if it is in fact just 30 odd feet, that would be totally manageable, but my husband was under the impression it was 300 something square feet and that was the issue.

B. Garchar: 229 is what it stated.

Boloven: So, I'm going to state it again to Mr. Hershey because I want to make sure I'm clear. If they keep the addition total square footage under 720, which would be 299, they don't have to worry about the shed in the back?

Hershey: Yes, sir. If they stayed at the maximum 720 square feet on the garage they can keep the shed.

Boloven: But if they go over the 720 --

Hershey: Now you've changed it and they'd have to --

Boloven: Now they have to worry about the shed, but they're allowed to go up 1,000

square feet on the garage?

Hershey: Yes, sir.

Boloven: Got it. So, with that being said to the petitioner, based off of hearing what the Inspection Department said, would be willing to reduce your plans for the attachment down to 299?

B. Garchar: I'd still like to go forward with my proposal.

Boloven: That's all, Mr. Chair. Thank you.

Coppola: Mr. Turbiak, you had a question? Did you have a question, Mr. Turbiak?

Turbiak: No. I thought I had a clarification. If someone else has one, I'm doing a calculation here. Maybe come back to me, please.

Coppola: Yeah. I calculated it's about a foot and a half off the width and you're in compliance. It's a little over 21 feet long, 20.6 feet long so --

Turbiak: I see now. I see your point that the shed was included in the square footage. That kind of threw me off. I thought the garage addition was over by 229, but because the shed square footage was included, that's what made that number 229. So, yes, it looks like it is only 35 square feet over. So, I'm aligned with all of the facts of the case now so I'm all set. Thanks.

Coppola: Any other questions? Seeing there is none, anybody in the audience who'd like to speak for or against this? What I'd like you to do is you can -- if you're online you can raise your hand by clicking on the raise your hand button, I think it's in the lower right hand side. If you're on the phone, you need to hit star nine. We've got a phone participant that I'm going to unmute here in a second, or try to. Going to unmute the phone participant. There you go. Person on the phone with the last four numbers 0158, name and address first, please?

C. Lipinski: Curtis Lipinski. 36555 Ann Arbor Trail. I live next to the people in question.

Coppola: All right. Mr. Lipinski, you are free to speak. But just before that, you did submit a correspondence so that will -- because you're speaking, that will not be read into the record. Please proceed.

Lipinski: I didn't understand.

Coppola: You can go ahead and talk.

M. Lipinski: Hi. This is Madeline Lipinski. I'm sorry, we didn't quite understand. Because we sent you a letter that we cannot speak? Is that correct?

Coppola: No. Actually the opposite. The letter will stay within the petition, but we're not going to read it out loud because you're speaking. You can go ahead and speak though, please.

M. Lipinski: Oh, okay.

Coppola: If you're speaking, ma'am, I need you to give your name and address also.

M. Lipinski: Madeline Lipinski, 36555 Ann Arbor Trail. We're next door neighbors to the Garchars.

Coppola: Okay. Please proceed.

M. Lipinski: Our concern is that we bought our house like it is, and I realize our driveway is almost to our property line, but with this addition and a fence brought in, I don't know how we're going to be able to open up our car doors and get in this garage. First of all, he's not a contractor. He's not a builder. This -- I just -- you know, we're talking about the spring and he hopes to have it maybe so he can work inside in the winter? How long is this going to last? But I mean I think if someone is going to build something it needs to be built by a company, not a -- that's -- I guess that's what our -- we've been listening to this conversation and that's our concern.

Coppola: Anything else?

M. Lipinski: No, no.

Coppola: Any questions for either speaker, Mr. or Mrs. Lipinski?

M. Lipinski: No. This is -- we got the letter in the mail. This is the first that we've heard about it. I guess we're concerned about our property line and being able to get in and out of our garage.

Coppola: I think the closest that the building will be to the property line is eight feet based on the plans that have been presented. So, the building itself will be eight feet from your property line. So, that should allow sufficient -- I would think allow sufficient space for you to open your door. And then in regards to the fence, there's certain requirements on the fence, and I don't believe at this point he would be allowed to bring his fence up to the back of that garage because that's not the furthest point.

B. Garchar: Because --

Coppola: But still it's eight feet from your property line, so that might provide you a little bit of comfort. If you parked on the edge of your driveway and opened your door, unless you've got a limo, you should be in good shape with eight feet of clearance.

C. Lipinski: I'm not for this at all. I mean he's lied to me in the past. That's a side yard. He had to go for a variance on it. He came up to me like a man should come up to a person and say "Hey, would you sign this?" I said "Yeah, no problem." I said "Don't be a jerk and put it right along my driveway." I come home one day, guess what? The posts are right along my driveway. Okay? So, then I had to re-send it and it became a big ordeal. Okay? So, he's not a contractor. He works in the automotive industry. He's not a builder. No. He would move the fence, probably put it right alongside my driveway again, and it would be an inconvenience. So, yeah. I strongly suggest that he stay within what's recommended and stop with this variance stuff and whatever he's got to do -- you've got a code, let's live by the code. I live by it. If you've noticed, I've never put in for anything other than what is required by the City, and I'm not asking for anything but to follow what is -- you guys have set up.

Coppola: Okay. Anything else?

C. Lipinski: That'll do it.

Coppola: Thank you. Any questions? Okay. Seeing none, anybody else who would like to speak or for against, raise your hand or star nine. Seeing that there's nobody else that would like to speak -- are you sure? I see some other people that are in the audience. No one else wants to speak? Star nine or raise your hand icon, bottom right hand side of your screen. All right. Seeing none, do we have any correspondence?

Klisz: Yes, Mr. Chair. We have two letters. We have a Letter of Approval from Bruce Breisch, B-r-e-i-s-c-h, 36550 Ann Arbor Trail. (Letter read.) And then the letter from the Lipinskis which we will not read because they spoke this evening. Those are the only two letters.

Coppola: Thank you. I'm going to unmute you, Mr. Garchar. You have an opportunity to make a final statement. Very much would like you to respond, if you would, to the Lipinskis' comments. That would be helpful for the Board.

S. Garchar: Hi. It's Sarah again. I did just want to clarify that the plan is not to put any fence between the garage addition and their property line. The plan would be to just connect the fence to where it already is, just adjusting for the additional width of the garage addition. And regarding the issue with the fence that we had originally, as my husband stated earlier, the original plan was to do it with the six feet as it is currently installed. We had hired a fencing company, they took the paperwork to the permit -- to the City to get the permit. He was told that we -- that it had to be on the fence line. I was out -- I'm sorry -- on the property line. I was still -- we lived out of state at the time and we were putting the fence in prior to moving in completely. And yes, the fencing contractor pulled the permit, was told it had to be on the property line and put it in. Never in a million years would we want to block them from getting in and out of their cars. That is ridiculous. We would not do that. So, the addition of the garage in no way, shape or form has anything to do with this variance. The variance is simply to allow us to have a three-car garage and a shed as many, many other homes in Livonia also do. And then did you want to say something?

B. Garchar: No.

Coppola: Okay. All right. Thank you. I'm going to put you guys back on mute. I'm going to close the public portion of the case and I'm going to start the Board's comments with Vice Chair Baringhaus.

Baringhaus: Thank you. I went through a similar exercise that Mr. Boloven outlined where when I read the original case, I noticed that the shed square footage of 194 square feet and was factored in to the total square footage amount. I think what we discussed was having a 421 square foot garage but then taking it up to 720 square feet by reducing the 35 square feet from the original proposal I think is fair. So, in other words, instead of having a 334 square foot addition, reducing that down to 299 I think is a very workable solution. One, I think it gives adequate space to store three cars plus it also gives the petitioner the ability to maintain the shed on their property. I'd like the petitioner to look at that proposal seriously going forward. So, based on that, I'd be in favor of tabling this variance until we can discuss that option further.

Coppola: Thank you. Ms. Fraske.

Fraske: I agree. I was actually going to be proposing the same. I'd like to table it and have the petitioner come back to us with a revised amount to stay within the variance because I do think it's very doable.

Coppola: Thank you. Secretary Klisz.

Klisz: Actually, I don't think that tabling -- while that is normally a standard procedure for us to consider when we want someone to come back with something that is less than they're currently proposing but more than is allowed, I think our idea is simply denying it so that they can come back and make it at 299 square feet which they're allowed to do. They don't need us so the tabling wouldn't matter. If they came back with 299, they don't need our approval. I guess if they're going to come back with something different in between then tabling might be an idea. But based on the sensibleness of the 299, I would be in favor of a denial and just let them come forward with the allowed petition at 299 and then they get to keep the shed and then it's just not an issue for us.

Coppola: Thank you. Mr. Testa.

Testa: Yeah, thank you. I would be in support of a table if they were able to work things out with their neighbor and have them come to an agreement or at least have their neighbor come to an approval letter based on the drawing that they have. I think the neighbor is not quite understanding the exact detail what's going on here. I think short of them having their neighbors' support, I wouldn't be in support of this. Or their other option would be to drop the size of the addition down to be within -- not needing a variance.

Coppola: Thank you. Mr. Boloven.

Boloven: I'm more in line with Secretary Klisz on this. Initially, I would say I'd go for a denial on there. I believe a clear directive has been given to the petitioner to either remove the shed and they can go up to 1,000 square feet or lower it down to 720 square feet and then they can keep the shed. But if they want to bring something different, I guess I'd support tabling it if a motion is made by another Board member, but I was in more in line with Mr. Klisz on a denial and stay with the parameters of the code. Thank you.

Coppola: Thank you. Mr. Turbiak.

Turbiak: Thank you, Mr. Chair. I can be in support of this as presented. I think the 35 square foot, as the Chairman pointed out, is about a foot and a half -- translates to about a foot and a half in depth. I think that's de minimus in relation to the impact of this project. It's still close to being within the variance. And I always take into consideration neighbor complaints, especially in a case like this where the neighbors are very close. But, you know, as it was pointed out, it's eight feet between the closest point of the proposed garage and the existing property line, so I think that is not an issue, that is this petitioner's concern. I mean the homeowners next door have their property situated in such a way that it is basically on the property line, and I think this neighbor -- the petitioner has done a good job of being a good neighbor by not putting a fence on the property line which is typically required and would be permitted. And I'm not sure why he had to get a sign off. It looks like what's shown in the drawings is a chain link fence, it's not a privacy fence, so I'm not sure why any, you know, permission to put it on the property line would have been agreed. I'm guessing it was permission to put to off the property line which was, again, in that neighbor's -- the objecting neighbor's interest. So, I think that was a good, neighborly thing to do. And again, I think there's a hardship. The property is over half an acre, it has yard equipment to maintain the yard which is something that we've considered in the past. Trying to think if there's any other comment. Yeah, so the side yard is -- again, to the point -- is not what's before us. The

side yard was within the ordinance of five feet is the minimum, a total of 14 feet combined between sides is what's required and he's proposing eight so it's well within what's possible there. So, I can be in support.

Coppola: Thank you. I am not in support of this. I think that this issue could be resolved very quickly and easily by redesigning the garage for 35 square feet less. It's already an oversized -- well oversized one-car garage, so I think it has ability to reduce it to 35 -- by 35 square feet and then he can keep his shed. I think I'm somewhere between one, one and a half or maybe two feet come off of it in I think a standard one-car garage. That would still put you at 13, almost 14 feet, and I think a standard one-car garage width is normally less than that. So, I think this is one that could easily be rectified. I do believe there is a hardship, but I think the hardship can be cured or dealt with within the confines of what the zoning rules are today and this will get the petitioner what he wants which is extra garage space and he can keep his shed. So, I'll go ahead and open up the floor for a motion.

Baringhaus: Mr. Chair, can I just make one comment? And I agree with both Mr. Boloven and Mr. Klisz and yourself. Initially, as it was stated, normally we will look at tabling for some proposals that don't meet zoning requirements. But I think the point is more than established that by merely reducing it slightly to 299 the situation could be resolved, and based on what the Inspection Department told us, it falls within ordinances and there's no need for a variance. So, based on that, I would be in support of a denying motion. Thank you.

Coppola: You're welcome. Just a clarification, Mr. Fisher, if we were to deny this petition, that just -- in a sense -- precludes the petitioner coming back with the same petition; that petitioner could come back with a revised, different petition. Is that correct?

Fisher: Well, generally we say denying anything that's bigger than what they proposed. So, anything smaller is cool.

Coppola: If they get down below 35 feet they don't need to see us again, or if they want to only drop it 20 feet then they'd have to come see us again?

Fisher: That's right.

Coppola: Thank you, Mr. Fisher. I appreciate it.

Fisher: Sure.

Coppola: I will go ahead and open up the floor for a motion.

Upon motion by Baringhaus and supported by Boloven it was:

RESOLVED: APPEAL CASE NO. 2021-02-06: An appeal has been made to the Zoning Board of Appeals by Bryan Garchar, 36549 Ann Arbor Trail, Livonia, MI 48150, seeking to construct an attached garage addition and maintain an existing accessory building (i.e.: shed), resulting in excess garage area.

Attached Garage Area:

Allowed: 720 sq. ft.

Proposed: 949 sq. ft. (Addition: 334 sq. ft, shed: 194 sq. ft)

Excess: 229 sq. ft.

The property is located on the south side of Ann Arbor Trail (36549) between Dowling and Newburgh, Lot. No. 126-01-0753-006, R-1 Zoning District. Rejected by the Inspection Department under Ordinance 543, Section 2.10(6), "Definition of Miscellaneous Terms; Garage, Private," **be denied for the following reasons and findings of facts:**

1. The petitioner has not demonstrated to the Board that a practical difficulty exists and that by slightly reducing the size of the garage would result in the proposed structure falling within the ordinances.

FURTHER, that the denial of this appeal is in the best interest of the City of Livonia.

ROLL CALL:

AYES: Baringhaus, Boloven, Coppola, Fraske, Klisz, Testa

NAYS: Turbiak

ABSTAIN: None

Klisz: Denial passes six to one.

Coppola: I'm going to unmute you for a second here, Mr. Garchar. So, the Board has denied your petition for the plan that you presented. I think the Board is pretty be clear that you have options to fall within the confines of the zoning and this denial doesn't preclude you from coming back with a modified petition with a smaller but not larger proposal. So, do you understand the outcome of the petition and hearing?

B. Garchar: Yeah, yeah. It's clear.

Coppola: Okay. All right. Thank you.

B. Garchar: Thank you.

Coppola: We don't have any -- do we have minutes tonight or not? I don't see any minutes.

Klisz: I did.

Turbiak: We do, Mr. Chair, but I propose that we table it till the next meeting because I've seen a couple corrections that I need to make and I didn't have time because they were only posted about two hours ago.

Coppola: I haven't updated my -- there they are. Okay. I wish this thing would automatically update. I always have to chase it. I believe that there was some communication after our last meeting in regards to Open Meeting rules and laws, and there are a number of newer -- although some of you aren't as new as you were a while ago, but nonetheless newer people, and to be honest myself, so it's good to get a refresher in regards to the Open Meetings. We have to be -- as members of the Board, we have to be mindful and careful of our communications specifically in regards to matters of the Zoning Board. So, I thought, Mr. Fisher, it would be helpful if you can just give us a few pointers on where we need to be careful on the petitions.

Fisher: Thank you, Mr. Chair. I think it's commendable on the part of the Board members to want to approach this -- their positions as professionally as possible and to seek out information, and I don't have a fundamental objection to Board members asking strictly factual or strictly legal questions of staff as appropriate. What I think is a problem, potentially, is if -- I mean the Open Meetings Act is designed to assure that deliberations of a public body take place in the open in public. And so if multiple ZBA members are on the phone to one another or they're emailing back and forth or texting or whatever about a case, now you've raised a potential problem. And that's why we have in the past -- and I think we continue to do so now -- urge that you resist the temptation to do that sort of thing. So, I don't think this is really rocket science or greatly complicated, but the idea is we want you to do your deliberating about these proposals in the actual public meeting that people have been noticed for and so forth. The idea is you don't want to have it appear that backroom deals are being made.

Coppola: Mr. Turbiak, you had a question?

Turbiak: Yeah. Mr. Fisher, so when you opened that comment you said something about -- I don't know, probably not repeating the same word -- City officials or something. Are we, as a single Board member, allowed to talk to whoever we want individually and it's just the group conversations that you're advising about?

Fisher: Well, group conversations is the potential problem because, again, your deliberations as a body are supposed to be taking place in public. The fact that you visit a site and the property owner is there or the fact that you have a question that you have asked Mr. Hershey or somebody in Inspection because you don't understand how this is written up or whatever, I'm not as troubled by that sort of thing. I think that's just commendable due diligence. But like I say, what I do find problematic is anything that happens in this body sort of off stage, so that when the people come to the meeting the decision has already been made or there's an appearance of that.

Turbiak: Okay. You emphasized no problem with factual -- strictly factual, strictly legal. So, is there a type of conversation that someone could have, like myself, with someone from the Inspection Department that would be out of bounds?

Fisher: Well --

Turbiak: Other than clearly trying to set some kind of a deal, I mean I understand that, but just as far as sharing opinions or something like that, is that out of bounds?

Fisher: You know, I guess it's probably possible to imagine a scenario where indiscreet things are said in a conversation like that, and I can't imagine the universe of possibilities right now.

Coppola: Let me just ask this question, Mr. Fisher.

Fisher: Go ahead.

Coppola: Again, talking to the Inspection Department, they're not a deliberating body of the Zoning Board, so I guess I'm -- I guess as always you want to be careful with any of your communications because it can always be taken the wrong way. But again, I struggle to see how that would be a violation of Open Meetings because again, they're not a deliberating member of the Board, they don't vote. So, unless you get -- there's different things you can do because you could be trying to influence how they write something up, I get that, but I don't think that's an Open Meetings violation.

Fisher: No, I guess you're right. Some of these things are not sort of strictly Open Meetings issues so much as they are an appearance of fairness --

Coppola: Right.

Fisher: -- views. That is another -- those two things go sort of hand in hand, I guess.

Coppola: Right.

Turbiak: So -- okay. So, like a question about how the Inspection Department typically interprets something, is that a fair question?

Fisher: That sounds fair.

Turbiak: Okay.

Testa: Mr. Fisher, your point is we should not CC the whole Board on email, we should just email directly to you or directly to Mr. Hershey only, correct?

Fisher: Yeah. That's not because it's necessarily evil and everyone hears the result, it's just that that now looks like you had a meeting outside of the noticed time and place.

Testa: Should we CC maybe Marilyn and maybe Mr. Coppola, or just no CC and just directly email to you?

Fisher: I don't see the necessity for a CC.

Testa: Okay. Maybe the point of the CC, at least in the case of Marilyn, she could then put that communication in the Board packet? Or would that not be something we would want to do?

Fisher: I guess it would depend on the communication.

Coppola: Or the email string, right?

Fisher: That's right.

Baringhaus: Mr. Chairman.

Coppola: Vice Chair Baringhaus.

Baringhaus: Yeah. I guess -- I don't know, just listening to the conversation, I think the guiding rule is pending case. For instance, if there's a meeting date change then it would be appropriate to communicate with the whole Board. If it's a question regarding a pending case, then to Mr. Fisher's point, just email yourself directly to either Mr. Fisher or a representative of the Inspection Department for clarification.

Coppola: If it's a Board clarification, I don't see (unintelligible) Mr. Fisher. Let's say Mr. Testa sends you a clarifying question that you think is actually important for all the members to know, you sending an email to all the members is not a violation of the rule, a response to that, that's not a violation of the Open Meetings Act?

Fisher: I think in the scenario you design it's not a violation.

Baringhaus: Well, like for instance, tonight in the first case you had some background information regarding the Planning staff finding the City Council meeting from a few years back. That would be appropriate so send to all ZBA members from yourself?

Fisher: Yeah, no. I agree with that.

Baringhaus: Okay.

Coppola: I think it's a matter of expediency. I think there's many cases that information should be added to the packet.

Baringhaus: Best way to do it, yeah.

Klisz: I think it was added, right? There was some back and forth emails that were added to the packet. I guess there's also the FOIA idea if they -- if someone sues the City, then they're going to want all emails and all -- but if they're already part of the packet that seems open especially if you're not deciding. If it's just a clarification matter, you know, "Here's what we all saw" kind of thing, I guess that makes sense.

Baringhaus: I like the idea of adding it to the packet and it makes it immediately visible to everyone.

Coppola: Unless you don't refresh.

Baringhaus: Chairman Coppola excluded.

Boloven: Mr. Fisher, where is the line drawn in communication with us as you acting as an attorney for the Board versus you giving information on a case? Where is the privilege in it on a document that goes into a packet? Is that waiving anything by putting it in the packet?

Fisher: Well, yes, probably because you're going to have -- if the -- if a person appeals the ZBA's decision in a situation, he or she is going to be given everything that's on the

record, so whatever is in your packet is fair game. We don't edit anything out.

Boloven: So, wouldn't it be better to leave your communication out and just send it to the Board so it doesn't waive privilege?

Fisher: Well, I guess if there's something that would require attorney/client privilege, we'll treat that separately. I don't think that -- I don't think of that as an everyday event though because the privilege situation is typically there's some litigation or something and we're looking to protect our communications because of that litigation.

Boloven: I mean any single person could appeal and sue us at Wayne County technically on any case.

Fisher: Yep. Those -- you would -- the good news there is you're not looking at personal liability if that's what you're getting at.

Boloven: No, no, no. I want to make sure a door is not open just by having one of your emails in our packet.

Fisher: Well, the point is taken and we'll try to be judicious about what we put in the packet. But generally speaking, we have no secrets as to what went into the Board's decision. That should be available for both sides in the appeal to look at.

Turbiak: To Mr. Boloven's point though I think -- and I guess Mr. Coppola's lack of refreshing, by sending out an email from you does not put the Open Meeting at risk of violation and it also gives the information to the Board members the quickest and doesn't open us to any other reduced privileges it sounds like. So, if you're aligned, Mr. Fisher, or if I'm misunderstanding, it seems like that's the best way. If one of us emails you directly or maybe Randy, and then that's pertinent to other Board members, then maybe that should be emailed from you or if Randy holds that same position where he's not violating the Freedom of -- the Open Meetings I should say, then maybe that is something that we should work to add as a regular best practice.

Fisher: Well, in terms of regularness, I don't know how frequent this would or should be. But I'm certainly open to trying to -- and we do always try to be as professional as we can in providing the Board every piece of information that would be helpful in decision-making.

Turbiak: And reduce the temptation to want to email other Board members to inform them, you know, and that's -- like you said -- could look -- could look bad.

Coppola: I think this is helpful. I think we just need to be mindful of our communication. I mean stating that we're going to -- everybody wants to grab a beer after the meeting I think is okay, but communicating in regards to any of the cases before us that have not been adjudicated yet, be extremely careful in those communications. Thank you, Mr. Fisher.

Turbiak: Sorry to make this so long. I'm sorry, Mr. Chair. Were you done?

Coppola: I am done. What can I do for you?

Turbiak: I have another complimentary subject on that where I emailed Mr. Funchar about the deck this past weekend. I had a question for him, I asked him to call me when he could and he did. And I attribute that to being akin to going to his property and

talking in person. However, then he started sending me some pictures and some comments about his case and I said to make sure that he CCs Marilyn because I thought she was CC'd on one of them but not two of the other ones. So, I guess, Mr. Fisher, what is the best way to address that? Like I said, I replied to him to "Please make sure you include Marilyn on all those communications." Is that appropriate or what else can I do to fix that?

Fisher: It's probably -- and you can see in hindsight -- it's probably not the best idea to have a petitioner calling up and telling you stuff.

Coppola: Not only that, but questions for the petitioner need to occur within the confines of the meeting. That's when you have your opportunity to talk to the petitioner about specific questions. I think you need to keep those types of communications within the meeting.

Turbiak: Well, from what I recall from our training session, you know, I can't remember the lady's name who gave the training, but she mentioned that if you go you need to take notes and then share those -- the relevant ones to the case anyway -- with the other members, you know, verbally in the meeting. And that's what I've tried to do in some cases. Obviously, this one hasn't come back up, but that was going to be my intention also was to, you know, capture the conversation in shorthand and, you know, share it with the other Board members at the meeting openly, you know. So, again, I don't -- yes, he called me, and it's unfortunate that he had my email, but our emails are public, right? They're on the website so, he could have just emailed me anyway. It's not like I gave him any secret information. But the problem is that it looks like he was trying to email me directly and I didn't want that appearance.

Coppola: Okay. Anything else? Thank you, Mr. Fisher. I appreciate that. That was helpful.

Baringhaus: That was helpful. Thank you very much.

Fisher: Sure.

Coppola: Anything else for the good of the cause? All right. I Just need one final motion then if you would.

Baringhaus: Mr. Chairman.

Coppola: Vice Chair Baringhaus.

Baringhaus: Motion to adjourn.

Coppola: Do I have support?

Turbiak: Support.

Coppola: Supported by Mr. Turbiak. All in favor?

Board: Aye.

Coppola: Any opposed?

Boloven: Aye.

Klisz: Someone's opposed.

Coppola: Troublemaker.

Klisz: Passes six to one. Sorry.

Coppola: You can say on Mr. Boloven.

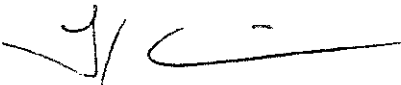
Baringhaus: Stay on all you want, Chris.

Coppola: All right, guys. Have a good night.

There being no further business to come before the Board, the meeting was adjourned at 8:27 p.m.



Gregory G. Coppola, Chairman



Timothy J. Klisz, Secretary

/jms