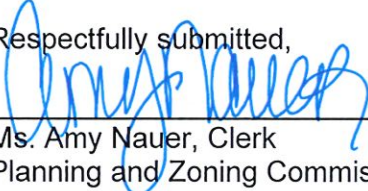


**BOARD OF ZONING APPEALS MEETING
MINUTES
Wednesday, July 26, 2023 – 6:00 p.m.**

In accordance with Article X of the Charter of the Village of Richfield and Chapter 1107 of the Codified Ordinances of the Village of Richfield, the attached Transcript of Proceedings from the July 26, 2023 Meeting of the Board of Zoning Appeals of the Village of Richfield shall serve as the official journal of proceedings and record of decision for the July 26, 2023 meeting of the Board of Zoning Appeals of the Village of Richfield.

Respectfully submitted,



Ms. Amy Nauer, Clerk
Planning and Zoning Commission

Approved,



Mr. Timothy Ochwat, Co-Chairman
Board of Zoning Appeals

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VILLAGE OF RICHFIELD
BOARD OF ZONING APPEALS

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:
In the Matter of: :
: Case Nos. :
Cowboy Properties, : 05-2023
United Church of Christ, : 06-2023
Fleet Fixes, : 07-2023
4751 Brecksville Road. : 08-2023
:
----- :

Village of Richfield
4410 W. Streetsboro Road
Richfield, Ohio 44286
July 26, 2023
6:00 p.m.

CHAIRMAN: Tim Ochwat
ZONING BOARD: Jim Turk
William Smith
Paul Swan
Joseph Rustic
ALSO PRESENT: Ben Chojnacki, Esq.
Brian Frantz
Amy Nauer

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PROCEEDINGS

MR. OCHWAT: Will the
Administrative Assistant call the roll?

MS. NAUER: Mr. Ochwat?

MR. OCHWAT: Here.

MS. NAUER: Mr. Schuler? I'm
sorry.

MR. TURK: Absent today.

MS. NAUER: Mr. Rustic?

MR. RUSTIC: Here.

MS. NAUER: Mr. Smith?

MR. SMITH: Here.

MS. NAUER: Mr. Swan?

MR. SWAN: Here.

MS. NAUER: Mr. Turk?

MR. TURK: Here.

MR. OCHWAT: Thank you. Are there
any agenda requests?

MR. FRANTZ: No agenda requests.

MR. OCHWAT: Any old business?

MR. FRANTZ: No old business.

MR. OCHWAT: New business. Will
the Administrative Assistant please read the
meeting minutes?

MS. NAUER: The Village of

1 Richfield Board of Zoning Appeals will hold a
2 meeting at 4410 W. Streetsboro Road at 6:00PM
3 on Wednesday July 26, 2023 to consider.

4 Case 05-2023 Parcel #5001332, Congress
5 Parkway West; a variance to utilize metal
6 siding for a proposed building instead of
7 masonry materials as required by Code.

8 Case 06-2023 4350, W. Streetsboro Road;
9 a variance to install a 46.8 square foot wall
10 sign instead of 40 square feet as required by
11 Code.

12 Case 07-2023, 4751 Brecksville Road; a
13 variance to permit outdoor storage of motor
14 vehicles, products, and merchandise; and a
15 variance to permit parking on gravel rather
16 than asphalt or concrete; and a variance to
17 permit storage or repair of merchandise or
18 motor vehicles or the repair of such vehicles.

19 Case 08-2023, 4751 Brecksville Road; a
20 variance to permit outdoor storage of two
21 enclosed trailers and two pieces of machinery
22 no larger than said trailers, but not
23 products, supplies, or merchandise of any
24 kind; and a variance to permit parking on
25 gravel rather than asphalt or concrete; and a

1 variance to permit storage or repair of
2 merchandise or motor vehicles or the repair of
3 such vehicles.

4 This was published on Saturday, July
5 15, 2023 in the Akron Beacon Journal.

6 MR. OCHWAT: Thank you. Will the
7 Director of Planning & Zoning please confirm
8 whether all statutory requirements and notices
9 have been advertised and properly delivered to
10 adjoining property owners?

11 MR. FRANTZ: They have been.

12 MR. OCHWAT: Thank you. So I will
13 explain the procedures for the hearing and
14 before we get started, I'll explain all the
15 procedures.

16 The Village of Richfield Board of
17 Zoning Appeals will hear the case, discuss the
18 case, and will announce our decision in the
19 case. First, Brian Frantz, the Village Zoning
20 Director will provide background information
21 for the Board. Then we will hear from the
22 applicant the reason why the variance is
23 requested. Finally, we will hear from the
24 interested parties.

25 When the Chair asks for any comments

1 from the general public, please raise your
2 hand if you desire to speak. Do not speak
3 until called. Please approach the podium and
4 begin by stating your name and address.
5 Restrict your testimony to the case under
6 discussion. Please also restrict your
7 testimony to the specific ordinances being
8 appealed. You may speak as many times as you
9 desire, so as long as practical and not
10 redundant from prior testimony. Shortly, we
11 will be swearing in everyone who plans to
12 speak. Any comments constitutes testimony.
13 So be aware that you will be speaking under
14 oath and that you are bound to speak the
15 truth.

16 This means for the applicant that if a
17 variance is granted, the applicant is bound
18 fully to any and all promises made during
19 testimony. If a variance is granted, there
20 may be restrictions attached to the variance,
21 and the applicant must adhere to all such
22 restrictions. Also, be aware that any
23 variances granted applies only to the specific
24 ordinance in the appeal, and not to any other
25 ordinances, laws, decisions or deed

1 restrictions, all of which must be separately
2 taken into account and complied with by the
3 applicant.

4 If the requested variance is not
5 granted, the applicant must appeal the Board's
6 decision to the Summit County Common Pleas
7 Court. Please be aware that there's a time
8 limit in which you may file the appeal. If
9 your matter involves a use variance that is
10 approved by the BZA, be aware that the
11 Richfield Village Council has the authority to
12 call up the BZA approval and any subsequent
13 vote, to overturn the BZA's decision.

14 Under Village Ordinances, a decision of
15 the BZA requires affirmation by three of the
16 five appointed members of the BZA. BZA
17 members are tonight, you must understand that
18 the applicant will have to receive yea votes
19 for three out of the four decisions.

20 BZA members here tonight, do you wish
21 to defend your applicant at this time?

22 (No response.)

23 MR. OCHWAT: For anyone who plans
24 to speak, please now stand and raise your
25 right, anyone in the audience who plans to

1 speak on any of the agendas.

2 (Witnesses sworn en masse.)

3 MR. OCHWAT: Thank you, you may be
4 seated.

5 So our first case, 05-2023.

6 Mr. Frantz, please provide any background
7 information to the Board.

8 MR. FRANTZ: Thank you,
9 Mr. Chairman. I've provided a map here that
10 was attached as an exhibit to my report this
11 evening, just so you can see and the audience
12 can see what's included in the conversation.

13 So the Applicant, Cowboy Property
14 Management, LLC, Mark Pawuk, the owner or
15 principal of the LLC, is requesting a use
16 variance pursuant to Section 1107.07 of the
17 Planning and Zoning Code. This use variance
18 request is related to the applicant's desire
19 to construct a truck maintenance facility with
20 metal siding as opposed to masonry materials
21 as required by Section 1171.11 (c) (2) of the
22 Planning and Zoning Code. The property is
23 zoned Industrial.

24 Reviewing the applicants application,
25 dated July 10, 2023, I offer the Planning

1 Commission some background information and
2 then evaluation of the criteria for a use
3 variance.

4 So some background information. Again,
5 the applicant is proposing to construct this
6 multi-tenant truck maintenance facility on the
7 subject land, which is located on the south
8 side of, essentially, Congress and Highlander
9 Parkway. You can see it here. Here's
10 Congress Parkway west and you see this red
11 line. This red line picks up what will be,
12 currently under construction, a public road
13 extension. So effectively Congress Parkway
14 west will connect to the back of Highlander
15 Parkway, which is the terminus point of the
16 Stonegate Business Park.

17 Then related to that then, the
18 applicant is going to construct, on this
19 property I just highlighted, construct a truck
20 maintenance facility, as I described in this
21 report. Again, the purpose of this use
22 variance request is to clad the structure in
23 metal siding, as opposed to masonry materials.

24 All of this is part and parcel with a
25 development agreement that the Village Council

1 authorized and Mayor executed to ultimately
2 see the construction of the public roadway
3 extension.

4 The initial conversations regarding the
5 project began, approximately, in mid-2022 with
6 Mr. Pawuk, when he approached the Village
7 about the need to construct a new building to
8 accommodate his existing tenants that were
9 located in the adjacent Saia terminal to the
10 north.

11 So this, where I'm highlighting here,
12 this parcel, that's the Saia terminal, and
13 Mr. Pawuk has tenants in there, or had tenants
14 in there, that were contemplated to be
15 relocated, because of a pending real estate
16 transaction, where the real estate and two
17 buildings, truck terminals, would transfer to
18 the Saia Corporation, and Mr. Pawuk then would
19 build on this property here, the subject
20 parcel, to the south, would build this truck
21 maintenance facility, and those tenants that
22 would be relocated or displaced, would do so,
23 the majority of them back over to this new
24 constructed building to the south.

25 So that transaction did occur. So from

1 the initial conversations regarding the
2 proposed building construction, I advised the
3 applicant that the architectural standards for
4 nonresidential buildings, and those standards
5 were updated and amended by Village Planning
6 Commission and Village Council in 2016 and
7 the new Code requires masonry materials, as is
8 the case in subject of the matter tonight.
9 One of the reasons for the 2016 amendment by
10 Planning Commission and Council was,
11 essentially, to upgrade the architectural
12 quality of future building construction.

13 The applicant, I believe, understood
14 the Code which changed to require masonry
15 materials, but still desired, and still
16 desires, with this application tonight, to
17 construct the building with a metal facade due
18 to cost and the fact that the applicants cites
19 there are other metal buildings in the
20 surrounding neighborhood. I explained that
21 the existing metal buildings in the
22 surrounding neighborhood are considered legal
23 nonconforming, as far as those structures were
24 built during a time when metal was permitted,
25 and the Code has since changed, as I had

1 stated, in 2016. So those buildings
2 effectively became legal nonconforming, again,
3 constructed at a time when that material was
4 permitted, but no longer is.

5 The applicant proceeded forward.
6 Again, the real estate transaction occurred.
7 The applicant proceeded forward and received
8 preliminary development plan approval in
9 January of 2023, so the beginning of this
10 year, and a stipulation of the Commission's
11 approval related to the applicant working on
12 refined architectural plans. At the time,
13 they were kind of conceptual in nature. So
14 working on those refined architectural plans
15 for, ultimately, final plan approval.

16 During the meeting, the discussion
17 about the masonry requirements came up, but
18 the applicant acknowledged that the
19 requirement was in place, but made a proposal
20 or a suggestion that they still wanted to
21 build a metal siding building. The Planning
22 Commission appropriately deferred that matter.
23 They don't have the authority to grant a use
24 variance and so the Commission added as a
25 stipulation and then ultimately, in my

1 opinion, they felt that the metal siding
2 proposal was not, obviously, adequate, and
3 referred either to construct the masonry
4 materials or to, potentially, seek a variance.

5 The applicant spent some time
6 contemplating the next moves, I believe, over
7 the course of a few months, and then
8 ultimately here this evening, is seeking that
9 use variance for the metal sided building
10 versus the masonry construction.

11 So the last thing I'll end on, during
12 that discussion with Planning Commission, it
13 was denoted that the subject property is part
14 of the Crossroads District. If you're not
15 familiar with what the Crossroad District is,
16 it's a planning level design district. It
17 encompasses approximately 550 acres. The
18 Village of Richfield owns a number of parcels
19 itself in this design district, often referred
20 to as the South Wheatley area, which is just
21 here to the north and east. But all of
22 Stonegate, Kinross Lakes, the FedEx property,
23 the back of, in this instance, the property
24 abutting up to Congress, all of this is in the
25 design district known as the Crossroads

1 District. That district holds heightened
2 architectural standards and development style
3 for both existing and new buildings that will
4 be constructed within the district.

5 So I've gone forward and provided the
6 Commission with an evaluation of Section
7 1107.09 (c), which is the use variance section
8 of the Code, and there's the seven standards,
9 if you will, that the Court's recognized our
10 standards to employ in the evaluation of a use
11 variance application. I'll note, different
12 than a dimensional variance application or an
13 area variance application, the use variance
14 standards have been recognized by the Courts
15 as all seven need to be satisfied in an
16 application for a use variance. Whereas with
17 an area variance requirement, the nine
18 so-called Duncan Factors are things that you
19 can weigh in an evaluation based on an
20 applicant's testimony.

21 So I'll go through those seven. Where
22 the variance stems from a condition, which is
23 unique to the property at issue and not
24 ordinarily found in the same zoning district.

25 My response, the Planning and Zoning

1 Code requires masonry materials for building
2 construction for all non-residential zoning
3 districts and the standard is not just applied
4 in this instance to the Subject site, but
5 everything within in the non-residential
6 zoning classification. So commercial, office,
7 industrial, all of those districts requires,
8 again, since 2016, masonry application for the
9 building facades.

10 Two, the hardship condition is not
11 created by actions of the applicant. Again,
12 all new non-residential building construction
13 in the Village must adhere to the current
14 requirements of the Planning and Zoning Code.
15 Therefore, it is the Administration's position
16 that an unnecessary hardship does not exist as
17 a result of the Code requirement.

18 Three, the granting of the variance
19 will not adversely affect the rights of
20 adjacent owners. This particular unnecessary
21 hardship test is more subjective than others.
22 While it's true that legal non-conforming
23 buildings (clad in metal) exist to the north
24 and east of the subject property, that fact
25 alone is not sufficient to determine adverse

1 impact to adjacent owners. The Saia facility
2 to the north was originally constructed 60
3 years ago, while the Bay Metals building,
4 adjacent to the subject area, which is this
5 building here that I'm showing on my cursor.
6 I'll highlight the parcel. That Bay Metals
7 building and even the one in front of that to
8 the east, those buildings were constructed
9 considerably long ago. The Bay Metal's
10 building was 30 years ago.

11 The Village, through its Comprehensive
12 Land Use Plan and Zoning policies, has
13 determined that metal buildings don't enhance
14 the overall architectural style being desired
15 and therefore they became legally
16 nonconforming when the Code was changed in
17 2016.

18 Four, the granting of the variance will
19 not adversely effect the public health,
20 safety, or general welfare. My comments to
21 that is I don't believe metal buildings hold
22 the same value as a building that is
23 constructed with a masonry facade. As such, a
24 metal clad building will adversely affect the
25 value of other non-residential buildings in

1 the Stonegate Business Park and the Crossroads
2 District that adhere to the Code standards.

3 Five, the variance will be consistent
4 with the general spirit and intent of the
5 zoning code. As previously stated, the
6 Planning and Zoning Code was amended in 2016
7 to clearly articulate the Village's desires to
8 upgrade construction materials by requiring
9 buildings to be clad in masonry materials
10 instead of metal. To date, this is the first
11 request to avoid compliance with the new
12 standards. Given this, granting the requested
13 variance is contrary, and inconsistent with
14 the spirit and explicit intent of the Code and
15 the architectural standards set forth in the
16 Council adopted Crossroads District Plan.

17 Six, the variance sought is the minimum
18 which will afford relief to the applicant.
19 Along with the Village's Architect, I met with
20 the applicant and explored several masonry
21 options to reduce costs compared to the cost
22 of a full masonry brick. However, the options
23 all exceeded the cost of a metal sided
24 building and therefore the applicant has
25 elected to seek this use variance request.

1 And seven, there is no other
2 economically viable use, which is permitted in
3 the zoning district. The applicant is
4 proposing to construct a truck maintenance
5 facility on the Subject Site so the permitted
6 and conditionally permitted uses in the
7 Industrial Zoning District are not the
8 impediment to bringing the project to
9 fruition. There are cost saving measures that
10 we believe can be implemented by the applicant
11 and remain compliant with the masonry
12 requirements of the Code.

13 I can answer any questions that the
14 Board may have.

15 MR. OCHWAT: I do have a question.
16 Regarding the extension of Congress Parkway
17 into the Highland Road area, so that would be
18 a fully accessible loop?

19 MR. FRANTZ: That would be. So
20 Highlander Parkway, as it currently exists,
21 terminates in this cul-de-sac that I'm showing
22 with my cursor, and then that approximate red
23 line will be built. That would be a public
24 road and it would connect to the approximate
25 location where Congress Parkway west

1 terminates. This that jets to the north and
2 west and this that jets to the south and west
3 are private driveways, serving properties, and
4 the public road will split and those driveways
5 will be realigned and it'll be a full loop
6 public access to Brecksville Road from both
7 Congress and Highlander Parkway.

8 MR. OCHWAT: So the buildings on
9 Highlander Parkway right now, have some sort
10 of, or they're all masonry construction,
11 masonry facades?

12 MR. FRANTZ: That's correct.

13 MR. TURK: Just to clarify, by
14 facade, you just mean the one side facing the
15 road of the building?

16 MR. FRANTZ: The Code requires
17 four side architecture --

18 MR. TURK: All facing walls,
19 okay.

20 MR. FRANTZ: That's correct.

21 MR. OCHWAT: Any further questions
22 for Mr. Frantz from the Board?

23 (No response.)

24 MR. OCHWAT: I will call on the
25 applicant, Cowboy Property Management. At

1 this time, we'll hear from the applicant or
2 its representatives. If you would, either to
3 the podium or to the table, and please turn
4 your microphones on. I don't know if they're
5 on right now.

6 MR. FRANTZ: So just a point of
7 clarification for this applicant and any
8 future applicants that come up or up to the
9 podium. The microphones are on. You just
10 have to press the little grey button to unmute
11 them, and if you want to mute, you can then
12 press the button again.

13 MS. NAUER: It sounds like they
14 were on, based on you connecting them.

15 MR. PAWUK: Good evening, my name
16 is Mark Pawuk. I'm the property owner and I
17 own several properties in Richfield, including
18 several truck terminals, FedEx and several
19 others.

20 So in selling the Saia property, we
21 have our own company in there, along with
22 several tenants, and we have Saia wants the
23 entire maintenance facility for their own
24 operation, so they can lock it down and not
25 have any access. So as part of the sale, the

1 back building to the west is still owned by
2 me. Saia split the property at the back of
3 the terminal.

4 Across the street, where we're building
5 the maintenance facility is pretty much in
6 line or a little to the east of where that
7 existing steel building is right now. The
8 steel building to the north of where our new
9 property is, to the west of where our new
10 property is, and to the northwest of where our
11 new property is are all steel-sided buildings,
12 including Hissong Kenworth.

13 The biggest reason for the variance
14 request is, is because the additional cost it
15 would take to put concrete panels on this
16 building, you'd have to upgrade the size of
17 the steel, there's larger footers involved,
18 and the cost of the materials. I personally
19 believe that if we do a nice fascia in the
20 front of the building facing the road, you're
21 not going to really see the sides and the back
22 of the building anyway. We're looking at
23 several hundred thousand dollars; is that
24 right Kevin?

25 MR. O'MALIA: Yes, 204,000.

1 MR. PAWUK: \$204,000 if we go
2 with this paneled building and what ends up
3 happening is it's cost prohibitive to build,
4 because I cannot charge that kind of rent for
5 this type of facility, to be able to make it
6 feasible to build it right now.

7 MR. O'MALIA: If I can expand on
8 that?

9 MR. PAWUK: Yes.

10 MR. O'MALIA: It is kind of a
11 unique condition to industrial buildings,
12 because they're built different from other use
13 types, where they're more feasible on a larger
14 scale because they're made out of
15 pre-engineered metal buildings. The way those
16 buildings are built, you can't just put normal
17 siding on them. So we have to build a
18 separate structural system to support the
19 sheathing that that siding's attached to, that
20 otherwise wouldn't be on that building. So
21 anything other than just a light sheet metal
22 siding is very expensive to do on a
23 pre-engineered metal building. That's why it
24 adds a lot of cost compares to other
25 industrial buildings that are traditionally

1 metal.

2 MR. PAWUK: I have worked very
3 hard through the years to upgrade the
4 facilities that we have and be a good
5 resident, a business person in Richfield. We
6 also own the business park that we brought
7 some good tenants in. Unfortunately, right
8 now with the way the economy is, we have a lot
9 of vacant office buildings that we're really
10 working hard on, on trying to update.

11 In my opinion, to the west of where
12 we're building this building there's a
13 downhill that goes into Highlander Parkway,
14 and I would think where these buildings are
15 would be a nice break off point where you
16 could still have steel, because all the
17 buildings around it are steel sided buildings,
18 and from there to the west and around back to
19 the other area where you go down the hill,
20 that's more office, OLI zoning, would make it
21 a nice split to be able to then continue to
22 park around with those type of structures.

23 MR. OCHWAT: So a question I have
24 for you. The adjacent property where the
25 cul-de-sac is, is that your property on either

1 side or is that part of Highlander Parkway?
2 Is that highlighted?

3 MR. PAWUK: We own that property.

4 MR. OCHWAT: You own that
5 property. So there could be more potential
6 buildings in the future?

7 MR. PAWUK: Hopefully. We hoped
8 we would have had the whole road done by now.
9 Just so you know, I am carrying a good part of
10 the cost of the road. The buildings just
11 chipped in because they wanted to extend it
12 all the way to Congress Parkway. We're going
13 to be putting a driveway off of the new road
14 into the back building behind Saia, and
15 eliminating that access road that currently
16 goes between the fence line. That'd be Saia's
17 property, so it'll be able to be landscaped or
18 whatever. So it's going to clean that area
19 up. Then I also own the Bay Metals building.
20 So we're changing the driveway coming into it
21 off of Congress Parkway. My dad actually gave
22 Bay Metals an easement on our property when
23 they built that building. Since then, I
24 purchased it from the previous owners.

25 So I pretty much own all that land back

1 there. We donated 20-some acres years ago on
2 the west side of Highlander Parkway, to a
3 conservation easement, so it could never be
4 built on. Then I own the Boyko Terminal
5 across the street and FedEx. I'm not sure if
6 everybody's aware, but I also work with the
7 Village. I donated land so you could build
8 your water tower. It's actually going to be
9 right outside my office. I'm watching them
10 every day building it. So I feel I've been a
11 good resident and business person to the
12 Village, and I would like to do this project,
13 but I got to make sure that it makes business
14 sense to be able to do it.

15 MR. OCHWAT: You mentioned on the
16 -- you were proposing or thinking of a tilt
17 wall system? You mentioned a concrete wall
18 system, a tilt wall system?

19 MR. O'MALIA: It was fiber cement
20 siding.

21 MR. OCHWAT: Oh, okay. I thought
22 you said tilt wall. That's a completely
23 different animal. Close to that.

24 MR. PAWUK: We're planning on
25 putting a split face type material up, like

1 four feet around all the doors, around the
2 front of the building, and then going up with
3 siding above that. I would be willing to look
4 at, if you wanted something different on the
5 face of the building facing the road. I'd
6 truly consider that. The biggest problem is
7 all the cost for steel and the structural
8 increases, which I also believe is bigger
9 footers to support those walls, that really
10 drives the cost. It's so expensive anyways.
11 Everybody knows what building costs have
12 gotten to be. When we add a couple hundred
13 thousand dollars to this project, it really
14 doesn't make it feasible.

15 MR. OCHWAT: So what you have
16 depicted on your elevations on 82.1, those are
17 what you propose with split face and siding?

18 MR. O'MALIA: See the one sheet
19 shows the horizontal fiber cement siding, and
20 then the other sheet shows the vertical metal
21 panel siding. There's two different versions.

22 MR. OCHWAT: I mean, you could run
23 brick veneer off that door, split face all the
24 way up. I'm just talking. I don't think
25 we're -- if I stand correct, it calls for

1 masonry to be split face or combination, it's
2 not specific to actual brick?

3 MR. FRANTZ: I'll read you what
4 the code says. Under 1171.11(c)(2), it says
5 non-residential buildings shall be clad in
6 masonry materials. Four inch split faced
7 block is acceptable with eight inch split
8 faced block only permissible on side or rear
9 building elevations, in parenthetical
10 reference, unless facing the street.

11 The notion of the fiber cement board
12 came up and the administration felt that was a
13 compromise, instead of requiring standard
14 utility brick that, like on it's own project,
15 the Village for industrial style building, had
16 utilized fiber cement board. So it seemed
17 reasonable, and that is a cement style
18 material, so it qualifies under that.

19 MR. OCHWAT: So it does fall into
20 that category?

21 MR. FRANTZ: We believe so, yes.

22 MR. OCHWAT: Any questions?

23 MR. RUSTIC: What's the building
24 elevation?

25 MR. OCHWAT: 20 foot to the

1 bearing wall up to the top.

2 MR. RUSTIC: You're under 30 feet?

3 MR. O'MALIA: Yeah, we're 20 at the
4 eave, so probably between 25 and 28 feet at
5 the peak.

6 MR. OCHWAT: We have a 35 foot
7 max, I think. Brian?

8 MR. RUSTIC: I can see that being
9 built in two weeks. A good group of brick
10 masons, concrete block, split face.

11 MR. FRANTZ: The maximum building
12 height actually allows the industrial district
13 can go up to five stories and no greater than
14 60 feet.

15 MR. OCHWAT: Any further questions
16 from the Board?

17 MR. TURK: I've got nothing.

18 MR. OCHWAT: So I guess given the
19 composite siding, it does fall into that
20 category of masonry or cementitious products.
21 Mr. Frantz, as you stated, it does fall into
22 that approval line or acceptable area?

23 MR. FRANTZ: Yeah. It's, as you
24 said, a cementitious board, so it's a masonry
25 product.

1 MR. OCHWAT: But as a point of
2 clarification, it's drawn as -- you're drawing
3 it split face and metal siding, or you're
4 drawing it as split face and cementitious?

5 MR. O'MALIA: So the split faced
6 and metal siding is what we're trying to get
7 the variance for because the split face and
8 fiber cement was already approved through, or
9 preliminarily approved.

10 MR. OCHWAT: Okay.

11 MR. PAWUK: It's only because of
12 the cost for the prefab metal building,
13 pre-engineered metal with having to add
14 thicker steel, because the panels are so
15 heavy. That's pretty much the reason, the
16 only reason why. If it was cost comparable,
17 we could have used the same structure, and
18 just hung it on it, even though the material's
19 more expensive, it wouldn't be a problem at
20 all. It's all the additional cost for the
21 added steel.

22 MR. O'MALIA: Yeah. Unlike other
23 buildings where you already have a wall behind
24 it, you can just change the finish on the
25 outside. You can't actually do that on

1 pre-engineered metal buildings. You have to
2 change the whole wall back up behind it.

3 MR. OCHWAT: Yeah. So if there's
4 no further questions, we'll now move into
5 deliberations. If any member of the Board
6 desires to move into Executive Session, in
7 order to confer with counsel or the Board,
8 please do so at this time.

9 (No response.)

10 MR. OCHWAT: Seeing that there's
11 none. I will ask for a motion for the Board
12 to grant the variance.

13 MR. TURK: Tim, are there any
14 comments from anybody out in the public.

15 MR. OCHWAT: I'm sorry. Are there
16 any comments from the public? Anybody else
17 who would like to speak on behalf?

18 (No response.)

19 MR. OCHWAT: So at this time, I
20 will ask if any of the Board Members who'd
21 like to place a motion for approval of this
22 Case No. 05-2023?

23 MR. TURK: Before you have a
24 motion, just one clarification. You are not
25 willing to put cement board on the exterior

1 wall, correct, or prefer not to?

2 MR. O'MALIA: That's correct.

3 MR. TURK: Okay.

4 MR. OCHWAT: But you said the
5 Board approved to utilize that, correct? That
6 Council approved to utilize cement board
7 siding?

8 MR. FRANTZ: So the applicant has
9 been to the Planning Commission for
10 preliminary development plan approval. They
11 have not come back with a final development
12 plan approval. At preliminary development
13 plan approval, Planning Commission provided a
14 positive recommendation of a preliminary plan
15 that illustrated fiber cement board and split
16 face. The applicant, during that meeting, had
17 stated he still desired to seek a metal sided
18 building and then that's how the meeting was
19 left.

20 They have not come back to Planning
21 Commission and are retaking this issue back up
22 and bringing it to the Board to seek the metal
23 siding. If approved, if the use variance is
24 approved, I just want to clarify one thing.
25 By Code, use variance approvals by the Zoning

1 Board of Appeals are not a call up authority
2 question, rather an automatic review. So any
3 use variances approved automatically under the
4 code, goes to Village Council for a review.
5 They can affirm the BZA decision or they can,
6 essentially, overturn and deny the use
7 variance.

8 So going back, if the request is
9 approved, that's the channel in which it goes.
10 If the request is denied, the applicant has a
11 decision whether to proceed with the project
12 or go back to the Planning Commission with
13 something maybe other than what was presented
14 originally, but maybe different alternatives
15 to masonry products that maybe are less
16 expensive, but still more than metal, but the
17 metal at that point, could be a concluded
18 matter. Or the applicant can appeal under
19 2506 to the Court, Summit County Court, for an
20 appeal of the Board's decision.

21 MR. TURK: The whole plan behind
22 this, Brian, was to upgrade the appearance,
23 not so much for fire codes or anything like
24 that. Steel would still conceivably be an
25 acceptable as a building material. It's

1 aesthetics that we're going for here.

2 MR. FRANTZ: Yeah. I mean, people
3 use steel a lot and they meet fire codes. So
4 this is really to -- the point and the purpose
5 of the amendment to change the requirements to
6 masonry materials is just that, it's an
7 aesthetics issue to upgrade the aesthetics and
8 upgrade the property values as well, in the
9 surrounding area and throughout the Village.

10 MR. OCHWAT: Thank you for your
11 explanation. I think that clarified it?

12 MR. TURK: Yes.

13 MR. OCHWAT: Any other questions?
14 Everybody's good?

15 So I will entertain a motion to grant
16 the applicant's request for the variance.

17 MR. SWAN: So moved.

18 MR. OCHWAT: So moved. So in Case
19 No. 05-2023, asked for approval on the
20 variance.

21 MR. TURK: There's no second.

22 MR. OCHWAT: Paul seconded it. I
23 mean is there a second to a motion?

24 MR. SWAN: I made the motion.

25 MR. OCHWAT: You made the motion.

1 Okay. Is there a second?

2 MR. TURK: I'll second it.

3 MR. OCHWAT: Ms. Nauer, can you

4 call the roll, please?

5 MS. NAUER: Mr. Smith?

6 MR. SMITH: No.

7 MS. NAUER: Mr. Ochwat?

8 MR. OCHWAT: No.

9 MS. NAUER: Mr. Swan?

10 MR. SWAN: Yes.

11 MS. NAUER: Mr. Rustic?

12 MR. RUSTIC: No.

13 MS. NAUER: Mr. Turk?

14 MR. TURK: Yes.

15 MR. OCHWAT: So the variance has

16 been denied at this time, so the Chair, if

17 there's any further questions on that, I guess

18 -- one moment please.

19 So no further action will be taken by

20 the Board at this time and there is a time

21 frame of appeals for this.

22 MR. CHOJNACKI: I believe it's 30

23 days. Let me confirm.

24 MR. FRANTZ: Yes. The applicant

25 has 30 days for the appeal to the courts.

1 MR. OCHWAT: Okay.

2 MR. FRANTZ: Just to clarify,
3 because it's a denial of the case, it is not
4 reviewed by Village Council. Only approvals
5 are reviewed by Village Council.

6 MR. OCHWAT: So at this time, we
7 would entertain a motion for the law director
8 findings and conclusions of facts for the
9 formal meeting minutes of proceedings.

10 MR. SWAN: So moved.

11 MR. TURK: Seconded.

12 MR. OCHWAT: Thank you.

13 MS. NAUER: Mr. Swan?

14 MR. SWAN: Yea.

15 MS. NAUER: Mr. Rustic?

16 MR. RUSTIC: Yes.

17 MS. NAUER: Mr. Turk?

18 MR. TURK: Yes.

19 MS. NAUER: Mr. Smith?

20 MR. SMITH: Yes.

21 MS. NAUER: Mr. Ochwat?

22 MR. OCHWAT: Yes.

23 So Mr. Pawuk, thank you for your
24 presentation. You may appeal it to the Court
25 of Common Pleas upon our facts and findings.

1 We will issue that too.

2 MR. CHOJNACKI: Well, I think before
3 we do that, to preserve the record on appeal,
4 I think it's appropriate for the Council to
5 accept the report, as prepared by Mr. Frantz
6 and the record. So a motion to that effect.

7 MR. SWAN: So moved.

8 MR. OCHWAT: Any second?

9 MR. TURK: Second.

10 MS. NAUER: Mr. Rustic?

11 MR. RUSTIC: Aye.

12 MS. NAUER: Mr. Turk?

13 MR. TURK: Yes.

14 MS. NAUER: Mr. Smith?

15 MR. SMITH: Yes.

16 MS. NAUER: Mr. Ochwat?

17 MR. OCHWAT: Yes.

18 MS. NAUER: Mr. Swan?

19 MR. SWAN: Yes.

20 MR. OCHWAT: Thank you.

21 We'll proceed to our next case, 06-2023

22 Richfield United Church of Christ.

23 Mr. Frantz, I believe.

24 MR. FRANTZ: Thank you, Mr. Chair.

25 The applicant is here this evening

1 representing the Church. He'll provide his
2 information momentarily, The United Church of
3 Christ. I have for ease of, I'm just going to
4 close out some of these other documents to be
5 able to move around a little bit.

6 So I put up an aerial photograph, but I
7 think probably everybody knows where the
8 United Church of Christ is. If you look out
9 to the east and it's right next to us. So
10 they are requesting a dimensional variance for
11 a wall sign that they're proposing. I'll give
12 you some background information from my
13 report. They're looking to erect a 4.5 foot
14 by 10.4 foot, which is 46.8 square feet, wall
15 sign on the building, and that's located at
16 4340 West Streetsboro Road.

17 The existing church building, you can
18 see it here on the aerial, it sits about 235
19 feet off the road. I'll give you a street
20 view of that here momentarily. I think it's
21 important to show you this just so you can see
22 from the perspective. I indicate this view in
23 my report, but effectively, that's the front
24 of the church and that facade right there that
25 I'm drawing with the triangle, that is where

1 the sign will go. So in this portion of the
2 facade will be a cross and then right below
3 it, immediately adjacent below it, will be the
4 words as proposed by the Church. I think it's
5 Richfield United Church of Christ, as showing
6 you here on the page. We'll show you that
7 here on the rendering that they provided.

8 So the issue within the code under
9 Section 1163.15 wall signs for non-residential
10 uses in a residential zoning district are
11 limited to 40 square feet. The applicant's
12 original request when they went to the
13 Planning Commission was close to 80 square
14 feet. Some members of the Commission
15 expressed some concern about that size, but
16 recognized that it is a great distance off the
17 road and also recognized, as the
18 administration pointed out, that several
19 Zoning Codes within Northeast Ohio and many in
20 Ohio in general and cross country, do provide
21 for allocations for properties that contain
22 large building setbacks and large properties,
23 generally.

24 So I point that out in my report that
25 the subject property is about 18 acres in

1 total with multiple parcels and, again, the
2 building sits back about 235 feet from the
3 road. So you can see from as the structure is
4 viewed here from the road, it's pretty far
5 back and difficult to see.

6 So the Church came forward with a
7 proposition to put a wall sign up. It was
8 about 80 square feet. Some members of the
9 Commission had some concern with that, in
10 particular because the code does limit it to
11 40 square feet. There was discussion. The
12 Church recognized and took that to heart.
13 They went back and they shrunk the sign down,
14 if you will, to the minimum size that they
15 believe can still be viewed from the road, and
16 get as close to code compliance as possible.

17 So as it stands, 40 square feet's
18 allowed. They're sitting at 46.8 square feet.
19 So the variance is for 6.8 square feet, as
20 applied for in their application.

21 So with that background, I'll also
22 point out that the Planning Commission had a
23 lot of conversation about this and I do
24 believe that there's a likelihood that we will
25 continue that conversation and explore an

1 amendment to the Code to add some allocations
2 in for larger lots and sites that have large
3 or deep building setbacks off of the road.
4 That's not currently something they're
5 reviewing, but I do think that that's
6 something the Commission will take up over
7 time, given what came out of this case.

8 So taking a look at it again, this is a
9 different type of variance. This is an area
10 variance or a dimensional variance. There's
11 requirements in the Code. If the Board were
12 so inclined to look at Chapter 1107,
13 specifically as it relates to area variances,
14 1107.09(b)(1-9) are the nine so-called Duncan
15 criteria or Duncan factors that come out of
16 the court cases, that they're recognized by
17 the courts as acceptable items or factors to
18 consider in evaluation and weighing of a
19 dimensional variance request. I say weighing
20 because I, at another zoning meeting, talked
21 about a use variance. Dimensional variances
22 are different.

23 So the applicant will present their
24 case and the nine factors that you have to
25 consider, there may be two, three, one,

1 however many you believe the applicant is
2 really demonstrating that they meet compliance
3 with or advance that particular requirement.
4 You don't have to have all nine in the
5 instance of a dimensional variance. Again,
6 it's a weighing or factoring in of the
7 presentation by the applicant of the nine
8 factors to consider. So with that said, I'll
9 go through those.

10 The first, whether special conditions
11 or circumstances exist that are unique to the
12 property in general and not generally
13 applicable to other lands in the same zoning
14 district. My response to that, the building
15 is setback approximately 235 feet and the Code
16 doesn't provide additional area allowances for
17 large setbacks. As such, I believe the
18 combination of these two issues create a
19 special condition unique to the Subject site.

20 Whether the property in question will
21 yield a reasonable return or whether it is a
22 beneficial use of the property without the
23 variance. I stated, the property is currently
24 being used for a church and therefore contains
25 a beneficial use of the property.

1 (3) Whether the variance is substantial
2 and is the minimum necessary to make possible
3 the reasonable use of the land or structure.
4 My response: The variance is not substantial
5 because the applicant has reduced the overall
6 size from the original application to the
7 minimum needed to read the message on the sign
8 as viewed approximately 235 feet from
9 Streetsboro Road.

10 (4) Whether the essential character of
11 the neighborhood would be substantially
12 altered or whether properties adjacent would
13 suffer a substantial detriment if the variance
14 is granted. I responded that in my opinion,
15 the character of the neighborhood (and the
16 intent of the Code) will not be negatively
17 impacted if the variance is granted given the
18 large setback distance from the road.

19 (5) Whether the variance would
20 adversely affect the delivery of governmental
21 services such as water, sewer, or trash
22 pickup. In my opinion, the delivery of
23 governmental services will not be negatively
24 affected if these variances are granted.

25 (6) Whether special conditions or

1 circumstances exist as a result or actions of
2 the owner. The church was constructed when
3 the property was part of the Township and
4 therefore subject to different rules.
5 Moreover the Village's Zoning Code doesn't
6 provide additional area allowances for large
7 building setbacks similar to other municipal
8 Codes. Given this, I don't believe this
9 request exists as a result or actions of the
10 owner.

11 (7) Whether the property owner's
12 predicament can be handled in some other
13 method other than a variance. As I stated
14 earlier, the applicant has reduced the overall
15 size of the sign to the minimum necessary for
16 the message to be read from Streetsboro Road.
17 Given this, I don't see any other method to
18 eliminate the requested variance.

19 (8) Whether the spirit and intent
20 behind the zoning requirement would be
21 preserved and variance is granted. Most Sign
22 Codes provide some level of area allowances
23 for large building setbacks and the Village's
24 Code does not. Recognizing this, the Planning
25 Commission will likely review this matter and

1 suggest applicable amendments to Village
2 Council. Therefore, I believe the general
3 intent of the Code will be preserved if the
4 variance is granted.

5 (9) Whether the granting of the
6 variance requested will confer special
7 privileges onto the applicant. My response:
8 All non-residential uses in residential zoning
9 districts are hampered by the lack of area
10 allowances for properties with large building
11 setbacks. Given this, and the likelihood that
12 this matter will be reviewed for amendments by
13 the Commission, I don't believe special
14 privileges will be conferred on the applicant
15 if the variance is granted.

16 I can answer any questions you may
17 have.

18 MR. OCHWAT: Do you have a drawing
19 of the letters, the size of the letters and
20 how it's laid out?

21 MR. FRANTZ: I apologize, it
22 didn't come through real great on the copy,
23 but that's the general size; 4.5 feet, 10.4
24 feet in length, which is the 46.8 square feet
25 being requested, compared to the 40 as

1 permitted.

2 MR. RUSTIC: So is it 14 inch
3 letters, 12 inch letters?

4 MR. FRANTZ: The first row,
5 Richfield, is 14 inch letters; and the second
6 and third row, United Church, and of Christ,
7 12 inch letters. They were originally larger
8 letters and so the applicant did reduce those
9 down. They want the Richfield to stand out
10 slightly, and actually, they did examine if
11 they reduced that to 12 inches, which really
12 is the minimum necessary, they believe and we
13 would concur, for visibility from Streetsboro
14 Road, even if they went that 14 to 12, they're
15 still over and require a variance. I don't
16 think that that, it's so negligible, it really
17 makes any impact.

18 MR. RUSTIC: Can I see the photo?
19 That's a realistic depiction?

20 MR. FRANTZ: That's been revised
21 to reflect the lettering as presented this
22 evening.

23 MR. OCHWAT: 235 feet away is
24 small.

25 MR. RUSTIC: Yeah, you're not

1 going to see it from 235 feet away.

2 MR. OCHWAT: Well, you will, but
3 --

4 MR. FRANTZ: This is what the
5 applicant has presented as being the minimum
6 necessary to what they would like to present
7 to the Village and they're satisfied with
8 this. But again, it's slightly over by 6.8
9 square feet.

10 MR. RUSTIC: So what's the limit
11 if this wasn't a wall sign? If they wanted to
12 put a regular posted sign in front, what's the
13 limit to their signage on that situation?

14 MR. FRANTZ: A ground sign for
15 non-residential uses in a residential
16 district, a ground sign cannot exceed 40
17 square feet. They've examined, as a matter of
18 just a little history, the Church has examined
19 a ground sign on this property. Actually,
20 I've spent a considerable amount of time
21 looking at it with them. The difficulty or
22 challenge there is, it drops off pretty
23 quickly. You can see there is an existing
24 sign and it drops off quickly. It's kind of a
25 bowl, as it was designed with a retention in

1 the middle of the property, and it is
2 difficult to get a sign in there at the
3 current location. They've been looking at it.
4 I think they maybe still a little at some
5 point, come back and try to work a sign if
6 it's possible, but I think that's my
7 perception of why they want to advance at
8 least to get a wall sign up for the time
9 being.

10 MR. OCHWAT: Any further questions
11 from the Board of Mr. Frantz?

12 (No response.)

13 MR. OCHWAT: Now to hear from the
14 applicant, thank you.

15 MR. HAKOS: I really have nothing
16 more to add. I think we've done the best we
17 can to get it reduced to where it can still be
18 readable from the street where the traffic is
19 going back and forth. That's our only
20 exposure is east and west. We're not a corner
21 lot.

22 MR. OCHWAT: I don't have any
23 questions. Any comments from the audience?

24 MR. CORMAN: My name's Timothy
25 Corman, C-o-r-m-a-n. I live at 3815 Ashley

1 Court. So if you spin yourself around, that
2 house, right there, is my house.

3 Now, kind sir, I'm a member of the UCC.
4 This is nothing against the Church, okay? I
5 don't know whether this is appropriate for
6 this Board or not, because I've never done
7 this before, so please bear with me. You can
8 tell me it isn't and I respect that, and I
9 respect the legal process.

10 First of all, you said the current
11 sign, first of all, that's much bigger than 40
12 square feet, because it's about ten feet high
13 and about seven feet wide, okay. Yes, it does
14 drop off. And I was wondering, it has been
15 damaged. At least it appears to be damaged.
16 So I don't know what the disposition of that
17 sign is going to be. I'm concerned about
18 distractions to drivers, because it is an east
19 and west, and the current signage as it
20 currently states, is visible to both
21 directions fine. But as Mr. Frantz points
22 out, it's about 235 feet setback. I think
23 many of us in looking left or right for
24 distance when you're driving, it's actually a
25 distraction for driving. So I am concerned

1 about that.

2 It's kind of funny, Mr. Frantz said,
3 when he first called this up, he said, the
4 UCC Church, pretty much everybody knows where
5 it is, so why do we need this extra signage,
6 when, in fact, that driveway is actually
7 serviceable to three different entities, if
8 you will, the apartments, the day care, and
9 the church. And it's lit up, and this is
10 going to make it that much brighter with
11 having the up-light that you've got on there
12 now.

13 So personally, I'm just questioning the
14 need for it. Longstanding people know where
15 it is. People will get distracted by it.
16 I've seen how people drive down that road. I
17 see it every day, and we will look at it every
18 single day. Every morning when I get up and
19 make my coffee, I'm going to see that.

20 Again, nothing against the Church, but
21 I don't necessarily believe that additional
22 signage is necessary for people to know where
23 their church is, given the fact that there
24 already is signage for the Church.

25 Those are my comments.

1 MR. OCHWAT: Thank you. Thank you
2 for your comments. I think some of your
3 comments are more internally, you know, within
4 the Church body or the group on the use of it.
5 But this Board is here, only are reviewing the
6 variance for the sign, it being presented to
7 us. That's a matter of the Church and the
8 congregation and the board there to address.
9 So thank you for your comments.

10 Any further comments from the public.

11 MR. BECHERUCCI: Which sign is ten
12 feet tall?

13 MR. CORMAN: That post, that white
14 post in the center.

15 MR. OCHWAT: If you want to
16 comment, sir, if you want, come up to the
17 podium and speak.

18 MR. BECHERUCCI: No --

19 MR. OCHWAT: Yes, yes, you do.
20 Please state your name.

21 MR. BECHERUCCI: Frank Becherucci,
22 4142 Maple Drive. So they're saying that the
23 steeple is --

24 MR. CORMAN: No, the current
25 signage, right by the driveway, that center

1 post is, I estimated, about ten feet, because
2 it does drop off, as Mr. Frantz mentioned.

3 MR. BECHERUCCI: Well, you measured it
4 ten feet from the swale or from where the sign
5 is to the road?

6 MR. CORMAN: I measured it from
7 the ground, not from the street, and I know
8 that it's at least seven feet wide because I
9 couldn't -- I spread my hands out, I didn't
10 get a measuring tape. But, anyway.

11 MR. BECHERUCCI: Carpenters don't
12 build houses by --

13 MR. CORMAN: Oh, I know.

14 MR. BECHERUCCI: -- oh, it's about six
15 feet long.

16 MR. CORMAN: I'm not a carpenter,
17 sir.

18 MR. OCHWAT: Thank you.

19 MR. CHOJNACKI: You may want to ask
20 the applicant if he wants to respond.

21 MR. OCHWAT: The applicant, would
22 you like to respond to any of that?

23 MR. HAKOS: No, not really. We
24 feel the sign, the lettering naming our church
25 is appropriate and considering the setback,

1 it's not overpowering at all, fits
2 proportionally with the reduction that we've
3 entertained and come through with, and it's
4 minimally, fractionally, over the 40 square
5 feet. From the 235 feet back, passing on the
6 road, it's not going to be overpowering at
7 all. I think it's quite appropriate fitting
8 that large red brick facing that we have.

9 MR. OCHWAT: Any further comments
10 from the Board, any questions?

11 (No response.)

12 MR. OCHWAT: Thank you. Seeing
13 that there's no further testimony, we will now
14 move to deliberations. If there's any member
15 of the Board that desires to move into
16 Executive Session in order to confer with
17 counsel or the Board, please indicate at this
18 time.

19 (No response.)

20 MR. OCHWAT: At this time, the
21 Chair would like to entertain a motion to
22 grant the applicant's request for a variance.
23 Is there a motion?

24 MR. SWAN: So moved.

25 MR. OCHWAT: Is there a second?

1 MR. SMITH: I'll second.

2 MR. OCHWAT: Ms. Nauer, can you
3 call the roll, please?

4 MS. NAUER: Can you clarify the
5 motion, I didn't hear it fully?

6 MR. OCHWAT: The motion is to
7 grant the applicant's request for a variance
8 for Case No. 06-2023, Richfield United Church
9 of Christ, requesting to install a 46.8 square
10 foot wall sign and Section 1163.15(a) of the
11 Planning and Zoning Code permitting 40 square
12 feet. A 6.8 square foot variance is being
13 requested for approval.

14 MS. NAUER: Mr. Rustic?

15 MR. RUSTIC: No.

16 MS. NAUER: Mr. Smith?

17 MR. SMITH: Yes.

18 MS. NAUER: Mr. Ochwat?

19 MR. OCHWAT: Yes.

20 MS. NAUER: Mr. Turk?

21 MR. TURK: Yes.

22 MS. NAUER: Mr. Swan?

23 MR. SWAN: Yes.

24 MR. OCHWAT: Your variance is
25 granted. Thank you.

1 MR. TURK: Mr. Chair, if I can
2 be excused for one second.

3 (Mr. Turk exited the meeting.)

4 MR. OCHWAT: I'd like to entertain
5 a motion for the findings and conclusions of
6 fact for formal minutes of this case. Is
7 there a motion?

8 MR. SWAN: So moved.

9 MR. OCHWAT: Is there a second?

10 MR. RUSTIC: I'll second.

11 MR. OCHWAT: Ms. Nauer, if you can
12 call for a vote, please?

13 MS. NAUER: Mr. Ochwat?

14 MR. OCHWAT: Yes.

15 MS. NAUER: Mr. Swan?

16 MR. SWAN: Yes.

17 MS. NAUER: Mr. Rustic?

18 MR. RUSTIC: Yes.

19 MS. NAUER: Mr. Smith?

20 MR. SMITH: Yes.

21 MS. NAUER: Mr. Turk?

22 MR. CHOJNACKI: He's absent.

23 MS. NAUER: Absent.

24 MR. CHOJNACKI: Motion carries
25 anyhow.

1 MR. FRANTZ: If you want to take a
2 couple minute recess?

3 MR. OCHWAT: Yeah, let's take a
4 five minute recess. Thank you.

5 (Recess taken.)

6 MR. OCHWAT: Ms. Nauer, go on the
7 record at 7:11.

8 MS. NAUER: Yes.

9 MR. OCHWAT: Thank you. We will
10 now hear Case 07-2023, Fleet Fixes, 4751
11 Brecksville Road.

12 Mr. Frantz, can you please provide some
13 background information for the Board?

14 MR. FRANTZ: Thank you, Mr. Chair.
15 I have my report on the screen. I have, as
16 I've done with the other cases, pulled up an
17 aerial photography, so that the aerial of the
18 subject property, which is 4751 Brecksville
19 Road, and then I pulled it up on Google. So
20 we do have that for reference. So I'll read
21 from my report, dated July 26, 2023. Use
22 variance request from Fleet Fixes.

23 The applicant, Fleet Fixes, is
24 requesting a use variance pursuant to Section
25 1107.07 of the Planning and Zoning Code. The

1 use variance request is related to the
2 applicant's desire to have outdoor storage of
3 product on existing gravel surface on the
4 property located at 4751 Brecksville Road.
5 The property is zoned General Business (C-2)
6 and the requested uses are prohibited in the
7 C-2 District. I have reviewed an application
8 received on July 10, 2023 in connection with
9 this request and provide this information and
10 report to the Board for their consideration.

11 So some background information:
12 Provided this report to summarize my
13 evaluation, from a professional planning and
14 zoning perspective of the request for a use
15 variance. In preparing this analysis, I have
16 reviewed and considered: The applicable
17 zoning districts; the applicant's proposal,
18 which is marked as Exhibit A to my report; and
19 the zoning and land use patterns surrounding
20 the subject site. Additionally, I have
21 visited the site and the surrounding area to
22 observe the existing conditions and
23 characteristics.

24 In considering a request for a use
25 variance, the Planning and Zoning Code sets

1 forth very specific criteria in Section
2 1107.09 (c) 1-7 that must be met prior to
3 issuing approval of a use variance. I
4 mentioned this in a previous case, a use
5 variance is different than a dimensional or
6 area variance. You have the seven standards
7 that the courts recognize that have to be
8 advanced in a request for a use variance. So
9 I've provided analysis of those seven. I do
10 have exhibits to my report and I'll attempt
11 to, as we go through, I can try to follow
12 along on the screen here.

13 So the first item in the seven
14 standards for a use variance, the requested
15 variance stems from a condition, which is
16 unique to the property in question and not
17 ordinarily found in the same zoning district.

18 2. The hardship condition is not
19 created by actions of the applicant.

20 3. The granting of the variance will
21 not adversely affect the rights of adjacent
22 owners.

23 4. The granting of the variance will
24 not adversely affect the public health,
25 safety, or general welfare.

1 5. The variance will be consistent with
2 the general spirit and intent of the zoning
3 code.

4 6. The variance sought is the minimum
5 which will afford relief to the applicant; and

6 7. There is no other economically
7 viable use, which is permitted in the zoning
8 district.

9 So I'll provide some response to each
10 of these seven here momentarily. Just to give
11 you some background information, the location,
12 land use and zoning. The subject site is
13 located on the east side of Brecksville Road.
14 So the parcel's here. The building sits on
15 the parcel. You can see it's sort of an
16 odd-shaped parcel that has frontage on
17 Brecksville Road, goes deep along Boston Mills
18 and then comes back in a bit of a flag shape.
19 It's located on the east side of Brecksville
20 Road on an approximate 2.1 acre parcel. To
21 the east of the subject site is a legal
22 nonconforming residential home. So this house
23 here is to the east. That is a legal
24 nonconformity, and that property is also zoned
25 C-2. It's outlined in the table on this

1 report.

2 To the north of the subject site is an
3 office/business use zoned C-2. That's this
4 parcel here. That's Cutting Edge Concrete is
5 the name of that business.

6 To the south is vacant parcel zoned
7 C-2, which is this parcel here. That piece
8 is in the Village. The remainder is the
9 Township. That's zoned C-2.

10 Then across Brecksville Road to the
11 west, also zoned C-2, is the hotel, Quality
12 Inn. That essentially shows you the
13 surrounding land use and zoning that's
14 outlined in the table. I noted in the
15 background here of the report, that zoning is
16 also evidenced on the Zoning Map, attached to
17 my report as Exhibit B. I'll attempt to get
18 to that. Exhibit A is the applicant's
19 application, which is referenced in the
20 report. B is the Zoning Code in the area that
21 we're talking about with the variance use
22 zoning.

23 I'll just kind of show the Board,
24 though it's this area along Brecksville Road.
25 The subject site is right there. So

1 I reference in my report that the C-2 zoning
2 district, which is identified in red on this
3 map, generally fronts Brecksville Road from
4 Boston Mills Road to Columbia Road, with the
5 exception along Columbia Road being industrial
6 zoning that is the Yellow Freight property to
7 the extreme north of the Village's municipal
8 boundaries.

9 So providing some background project
10 history. In early 2023, the property owner,
11 4751 Brecksville Road LLC, began calling my
12 office about a desire to downsize the
13 footprint of his business (On call
14 Waterproofing) to open up more floor area for
15 possible tenant occupancy. Sometime between
16 the initial inquiries and approximately the
17 end of February, two tenants assumed occupancy
18 of a portion of the building without required
19 occupancy permits. Visual evidence of one of
20 the tenants is illustrated in C to this
21 report. I'll show you that momentarily.
22 Exhibit C shows the front of the building and
23 specifically, you can could see some window
24 signage that occurred and went up on the
25 building, as part of one of the tenants

1 occupying that building. From the point of
2 discovering the tenancy to the time of this
3 report, my office has been working with the
4 property owner to obtain the appropriate
5 permits/approvals from the Village.

6 The applicant tonight, Fleet Fixes, is
7 a tenant in the building, and they are the
8 requester of the use variance. I'll continue
9 on here in my report. To bring Fleet Fixes
10 into zoning compliance, the applicant did
11 apply to the Planning Commission for a
12 conditional zoning certificate and attended
13 the April 25th meeting of this year. The
14 meeting, April 25th meeting was continued to
15 the May 9th Commission meeting to provide the
16 applicant more time to address issues raised
17 during the April 25th meeting. Exhibit D is
18 provided and attached to my report. Those are
19 the minutes of the -April 25th meeting.

20 The applicant provided additional
21 information and did attend the May 9th
22 meeting. Ultimately, the applicant's
23 conditional zoning certificate was approved
24 subject to stipulations. I provided Exhibit C
25 to my reporter, which are the May 9th minutes.

1 Section 1173.07 (d) of the Planning and
2 Zoning Code allows Village Council to exercise
3 call-up authority as it relates to any
4 conditional zoning certificates approved by
5 the Planning Commission. As such, I indicated
6 in my May 16th department report to Council of
7 the approval. During the May 16th meeting,
8 some members of Village Council raised
9 concerns about the Commission's approval,
10 specifically about their approval to permit
11 Fleet Fixes product (vehicles) to be stored
12 outside on a non-paved surface. Generally,
13 Council questioned whether the Planning
14 Commission has authority to grant such
15 exceptions or whether the request should be
16 made to the Board of Zoning Appeals (BZA).

17 After consultation with Village legal
18 counsel, it was determined that Planning
19 Commission lacks the authority to make
20 exceptions to grant outdoor storage and
21 off-street parking on non-hard surfaces.
22 Understanding this, Village Council directed
23 the Law Director to inform the applicant that
24 Council will not approve the conditional uses
25 unless the two matters are resolved by either

1 seeking variances or eliminating the storage
2 and use of gravel surfaces for parking. Given
3 this, the applicant is seeking use variances
4 for both issues.

5 Please note: Fleet Fixes is renting
6 space from 4751 Brecksville Road LLC, which is
7 a Limited Liability Company operated by the
8 ownership of On-Call Waterproofing. On-Call
9 Waterproofing is also seeking similar use
10 variances from the BZA and they also are
11 subject of a pending conditional zoning
12 certificate with Village Council. Two
13 representatives of On-Call Waterproofing were
14 present at both Planning Commission meetings
15 and did make representations that they no
16 longer want to pave the existing gravel area
17 that is subject of the Fleet Fixes request
18 because they might expand the building in the
19 future and don't want to spend money for
20 paving that will possibly be removed with a
21 building expansion. This particular issue has
22 been an on-going representation by On-Call
23 since they received their original conditional
24 zoning certificate in May 2021 (Exhibit F -
25 May 2021 meeting minutes).

1 While the two BZA applications are
2 similar and it is difficult not to refer to
3 one of them without referring to the other
4 given the tenancy relationship, they are two
5 separate applications and must be acted on
6 accordingly.

7 For the purposes of this report, I will
8 address each of Fleet Fixes variance requests
9 separately. Variances one and two in this
10 report relate to the outdoor storage matter
11 and is regulated in Section 1177.03 (g) and
12 Section 1105.19 of the Code, while variance
13 three addresses the parking of Fleet Fixes
14 product (customer vehicles) on an unpaved
15 surface as regulated in Sections 1177.03 (b)
16 and (c) of the Planning Zoning Code.

17 So going on in the report, I provided
18 an evaluation of the seven standards for a use
19 variance request and I'll read from my report
20 my response to those seven standards.

21 First, the variance requested stems
22 from a condition, which is unique to the
23 property at issue and not ordinarily found in
24 the same zoning district. My response:
25 Variance One and Two - Fleet Fixes is an

1 automotive repair shop for vehicles. Fleet
2 Fix ownership has stated that they often need
3 to store vehicles outside during periods of
4 time when additional parts are ordered but not
5 yet delivered. This issue is likely common
6 for automotive repair facilities and not
7 unique to the subject property and not
8 ordinarily found in the same zoning district.
9 However, Fleet Fixes stated in the May 9th
10 Planning Commission meeting that it was able
11 to procure additional storage, and did, in
12 fact, do so by leasing another 720 square feet
13 from the property owner (Exhibit E - May 9th
14 meeting minutes).

15 Further, the Industrial Zoning District
16 also conditionally permits the applicant's use
17 but provides for outdoor storage subject to
18 various screening requirements. There is
19 nothing unique to the property at issue to
20 support the requested variances. Indeed, the
21 applicant has shown this additional indoor
22 storage is available, it is simply a matter of
23 whether the applicant and its landlord are
24 able to agree on how the interior of the
25 building will be used. This does not justify

1 a variance.

2 Variance Three - As a tenant, Fleet
3 Fixes is requesting this variance because the
4 property owner is requesting to delay or not
5 perform the necessary hard-surface paving,
6 possibly until 2024 or later, when a building
7 expansion may or may not occur.

8 Unfortunately for Fleet Fixes, this
9 particular matter has been on-going since
10 On-Call received its conditional zoning
11 certificate in May 2022 and in parenthetical
12 reference, I reference see Planning Commission
13 meeting minutes from May of 2022.

14 Section 1177.03 (b) and (c) of the Code
15 requires drive-isles and offstreet parking
16 areas to be paved in all Zoning Districts, not
17 just the C-2 District.

18 Therefore, this variance stems from the
19 property owner, not the property itself.

20 2. The hardship condition is not
21 created by actions of the applicant.

22 Variance One and Two - Both the Fleet
23 Fixes and On-Call conditional zoning
24 applications discussed the ratio of office to
25 warehousing of products percentages required

1 by code. Initially, Fleet Fixes was only
2 slated to lease 1,107 square feet from the
3 property owner. However, during the May 9th
4 meeting of the Planning Commission, the owners
5 of On-Call stated that Fleet Fixes is going to
6 lease an additional 720 square feet as a
7 remedy to the office/warehousing ratio that
8 On-Call wasn't able to meet. As such, Fleet
9 Fixes gained 720 square feet not previously
10 anticipated, and that indoor space could be
11 allocated to Fleet Fixes needs, thereby
12 eliminating the request for outdoor storage.
13 To the extent a hardship condition exists, it
14 is because the applicant's landlord is not
15 willing to lease a sufficient amount of indoor
16 space, or the applicant is not willing to pay
17 a sufficient amount of rent to lease the
18 required indoor storage space necessary to
19 comply with the requirements of the Code.

20 Variance Three - As noted in the
21 previous response, Fleet Fixes is requesting
22 this variance because the property owner is
23 requesting to either delay the necessary hard-
24 surface paving until 2024 or later, or not
25 perform it at all, in the possibility of doing

1 a building expansion.

2 3. The granting of the variance will
3 not adversely affect the rights of adjacent
4 owners.

5 The applicant contends that granting
6 the requested variances will not adversely
7 affect the rights of adjacent owners and
8 further will not alter the characteristics of
9 the neighborhood because the neighborhood
10 currently has properties with vehicles parked
11 outside on a non-temporary basis. To
12 illustrate this argument, the applicant refers
13 to 3901 Brecksville Road, which is a property
14 acquired by the Village of Richfield in 2022.
15 This particular property is not in the same
16 neighborhood as the subject site, nor is it
17 even in the same Zoning District. 3901
18 Brecksville Road is an industrially zoned
19 property, while the subject site is entirely
20 different as C-2 General Business District
21 Zoning.

22 The prohibition of outdoor storage and
23 requirement for hard-surface drive-isles and
24 parking spaces affects all property owners in
25 the C-2 District. All owners desiring to

1 develop/redevelop properties in the C-2
2 District have to adhere to these same laws.
3 Therefore, granting the requested variances
4 can adversely impact adjacent owners in the
5 area.

6 4. The granting of the variance will
7 not adversely effect the public health,
8 safety, or general welfare.

9 The C-2 District does not permit
10 outdoor storage and all properties are subject
11 to these regulations. To grant variances to
12 this applicant undermines the clear intent of
13 the Code and can negatively impact the health,
14 safety and general welfare of the other
15 properties in the area by reducing the overall
16 property valuations.

17 5. The variance will be consistent with
18 the general spirit and intent of the zoning
19 code.

20 As stated previously, the C-2 Business
21 District does not permit outdoor storage and
22 all Zoning Districts are subject to the hard-
23 surfacing requirements of Section 1177.03 (a)
24 and (b) of the Code. Therefore, granting the
25 requested variances will be inconsistent with

1 the intent of the Code.

2 6. The variance sought is the minimum
3 which will afford relief to the applicant.

4 Fleet Fixes began operation without
5 permits from the Planning Commission. The
6 Code makes a distinction between Fleet Fixes
7 automotive repair use that requires outdoor
8 storage and automotive repairs uses that
9 don't. Specifically, the C-2 General Business
10 District permits automotive repair uses but
11 without outdoor storage and the Industrial
12 Zoning District permits the automotive repair
13 uses but permits screened outdoor storage.
14 There are opportunities within the Industrial
15 Zoning District for Fleet Fixes to operate and
16 do so with outdoor storage. Given this, the
17 requested variances are not the minimum needed
18 to afford relief to the applicant.

19 7. There is no other economically
20 viable use, which is permitted in the zoning
21 district.

22 The C-2 Zoning Districts provides a
23 variety of permitted and conditionally
24 permitted uses on the subject site. In fact,
25 in early 2023 the property owner approached my

1 office about several possible tenants for the
2 building. Moreover, On-Call itself has been a
3 tenant on the subject property. Given these
4 facts, its apparent that other economically
5 viable uses are present within the C-2 Zoning
6 District and can applied to the subject
7 property.

8 I can answer any questions the Board
9 may have.

10 MR. OCHWAT: Any questions from
11 the Board?

12 (No response.)

13 MR. OCHWAT: I guess there's no
14 questions. We'll hear from the applicant.

15 Please state your name for the record
16 and your address.

17 MS. BECA: Hi, I'm Angie Beca.
18 I'm the wife of the owner of Fleet Fixes.
19 This is Michael Beca. Our address is 230
20 Trudy Avenue, Munroe Falls.

21 So Fleet Fixes as we've mentioned,
22 basically, is a fleet mechanic. So what we
23 do, and by we, I mean Mike, he fixes that
24 vehicles that the companies need to keep
25 working. So the local companies in our town,

1 come of the construction companies, the
2 concrete companies, the snow plowing
3 companies, the waterproofing companies, they
4 bring their stuff to Mike and then Mike fixes
5 it for them or he does preventative
6 maintenance for them, so that the materials
7 last longer, so the trucks last longer. We
8 work on things like five ton dump trucks, and
9 by we, again, I mean Mike, company cars or
10 pickup trucks, chippers, saws, sewer jets,
11 salt spreaders, plows and other equipment.

12 We did, for the past couple of months,
13 basically since we got that letter that said
14 the approval we had originally had shouldn't
15 have been granted and got taken away, we've
16 been doing a pilot to see if we can be a
17 viable business without having any parking
18 outside, but due to supply chain disruption
19 and the fact that it's really hard to get
20 parts in, we've had to turn away customers,
21 because we just don't have enough storage for
22 the vehicles. Parts are taking so long to get
23 in and then once you have it, it's just not
24 viable to not have more outdoor storage,
25 unfortunately.

1 The comment about whether something
2 else could be used there. While technically,
3 I'm sure something else could be used in that
4 business. As Fleet Fixes is a fleet mechanic
5 business, our business can't do anything else
6 there. We can only do what we do and what
7 Mike's training is in. We can't do something
8 else. So we can just do that.

9 So any questions?

10 MR. OCHWAT: Any questions from
11 the Board?

12 MR. RUSTIC: Are you unable to fix
13 vehicles at this point? You're unable to?

14 MS. BECA: So at the moment,
15 what's happening, we'll have either a truck or
16 a chipper and we'll leave it in our bay
17 because we can't store it outside at night,
18 and it's broken. So we can't take it out and
19 then bring another vehicle in and fix
20 something else, because then that part doesn't
21 come in either. So we have to manage our time
22 where the vehicle is parked before we start on
23 a new project. Whereas if we have outdoor
24 parking, then we can bounce between projects
25 as the parts come in. Unfortunately, there's

1 a lot of times where we'll order a part and
2 sometimes they don't send us the right part,
3 and then we have to send it back, and then
4 that takes even longer, especially when the
5 parts have to come from across the country.
6 It's just not as easy to get parts as it was
7 pre-corona, or COVID-19, sorry, supposed to
8 use the right words.

9 MR. BECA: My name is Mike Beca,
10 same address. We're also have, not scheduling
11 issues, but people have called and say, we're
12 going to drop something off and they don't.
13 They don't come through with their appointment
14 and then I call them the next day and they're
15 like, oh, I forgot, I had to use it. Then I
16 still haven't seen something somebody asked me
17 to fix on July 2nd.

18 MS. BECA: Again, that's one of
19 the things we run into is the fact that we
20 cater to small companies, is that until their
21 vehicle or whatever part they're using, or
22 their chipper or their truck, until it's
23 actually completely dead, they're going to use
24 it as much as they can, basically, until the
25 season's over. Again, we cater to the small

1 people, so the small business, not to the big
2 companies that hire their own mechanics.

3 MR. RUSTIC: So where would these
4 temporary vehicles be stored?

5 MS. BECA: Well, we were hoping
6 to store them either behind the fence or
7 behind the building. I was recently informed
8 by our landlord that he has dug up part of the
9 property to go ahead and pave, put some
10 concrete down. So that is going to get fixed.
11 So I apologize for not asking if that's behind
12 the fence or behind the building. But it's
13 one of those two places, so then it'll be out
14 of sight.

15 MR. OCHWAT: So the area where,
16 right there where Brian's pointing too, the
17 area behind the fence or behind the building?

18 MS. BECA: Either there or where
19 those other two trucks are, there's a fence
20 there. I'm not sure which area has been dug
21 up to get paved. Do you know which area?

22 MR. TOMARO: Behind the building.

23 MS. BECA: Behind the building
24 has been dug up to add pavement. But due to
25 all this rain and the fact that the company

1 who was going to do it ran into -- no it
2 rained Saturday too. It just won't stop
3 raining.

4 But I did say we did the pilot program.
5 So we did do the pilot program, where we
6 haven't had anything outside and it's just
7 really not working for us.

8 MR. OCHWAT: I'm sure you're
9 getting a lot of scheduling conflicts.

10 MS. BECA: Yes.

11 MR. OCHWAT: And shows and no
12 shows --

13 MR. BECA: Yes.

14 MR. OCHWAT: -- and you're dead in
15 the water.

16 MS. BECA: Yes.

17 MR. OCHWAT: Along with parts.

18 MR. BECA: I don't need more
19 vacation time when it's beautiful out.

20 MR. OCHWAT: Understand.

21 MR. TURK: I'm presuming that
22 photo that's up there --

23 MR. BECA: Yeah, that's pretty
24 ancient.

25 MR. TURK: How much of that dirt

1 area is going to become paved or in concrete?

2 MS. BECA: So we don't actually
3 own the property, but I know that enough to at
4 least have -- is it six parking spots?

5 MR. TOMARO: Four.

6 MS. BECA: Four parking spots or
7 eight.

8 MR. TURK: So about one quarter
9 of that area there, that dirted area there
10 behind the fence, I presume.

11 MS. BECA: I apologize, I didn't
12 take a picture and I don't know what got dug
13 up to put the concrete down.

14 MR. FRANTZ: Mr. Chair, we've had
15 some indirect testimony from an applicant for
16 the next case. Perhaps it would be beneficial
17 to have that applicant come up in support of
18 this particular case. He is the owner of the
19 property. I think to be able to get some
20 clear indication of what's being requested at
21 this time.

22 MR. OCHWAT: Would you like to
23 come up and comment?

24 MR. TOMARO: Sure.

25 MR. OCHWAT: Thank you.

1 MR. TOMARO: I'm Frank Tomaro, 176
2 State Road, Hinckley, Ohio. I'm the owner of
3 4751 -- actually, the co-owner of 4751
4 Brecksville Road.

5 So the area directly behind the
6 building, not where those two trucks are
7 parked, but that area, we have excavated and
8 paved. We actually would have poured concrete
9 today, but the inclement weather that was
10 coming in, decided not to, so we have
11 scheduled concrete pouring tomorrow.

12 The question that you directed,
13 Mr. Rustic, where would the trucks be parked,
14 if you can go to Exhibit A, Brian. So in this
15 picture right here, do you see the fence?

16 MR. RUSTIC: Yes.

17 MR. TOMARO: It's very hard to
18 see, but you could tell, if you look closely
19 at the top of the fence line, there's actually
20 two trailers parked right there, not visible
21 from the road. That is the gravel area that I
22 do not want to pave, because if we put a --
23 extend the building, that's where we would end
24 up putting potential building in front. The
25 back of the building, I have no issue paving

1 there. We're doing it as we speak, to create
2 parking. That's why we're asking for this
3 use.

4 The whole idea behind the fence is that
5 it's out of sight and behind the fence. You
6 know, if you go back to the last picture, you
7 kind of see how we had the two trailers parked
8 in the front. Again, that fence there, those
9 are the same exact trailers. I believe the
10 picture was at the same time those two trucks
11 are parked. Again, nothing visible from the
12 road. Then once we put the paved surface
13 behind the building, the easier of the
14 vehicles to put behind the building will go
15 behind the building.

16 The future expansion would basically go
17 where those two trucks are parked and then the
18 building would go to the -- I believe that's
19 the direction to the west. So it would come
20 out off of that and go towards the west,
21 towards the street.

22 MR. TURK: With the pouring of
23 this new pad, I presume it's going to be Fleet
24 Fixes to use and theirs alone?

25 MR. TOMARO: Yes.

1 MR. TURK: What is that,
2 approximately 200 square feet?

3 MR. TOMARO: 40 by 25, 600 -- what
4 is that?

5 MR. OCHWAT: So is that from --
6 I'm sorry?

7 MR. TURK: 500 I was thinking
8 real quick.

9 MR. OCHWAT: Is that from the
10 corner of the building around the back? Like
11 right from the corner.

12 MR. TOMARO: It's not around the
13 back. See the part that's a square of the
14 building, closest to the truck? It's
15 basically that area.

16 MR. OCHWAT: So it's not following
17 the contour of the building on the back,
18 right?

19 MR. TOMARO: No.

20 MR. OCHWAT: So when you put the
21 addition on, how would they get around that?

22 MR. TOMARO: Then we would do
23 something to come around the other side at
24 that point. At this point, there's no need to
25 do anything to that side, because we have the

1 gate on the south side.

2 Can I approach that picture? So
3 parking is here now. That's what's going to
4 be paved. If we did a building addition, it's
5 likely to come this way and a few feet this
6 way. So this is the area that could be
7 parking lot, but if I did an addition to the
8 building, this is where, and this is where
9 I don't want to pave. I'm fine paving this.
10 This will actually be done next week. What
11 I don't want to pave is this.

12 Currently, the trucks and trailers --
13 there's two trailers here, two trucks here,
14 parked. Obviously, Mike was working on them
15 at the time. He couldn't pull them out, so he
16 put them behind the fence. Again, this is
17 going to be paved, so these will no longer be
18 parked here, they'll be parked in the rear,
19 and this area -- this is a grassy area, but
20 this is all gravel. It's not dirt, it's
21 gravel. And actually, it was the old parking
22 lot that was left from years ago. We just
23 never did anything with it, as we excavated
24 and removed. So it's actually the old section
25 of the parking lot that was deteriorated and

1 looks like left over asphalt.

2 This is going to be concrete, and this
3 is the area that we're asking to park. If you
4 go back to A, you can see from the road, you
5 could almost not tell that there's anything
6 there.

7 MR. OCHWAT: Thank you.

8 Mr. Frantz, can you clarify the original
9 intent? Was all that supposed to be paved at
10 one particular time behind the fenced area?

11 MR. FRANTZ: Yes. I believe this
12 area was to be paved.

13 MR. TOMARO: No.

14 MR. FRANTZ: So the original
15 applicant that Mr. Tomaro was assuming his
16 responsibilities from was Dan Baron, with
17 Baron Outdoor Living. Mr. Baron had a plan
18 that came to the Commission and the area was
19 to be paved. Mr. Tomaro presented testimony
20 to the Planning Commission. He would assume
21 those rights and responsibilities from
22 Mr. Baron in a transaction, and so I believe
23 this area was intended to be paved.

24 MR. TOMARO: It was greenspace.
25 You have the original drawings, Brian.

1 MR. FRANTZ: I don't have those
2 this evening.

3 MR. TOMARO: And my second
4 approved plan did not show that paved either
5 from the Planning & Zoning.

6 MR. FRANTZ: As I don't have the
7 plan with me, here's the minutes that refer
8 back to the Baron landscaping plan and the
9 requirements placed on Baron. It showed the
10 asphalt paving area of the gravel area used
11 for parking. I believe that is the area we're
12 talking about.

13 It's difficult to tell, because this
14 particular case has morphed multiple times.
15 The issues surrounding this particular case
16 have morphed multiple times and things have
17 been done without our knowledge or involvement
18 or approval with permits. So it can be very
19 difficult to ascertain fully what's been done,
20 hasn't been done on the property. I wasn't
21 aware of the paving coming into this testimony
22 this evening.

23 MR. OCHWAT: Any questions from
24 the Board to the applicant?

25 (No response.)

1 MR. OCHWAT: Would you like to
2 approach the podium again.

3 MR. TOMARO: So Exhibit A. Brian
4 can you go back to the picture of what the
5 building looked like prior to me purchasing
6 it? This is the after picture of the building
7 and can you back to the -- it says, Exhibit A,
8 May of 2019?

9 MS. BECA: I don't think we have
10 the old pictures of the building.

11 MR. TOMARO: I have it here in my
12 memorandum, so Brian should have it.

13 MS. BECA: Oh, yours is
14 different than mine.

15 MR. OCHWAT: This is, if I'm not
16 mistaken, this is Fleet Fixes' application.

17 MR. TOMARO: Okay, theirs is
18 different than mine.

19 MS. BECA: Yes. We're still on
20 ours.

21 MR. FRANTZ: Mr. Tomaro, are you
22 referring to something in your application?

23 MR. TOMARO: Yes, I apologize. I
24 thought they had the same pictures.

25 MR. OCHWAT: I can't address that

1 at this particular time.

2 MR. FRANTZ: Mr. Chair, I can find
3 it in here, most likely. I'm sure Google
4 Earth is --

5 MS. BECA: That's the old
6 building.

7 MR. TOMARO: Yeah. So when I
8 purchased the building, this is what it pretty
9 much looked like, and this is what it is
10 today. The entire gravel parking lot's gone.
11 There's landscape added. The facade of the
12 building is beautified. Every neighbor in the
13 neighborhood has come by and said thank you.
14 I've worked hard to work with the City.

15 Yes, we have done things. However, I
16 have worked through everything with Brian and
17 Amy, and even to this paving, the question
18 becomes is, you're a business owner.

19 Mr. Ochwat, you're a business owner. I don't
20 know the rest of you. But I can't predict
21 tomorrow what's going to happen, but it would
22 be silly for me to say, I want to put a
23 parking lot here, when I know, eventually, I
24 want to expand a building. If I expand that
25 parking lot today to allow this parking, and

1 in five years the business grows a little bit
2 more or doesn't grow, I don't know what's
3 going to happen, I can't predict the future,
4 but it would be silly for me to go, I'm going
5 to spend a lot of money to put a parking lot
6 here and then potentially excavate it out and
7 put a building here.

8 That's basically the grievance. On top
9 of this, Planning & Zoning and gave Fleet
10 Fixes the go ahead with all of this, and then
11 the Council called up the action. That's
12 actually why we're here, because it was
13 approved by Planning & Zoning, and then the
14 Village Council used their call to action to
15 bring us here. It was not moreso that they
16 didn't like the action. It was the question
17 of did Planning & Zoning have the authority to
18 grant that permission in the first place. If
19 that's the case, we're going to go all the way
20 back to Mr. Baron, and our first meeting with
21 the City, because that's when I was given the
22 okay to park outside on surfaces, with
23 conditions that I pave them.

24 Things have changed over the years,
25 obviously, but back in 2020 when I purchased

1 the land, or '21, Planning & Zoning had said
2 yes, park behind the building, out of sight.
3 Put a fence up. We've basically done
4 everything that's been asked.

5 That's all I have to say. Thank you.

6 MR. OCHWAT: So to recap it, the
7 area to be paved would accommodate swing space
8 for your vehicles behind the fence as once
9 clarification.

10 MS. BECA: They're behind the
11 building.

12 MR. OCHWAT: Behind the building?

13 MS. BECA: Yeah.

14 MR. OCHWAT: Behind the building,
15 okay.

16 MR. TURK: You have access to
17 that either through a fence or through a bay
18 going out the back of the building, I presume?

19 MR. BECA: Yes, there's a fence
20 door. Yes, sir.

21 MR. TURK: Right there.

22 MR. OCHWAT: Mr. Frantz, are there
23 adequate parking spaces for both businesses,
24 given two businesses operating out of there?

25 MR. FRANTZ: Yeah, I believe that

1 the Planning Commission has approved, under
2 their authority, the parking, off-street
3 parking, with the exception of what we're
4 talking about.

5 MR. OCHWAT: Okay. Any further
6 questions from the Board?

7 MR. CHOJNACKI: I have two quick
8 questions. Mr. Beca or is it Beca?

9 MS. BECA: Technically, it's
10 Beca.

11 MR. CHOJNACKI: Just to make certain
12 for the record to be clear, how much of the
13 building is your business currently using?

14 MR. BECA: I believe we talked
15 about me adding another bay, so we --

16 MR. CHOJNACKI: How many bays are
17 there total?

18 MR. BECA: Four. So there's two
19 smaller ones on the old side and two bigger
20 ones in the newer half.

21 MR. CHOJNACKI: For the record, is
22 the old side the side that's the northern kind
23 of property that's more perpendicular to the
24 road?

25 MS. BECA: The old side is the

1 one that looks more like a square. The new
2 side is the tall doors.

3 MR. CHOJNACKI: So which is it; is
4 that the north side is the old side and the
5 south side is the southern portion, just the
6 opposite?

7 MR. TURK: Yeah, that's south to
8 the right.

9 MS. BECA: I am so bad with
10 directions. The side with the awning and the
11 big windows, that's the old side. The other
12 half is the new side.

13 MR. CHOJNACKI: Understood. Which
14 portion of the building does Fleet Fixes
15 occupy?

16 MR. BECA: The left big door, so
17 number three and number four.

18 MR. CHOJNACKI: So those two doors.
19 Do you currently have access to any of the
20 rest of the building?

21 MR. BECA: The bathroom's on the
22 other side, yes.

23 MR. CHOJNACKI: So is that a no, you
24 don't have access to the interior of, we'll
25 call them, doors one or the garage doors one

1 and two?

2 MR. BECA: Have to walk through
3 them.

4 MS. BECA: In the sense that
5 it's an open area, we can see it, yes. But
6 since we don't rent that space out, we keep to
7 our side.

8 MR. CHOJNACKI: So the balance of the
9 building is open, just not available for use
10 to Fleet Fixes?

11 MR. BECA: Correct.

12 MR. CHOJNACKI: So hypothetically,
13 when you're dealing with the occupancy or your
14 pilot program, and you're storing things
15 outside, there was open space in the building
16 itself; it just wasn't available for you to
17 use?

18 MR. BECA: Of the first two
19 bays?

20 MR. CHOJNACKI: Correct.

21 MR. BECA: Those aren't mine, so
22 I can't --

23 MR. CHOJNACKI: Are they available in
24 the building is what I'm asking? Is there
25 space in the building for them?

1 MS. BECA: No. That's part of
2 On-Call Waterproofing's two-thirds, one-third.

3 MR. CHOJNACKI: Setting aside who
4 owns it, I'm talking about the physical
5 structure itself. Is there space in the
6 physical structure for another vehicle to be
7 parked there?

8 MR. BECA: No.

9 MS. BECA: If it wasn't
10 currently filled, because it has stuff in it.
11 I apologize, I'm not understanding the
12 question.

13 MR. CHOJNACKI: I'm just asking, if
14 there is space in the building, if On-Call
15 Waterproofing weren't there, would you be able
16 to park an additional vehicle, or whatever you
17 were servicing, in that bay?

18 MS. BECA: If On-Call
19 Waterproofing weren't there and let's pretend
20 we were able to afford to rent that entire
21 building out, then at that point, we could
22 park inside, but we're not big enough to be
23 able to afford an entire building. We're a
24 small company who caters to small companies.

25 MR. CHOJNACKI: I understand that.

1 I'm just asking about the structure itself.
2 So is that a yes or a no?

3 MS. BECA: Yes, there's four
4 garage bays in the building.

5 MR. TOMARO: No.

6 MS. BECA: No?

7 MR. TOMARO: Because those two
8 doors aren't wide enough for tow motors.

9 MS. BECA: Oh that's true, we
10 can't use the small doors. You can't fit a
11 five-ton dump -- a five-ton -- baby, your
12 turn. The vehicles Mike works on are tall and
13 big.

14 MR. CHOJNACKI: And you only work on
15 the five-ton ones; is that correct?

16 MS. BECA: That's the one that
17 we work on generally most often. Usually, the
18 companies we work for, they go through their
19 pick-up trucks so quickly that they don't need
20 us, except for maybe oil changes here and
21 there. But the really expensive big purchases
22 of the chippers and the five-ton dump trucks,
23 those are the ones that are so expensive, you
24 just keep fixing them until you can't fix it
25 anymore. Those are the big purchases.

1 MR. CHOJNACKI: Those are the ones
2 that you're storing outside, or you were
3 storing outside?

4 MR. BECA: Yes.

5 MS. BECA: Yes, as we were
6 waiting for parts, because, again, since
7 they're the big purchases and they're far less
8 common than your average Toyota pick-up truck,
9 the parts are a lot harder to get access to.
10 But you're right, I completely forgot how tall
11 they are and they don't fit in the small
12 doors.

13 MR. CHOJNACKI: How long on average
14 does a vehicle stay outside?

15 MS. BECA: We aim for never more
16 than a couple of days, but sometimes it's been
17 a week or two. We try to never hit that far.
18 Unfortunately, things are just so slow.

19 MR. CHOJNACKI: Thank you.

20 MR. OCHWAT: Your swing space out
21 there, you indicated it's a couple days you
22 keep them out there. If the vehicles are
23 broken down, how do you get them out of the
24 bay to the other one?

25 MS. BECA: We have a forklift.

1 So we'll drag it in or out. We'll pull it in
2 to work on it and if there's nothing inside,
3 we do try to hide everything inside, because
4 we know you guys don't really like stuff
5 outside. But sometimes, you can't. It's a
6 jigsaw puzzle and you can't shove it all in
7 there occasionally.

8 MR. OCHWAT: Sure. I feel for you
9 because of your scheduling conflict, as a
10 business owner. Trying to keep everything
11 moving, I understand. Okay, any further
12 questions from the Board to the Applicant?

13 (No response.)

14 MR. OCHWAT: Any other comments
15 from the audience?

16 (No response.)

17 MR. OCHWAT: At this time, I will
18 entertain three separate motions to vote to
19 grant the Applicant's request for variance. I
20 rescind that.

21 Seeing there's no further testimony,
22 we'll move into deliberation. If there's any
23 Board Member that desires to move into
24 Executive Session in order to confer with
25 Counsel to the Board, please indicate at this

1 time? Anyone?

2 (No response.)

3 MR. OCHWAT: Is there a motion on
4 the first variance?

5 MR. TURK: If I can ask you,
6 Tim, do you want on the first variance or are
7 we going to duplicate Case 07 and 08 together?

8 MR. OCHWAT: We have to take Case
9 07 by itself, yes. These are each individual.
10 I'd like to vote on each variance.

11 MR. TURK: Right. I move that
12 we accept the request for variance on Case
13 07-2023, Subsection 1, involving Section
14 1105.19 to permit outdoor storage of motor
15 vehicles, products and merchandise, period.

16 MR. OCHWAT: Is there a second?

17 MR. SMITH: I second.

18 MR. OCHWAT: Ms. Nauer?

19 MS. NAUER: Mr. Swan?

20 MR. SWAN: Yes.

21 MS. NAUER: Mr. Rustic?

22 MR. RUSTIC: Yes.

23 MS. NAUER: Mr. Smith?

24 MR. SMITH: No.

25 MS. NAUER: Mr. Ochwat?

1 MR. OCHWAT: Yes.

2 MS. NAUER: Mr. Turk?

3 MR. TURK: Yes.

4 MR. OCHWAT: First variance is
5 granted. On the second variance, would
6 someone like to place a motion?

7 MR. TURK: If I may, involving
8 Case -- I so move that we accept Case No.
9 07-2023, Subsection 2, a variance of Section
10 1177.03(c) to permit parking on gravel, rather
11 than asphalt or concrete, period.

12 MR. OCHWAT: Do I have a second?

13 MR. SMITH: I'll second.

14 MR. OCHWAT: Ms. Nauer?

15 MS. NAUER: Mr. Smith?

16 MR. SMITH: No.

17 MS. NAUER: Mr. Ochwat?

18 MR. OCHWAT: No.

19 MS. NAUER: Mr. Swan?

20 MR. SWAN: No.

21 MS. NAUER: Mr. Rustic?

22 MR. RUSTIC: No.

23 MS. NAUER: Mr. Turk?

24 MR. TURK: No.

25 MR. OCHWAT: So the second

1 variance, that is denied. So the third
2 variance, would someone like to place a
3 motion?

4 MR. TURK: Yeah, I'll continue.
5 Involving Case No. 07-2023, Subsection 3, I
6 move that we grant a variance from Section
7 1177.03(g) of the Planning and Zoning Code, to
8 permit storage or repair of merchandise or
9 motor vehicles, or the repair of such
10 vehicles.

11 MR. OCHWAT: Is there a second on
12 that motion?

13 MR. SMITH: I'll second.

14 MR. OCHWAT: Ms. Nauer?

15 MS. NAUER: Mr. Smith?

16 MR. SMITH: No.

17 MS. NAUER: Mr. Ochwat?

18 MR. OCHWAT: Yes.

19 MS. NAUER: Mr. Swan?

20 MR. SWAN: Yes.

21 MS. NAUER: Mr. Turk?

22 MR. TURK: Yes.

23 MS. NAUER: Mr. Rustic?

24 MR. RUSTIC: Yes.

25 MR. OCHWAT: So the third variance

1 is passed. On the second variance --
2 (Discussion off the record.)
3 MR. OCHWAT: We'd like to enter
4 this into the record and have the Law Director
5 prepare facts and findings, conclusion of
6 facts, for all three of the variances in this
7 case. Is there a motion to that effect?
8 MR. SMITH: So moved.
9 MR. SWAN: Second.
10 MR. OCHWAT: Thank you.
11 MR. FRANTZ: Mr. Chair, can I just
12 clarify before you vote on that? So your
13 motion is to accept the staff report dated
14 July 26, 2023 into the record and
15 concurrently, direct the Law Director to
16 prepare conclusions?
17 MR. OCHWAT: That is correct.
18 MR. CHOJNACKI: And the submissions
19 from the applicants.
20 MR. OCHWAT: Ms. Nauer?
21 MS. NAUER: Mr. Ochwat?
22 MR. OCHWAT: Yes.
23 MS. NAUER: Mr. Swan?
24 MR. SWAN: Yes.
25 MS. NAUER: Mr. Rustic?

1 MR. RUSTIC: Yes.

2 MS. NAUER: Mr. Turk?

3 MR. TURK: Yes.

4 MS. NAUER: Mr. Smith?

5 MR. SMITH: Yes.

6 MR. OCHWAT: Thank you.

7 Now we'll hear Case 08-2023 for 4751
8 Brecksville Road. Mr. Frantz, can you provide
9 any background information to the Board?

10 MR. FRANTZ: Thank you, Mr. Chair.
11 I will read from my July 26, 2023 report.
12 We've gone over the maps, so I think the
13 Board's familiar with the building location at
14 this time.

15 The applicant, Frank Tomaro, is
16 requesting a use variance pursuant to Section
17 1107.07 of the Planning and Zoning Code. This
18 use variance request is related to the
19 applicant's desire to have outdoor storage of
20 machinery and equipment stored on existing
21 gravel surface on the property located at 4751
22 Brecksville Road. The property is zoned
23 General Business (C-2) and the requested uses
24 are prohibited in the C-2 District. I have
25 reviewed an application received on July 13,

1 2023 in connection with this request and offer
2 the Board the following comments for
3 consideration:

4 Background Information. Same as the
5 last application, reviewed the applicable
6 zoning regulations; the applicant's proposal,
7 which is identified as Exhibit A in my report;
8 the zoning and land use patterns surrounding
9 the subject site. Additionally, I have
10 visited the site and the surrounding area to
11 observe the existing conditions and
12 characteristics.

13 As I stated before, when considering a
14 use variance request, the Planning Commission
15 sets forth very specific criteria that they
16 review, and that's in Section 1107.09 (c) 1-7.
17 I identified those criteria into my report.
18 Also provide for the purposes of background,
19 the location, land use, and zoning. This is
20 similar to or the same as the last case.

21 Subject site is located on the east
22 side of Brecksville Road and approximately a
23 2.1 acre parcel. East of the subject site is
24 a legal nonconforming residential home, which
25 is zoned C-2. To the north of the subject

1 site is an office/business use, zoned C-2. To
2 the south is vacant parcel zoned C-2 and to
3 the west, across Brecksville Road, is a hotel,
4 zoned C-2.

5 As indicated on the Richfield Village
6 Zoning Map, which is included as Exhibit B to
7 my report, the C-2 District fronts Brecksville
8 Road generally from Boston Mills Road to
9 Columbia Road. The exception to the C-2
10 zoning fronting Brecksville Road, is the
11 Yellow Freight property near the northern
12 corporation limit lines and that property is
13 zoned Industrial.

14 The surrounding land use and zoning is
15 indicated in a table as part of this report.

16 The Project History is slightly
17 different and I'll go ahead and read from
18 that.

19 The subject property was originally
20 occupied by Richfield Radiator and sold in
21 late 2019 to Mr. Dan Baron. Mr. Baron
22 received a conditional zoning certificate to
23 operate his business, Baron Outdoor Living,
24 from the subject site and referenced as
25 Exhibit C - the Baron Final Plan Approval

1 meeting minutes to this report. A site
2 development plan was approved in connection
3 with the conditional zoning certificate.
4 Unfortunately, in early 2020, the COVID-19
5 pandemic began and Mr. Baron's company was
6 eventually dissolved as a result. In early
7 2021, Mr. Baron contacted my office to inform
8 the Village that he had a buyer for the
9 property, Mr. Frank Tomaro, and he desired to
10 operate his business, On-Call Waterproofing,
11 from the subject site in the same manor as his
12 Planning Commission approval permitted. In
13 May 2021, Mr. Tomaro received conditional
14 zoning approval from the Planning Commission,
15 subject to the same development plan (and
16 approval stipulations) as Mr. Baron, and I
17 attached Exhibit D - Frank Tomaro CUP Approval
18 meeting minutes to my report. Mr. Tomaro was
19 tasked with completing the 2019 site plan
20 approval items, which included paving areas
21 used for parking.

22 In 2022, it was discovered that On-Call
23 had not completed the outstanding items from
24 its development plan approval. To cure these
25 discrepancies, On-Call sought variances and

1 went back to Planning Commission to address
2 jurisdictional matters under the purview of
3 the Commission. Ultimately, On-Call remedied
4 the issues except for the parking requirements
5 and vehicles on a non-paved surface as
6 required by Section 1177.03 (b) and (c) of the
7 Planning and Zoning Code.

8 In early 2023, the property owner,
9 Mr. Frank Tomaro, began calling my office
10 about a desire to downsize the footprint of
11 his business, On-Call Waterproofing, to open
12 floor area for possible tenant occupancy.
13 Mr. Tomaro explained that his office staff for
14 On-Call never moved into the building on the
15 subject site as a result of the COVID-19
16 pandemic. Mr. Tomaro expressed a desire to
17 use only a portion of the building for
18 On-Call's storage needs but the office
19 employees would remain working from home. I
20 advised Mr. Tomaro that the primary concern
21 with On-Call using the building and the
22 exterior only for storage related to the
23 required ratio between office and the
24 warehousing of products. That was one of the
25 principal concerns if the office staff wasn't

1 going to be there.

2 I explained that On-Call will need to
3 maintain the one-third office, two-third
4 warehousing of products ratio and the Planning
5 and Zoning Code does not permit or
6 conditionally permit storage uses without a
7 principally permitted use. Moreover, I
8 clarified that office space allocated to a
9 possible tenant could not be used to satisfy
10 the office to warehouse requirements for
11 On-Call's existing conditional zoning
12 certificate.

13 Sometime between the initial inquiries
14 and approximately the end of February, two
15 tenants assumed occupancy of a portion of the
16 building without permits. Visual evidence of
17 one of the tenants is illustrated in Exhibit E
18 to this report. We saw that in the last
19 application. From the point of discovering
20 the tenancy to the time of this report, my
21 office has been working with the property
22 owner to obtain the appropriate permits and
23 approvals from the required Sections of the
24 Planning and Zoning Code.

25 Ultimately, the On-Call ownership

1 determined that it was important to utilize
2 only a portion of the building and applied to
3 the Planning Commission for a new conditional
4 zoning certificate as a tenant within the
5 existing building. Representatives from
6 On-Call attended the April 25th Planning
7 Commission meeting and the May 9th Planning
8 Commission meeting both referenced as exhibits
9 to my report, Exhibit F, the April 25th
10 meeting minutes and Exhibit G, May 9th meeting
11 minutes, attached to this report.

12 Section 1173.07 (d) of the Planning and
13 Zoning Code allows Village Council to exercise
14 call-up authority as it relates to any
15 conditional zoning certificates approved by
16 the Planning Commission. As such, I indicated
17 in my May 16th departmental report to Council
18 of the approval. During the May 16th meeting,
19 some members of Village Council raised
20 concerns about the Commission's approval,
21 specifically about their approval to permit
22 machinery and equipment to be stored outside
23 on a nonpaved surface. Generally, Council
24 questioned whether the Planning Commission had
25 authority to grant such exceptions or whether

1 the request should be made to the Board of
2 Zoning Appeals.

3 After consultation with Village legal
4 counsel, it was determined that Planning
5 Commission lacks the authority to make
6 exceptions to grant outdoor storage and
7 off-street parking on non-hard surfaces.
8 Understanding this, the Village Council
9 directed the Law Director to inform the
10 applicant that Village Council will not
11 approve the conditional uses unless the two
12 matters are resolved by either seeking
13 variances or eliminating the storage and use
14 of gravel surfaces for parking. Given this,
15 the applicant is seeking use variances for
16 both issues.

17 For the purposes of this report, I will
18 generally address each variance separately.
19 Variance One in this report relates to the
20 outdoor storage matter and is regulated by
21 Section 1105.19 of the Code, while Variance
22 Two addresses the parking of machinery and
23 equipment on an unpaved surface, which is
24 regulated by Section 1177.03 (b) and (c) of
25 the Code.

1 So I go into specifically the
2 evaluation of Section 1107.09 (c) of the
3 Planning and Zoning Code, as it relates to use
4 variance requests, and I'll read from my
5 report for those seven factors that the Board
6 can consider and should consider, and the
7 applicant must advance all seven.

8 Item No. 1, the variance requested
9 stems from a condition, which is unique to the
10 property at issue and not ordinarily found in
11 the same zoning district.

12 Variance One - The requested variance
13 does not stem from a condition, which is
14 unique to the property at issue and not
15 ordinarily found in the same zoning district.
16 The C-2 Zoning District does not permit
17 outdoor storage. The applicant is aware of
18 this and to date continues to state that any
19 outdoor storage will be located by a fence and
20 hidden from view. This matter is not unique
21 to the subject property and all properties in
22 the C-2 Zoning District are subject to the
23 requirements. The Planning and Zoning Code
24 does provide land zoned as Industrial, which
25 does conditionally permit the applicant's use,

1 but provides for outdoor storage subject to
2 various screening requirements. The
3 contention raised by the applicant that the
4 Planning Commission previously granted outdoor
5 storage is irrelevant because On-Call's
6 previous approvals were nullified by their
7 recent conditional zoning certificate
8 application to use less of the building to
9 create rental spaces for tenants.

10 Variance Two - This variance stems from
11 the property owner's desire to not pave
12 certain areas of the property due to possible
13 building expansion. As documented in various
14 minutes of the Planning Commission, previous
15 approvals were stipulated on the applicant
16 completing the required paving. This notion
17 of building expansion is new and only surfaced
18 during the period leading up to the April 25th
19 Planning Commission meeting. This is not a
20 condition unique to the property, but rather a
21 requirement for all Zoning Districts in the
22 Village.

23 2. The hardship condition is not
24 created by the actions of the applicant;

25 Variance One - There is no hardship

1 condition, the applicant's building is of a
2 sufficient size that it does not need to store
3 and/or park anything outside. The applicant's
4 desire to have an additional tenant on the
5 property is the only reason outdoor storage is
6 needed. All lands subject to the regulations
7 of the C-2 Zoning District are not permitted
8 to have outdoor storage. Conversely, outdoor
9 storage is conditionally permitted in the
10 Industrial Zoning District. Therefore, this
11 condition is created by the applicant.

12 Variance Two - As noted in the previous
13 response, On-Call doesn't want to pave the
14 existing gravel areas because they may expand
15 the building at some point in the future.
16 This condition is a direct result of the
17 applicant's desires rather than the
18 requirement of the Code.

19 3. The granting of the variance will
20 not adversely affect the rights of adjacent
21 owners;

22 The applicant contends that granting
23 the requested variances will not adversely
24 affect the rights of adjacent owners and
25 further will not alter the characteristics of

1 the neighborhood because vehicles, and
2 presumably equipment, will be "parked out of
3 sight and behind the fence."

4 The prohibition of outdoor storage and
5 requirement for hard-surface drive-aisles and
6 parking spaces affects all property owners in
7 the C-2 District. All owners desiring to
8 develop or redevelop properties in the C-2
9 District have to adhere to these same laws.
10 Therefore, granting the requested variances
11 can adversely impact adjacent owners in the
12 area regardless of being hidden behind a
13 fence.

14 4. The granting of the variance will
15 not adversely affect the public health,
16 safety, or general welfare;

17 The C-2 District does not permit
18 outdoor storage and all properties are subject
19 to these regulations. To grant variances to
20 this applicant undermines the clear intent of
21 the Code and can negatively impact the health,
22 safety and general welfare of the other
23 properties in the area by reducing the overall
24 property valuations.

25 5. The variance will be consistent with

1 the general spirit and intent of the zoning
2 code;

3 As stated previously, the C-2 Business
4 District does not permit outdoor storage and
5 all Zoning Districts are subject to the hard-
6 surfacing requirements of Section 1177.03 (a)
7 and (b) of the Code. Therefore, granting the
8 requested variances will be inconsistent with
9 the intent of the Code.

10 6. The variance sought is the minimum
11 which will afford relief to the applicant;

12 The applicant was advised from initial
13 conversations with the Administration that
14 outdoor storage is not permissible in the C-2
15 Zoning district. Despite those early
16 conversations, the applicant proceeded with
17 acquisition of the subject site and
18 subsequently began requesting outdoor storage
19 from the Planning Commission and only now is
20 asking for a variance. No relief is needed if
21 the applicant acquired property in a properly
22 zoned area of the Village. Industrial Zoning
23 District provides for outdoor uses and is the
24 appropriate zoning classification to address
25 the applicant's needs.

1 7. There is no other economically
2 viable use, which is permitted in the zoning
3 district.

4 The C-2 Zoning District provides a
5 variety of permitted and conditionally
6 permitted uses on the subject site. In fact,
7 in early 2023, Mr. Tomaro approached my office
8 about several possible tenants for the
9 building. Moreover, On-Call itself has been a
10 tenant on the subject site. Given these
11 facts, it's apparent that other economically
12 viable uses are present within the C-2 Zoning
13 District and can applied to this property.

14 I can answer any questions the Board
15 may have.

16 MR. OCHWAT: Any questions?

17 MR. TURK: Are we to assume that
18 any variance here granted is because of their
19 tenant, Fleet Fixes, being on the property and
20 not anyone else?

21 MR. FRANTZ: I'm not sure I
22 understand that question. I think the
23 variance being request is for On-Call's
24 machinery and equipment to be stored outside
25 and not related to the Fleet Fixes

1 application.

2 MR. TURK: Not related, okay.

3 MR. OCHWAT: Any other questions
4 from any of the Board Members?

5 (No response.)

6 MR. OCHWAT: At this time, we'll
7 hear from the applicant.

8 MR. TOMARO: So I was not aware of
9 that --

10 MS. NAUER: Can you state your
11 name for the record?

12 MR. TOMARO: Sure. Frank Tomaro,
13 176 State Road, Hinckley, Ohio.

14 MR. OCHWAT: Thank you.

15 MR. TOMARO: I was not previously
16 aware that by changing the zoning it -- not
17 changing, that's wrong. I don't know how you
18 word it, Brian. We no longer have any parking
19 spaces outside. I thought that's what you
20 said.

21 Long story short, we bought this
22 building. We did what we said we were going
23 to do. The only part that I'm asking you,
24 which you've already shot down from my tenant,
25 is I don't want to pave inside that area

1 because I don't know if I'm going to put a
2 building up. I'm fine if I have to add four
3 more spots and allow that. As far as my
4 business, I need to keep two trailers there.
5 They're not a permanent fixture. They go in
6 and out. I don't know about daily, but at
7 least weekly.

8 Sometimes we park our truck inside the
9 gate, shut the gate. It's a business, that's
10 what we're designed -- that's what we do.
11 When we purchased the building, that was one
12 of the things that came up. Zoning approved
13 us and we've been operating there since. I
14 don't feel that there has been a complaint.
15 This has all been brought up as we've gone
16 along and switched gears with things. But
17 again, we need the outdoor spaces, and they're
18 not permanent.

19 You've seen, you guys all live in the
20 Village. You've driven by. I don't think I
21 have an eyesore there. I think I've made good
22 faith and shown the Village that, hey, I'm
23 making a nice place. I understand that the
24 parking is the parking. But if I'm not able
25 to park there, then I can't be there. At this

1 point, I'm at a loss of what to do.

2 Again, I know I have to pave the area,
3 so I'm requesting the variance to have the
4 outdoor overnight parking for that purpose for
5 my building and business.

6 MR. OCHWAT: Mr. Tomaro, do you
7 know how big your future building would be,
8 the approximate footprint from the small to
9 the large?

10 MR. TOMARO: I don't, because I
11 don't even have -- it's just in my head. Part
12 of the reason why I'm not occupying the entire
13 building as I originally planned is I don't
14 fit inside everything. So things changed and
15 as a business owner, you have to change with
16 the times. I think by talking to Brian and
17 Amy, I'm allowed somewhere around 12,000
18 square feet or 3,500 square feet. So it would
19 occupy that whole area there, that future
20 building.

21 MR. OCHWAT: The future building.

22 MR. SWAN: I have a question for
23 you. If you were to add four more spaces in
24 the area that you're going to pave, would that
25 take care of you storing your equipment on

1 that area then, on the paved area.

2 MR. TOMARO: Yeah. But again, if
3 five years down the road, I go to put up a
4 building, I'm tearing the parking lot up that
5 I just poured.

6 MR. SWAN: I guess my question
7 was, the space you're already going to
8 hardtop, would that accommodate those other
9 four spaces?

10 MR. TOMARO: No, because of the
11 other tenant.

12 MR. OCHWAT: On that plan view
13 there, you indicated where the concrete paving
14 would be for your tenant, basically from the
15 corner of that building to that breakpoint in
16 the middle building?

17 MR. TOMARO: Correct.

18 MR. OCHWAT: So that area behind
19 there that Mr. Frantz is -- go back, Brian, to
20 the other corner. Go back. No, the other
21 direction, north.

22 MR. TURK: I think it's just
23 squared off.

24 MR. OCHWAT: It's just squared off
25 on the end.

1 MR. TOMARO: Yeah, it's not on the
2 other -- it's not on the corner. Right there,
3 from there. It doesn't go to the fence line.
4 It goes approximately five feet from the fence
5 line.

6 MR. OCHWAT: So if you paved or
7 concreted all that area?

8 MR. TURK: No, go to the next
9 tangent, Brian.

10 MR. FRANTZ: So come over here?

11 MR. TOMARO: Just straight across.
12 This goes 20 feet out and down here.

13 MR. OCHWAT: So is that the area
14 --

15 MR. FRANTZ: It doesn't come back
16 here?

17 MR. TOMARO: No, just straight out
18 and straight across, down and out.

19 MR. TURK: Behind the south part
20 of the building?

21 MR. TOMARO: No, that's the east
22 side.

23 MR. TURK: Yeah, okay. But the
24 southern most part of your building is what I
25 meant. East of the southern most.

1 MR. TOMARO: Paving will be from
2 here to here.

3 MR. FRANTZ: Not over here?

4 MR. TOMARO: Not over here.

5 MR. FRANTZ: So it's here to some
6 point like there, right?

7 MR. TOMARO: Yes.

8 MR. FRANTZ: And then down like
9 that?

10 MR. TOMARO: Yep, exactly.

11 MR. OCHWAT: So that's the area
12 you're paving now?

13 MR. TOMARO: Yes.

14 MR. OCHWAT: Which is about 400
15 plus/minus square feet.

16 MR. FRANTZ: 1400.

17 MR. TURK: What is it, 25 by 40?

18 MR. TOMARO: Yes.

19 MR. TURK: Which is a thousand.
20 Amy showed me, right on the nose.

21 MR. OCHWAT: You're saying that if
22 you were to build a new building, you would
23 build off the end of the building and it would
24 be about 4,000 square feet?

25 MR. TOMARO: Correct. I would do

1 something like this. Here to here. So the
2 building would eventually look like a U.

3 The idea behind that is when we come
4 here with a truck and trailer, the length, so
5 even in the existing part of the building, I
6 can't leave a truck and a trailer hooked up.
7 So when they swing in, it's a dump truck with
8 that enclosed trailer. Nothing fits length-
9 wise inside the building. So if we built a
10 longer building with three more bay doors,
11 everything could potentially back in.

12 MR. RUSTIC: So you're saying if
13 you build a building you won't be parking
14 outside anymore?

15 MR. TOMARO: Correct. However,
16 money doesn't grow on trees.

17 Again, I have no objection. Again,
18 this is a thought down the road. I can't tell
19 you if I'm going to do it in a year or five
20 years. It is my intent, because I picked the
21 building because of the location, logistically
22 we could be anywhere. We can be downtown
23 Akron or downtown Cleveland in half an hour.
24 So this is why I picked the location of the
25 building. Upon taking ownership and moving in

1 and making all the improvements, like hey, the
2 trucks really don't fit, and then we kind of
3 did a time table of okay, if we disconnect the
4 truck and back each one in every night. It
5 doesn't make sense versus the trucks are
6 loaded and ready to go. So all we operate out
7 of there is our sewer jetting division, which
8 is a sewer jet and a van, they come and go
9 daily.

10 MR. OCHWAT: Mr. Frantz, are there
11 permissible varying hard surfaces allowed, be
12 it from a temporary basis, having a hard
13 surface be it a base coat?

14 MR. FRANTZ: No. We don't have
15 provisions that allow sort of a temporary
16 approach to an ultimate. It's asphalt or
17 concrete, is what the Code requires.

18 MR. TOMARO: The area that is
19 there, that doesn't show it very well, but it
20 is grass, and then where those two trucks are
21 is the old asphalt parking lot that was
22 existing there. We never touched that. It
23 got disturbed over the time when we didn't
24 remove. It's just whatever was there, was
25 there. We graded off to it and that was about

1 it.

2 So I didn't add that area. That area
3 was always there. It used to have a curb that
4 we ripped out that went from the back of the
5 building, actually all the way into the
6 neighbor's property. Remember the two parking
7 lots used to adjoin. That's the only area
8 that I'm asking for the variance.

9 Again, it goes back to, okay, I can
10 pave it, spend \$10-15,000 to add more parking
11 spaces and then five years down the road, if I
12 put up a building, I'm back to square one,
13 tearing up \$15,000 worth of parking lot.

14 MR. RUSTIC: Paving was part of
15 the original plan that you proposed to the
16 Village.

17 MR. TOMARO: No, never in the back
18 of the building. In the front of the
19 building, yes.

20 MR. RUSTIC: So you're calling the
21 south end the back of the building?

22 MR. TOMARO: Yes. The south and
23 -- I guess the south would be the side of the
24 building.

25 MR. RUSTIC: The south is where

1 you keep your trailers and those two trucks
2 are?

3 MR. TOMARO: Yes. None of that
4 was part of the original -- I believe that was
5 supposed to be greenspace, according to the
6 Baron plan. Then we modified that and the
7 plan was approved as shown.

8 MR. OCHWAT: Mr. Frantz, I think
9 you clarified that, that it was required to be
10 paved in your explanation?

11 MR. FRANTZ: I believe the area
12 that we're referring to over here was subject
13 to paving requirements that was discussed with
14 the Planning Commission years ago. Now,
15 obviously, we have a discrepancy or
16 disagreement of who's correct with regard to
17 that, but I believe that was the intent. And
18 it makes sense, because again, the Code
19 doesn't -- well, we don't allow outdoor
20 storage. The Village does not allow outdoor
21 storage in the C-2 district, period. That's a
22 requirement. So if the Village wants to
23 change that, they can change the Code to allow
24 that. That's just the process.

25 So they made a cognizant decision to

1 not allow that and they further made a
2 cognizant decision to state that when you have
3 nonresidential property, you have to pave the
4 areas where you're going to park, and you have
5 to pave the areas where you drive.

6 MR. OCHWAT: Any further questions
7 from the Board to the applicant?

8 MR. TURK: So a possible
9 solution would be to lay an asphalt pad then
10 until a building was constructed then,
11 possibly. Meaning that asphalt would come up
12 easier than concrete.

13 MR. FRANTZ: Well certainly if
14 there's vehicles, machinery, equipment stored
15 outside, then they need to be stored on a hard
16 surface and asphalt would be an option.

17 MR. OCHWAT: Mr. Tomaro, as you
18 stated, you have no indication of what your
19 future building would be, footprint or
20 anything of that nature?

21 MR. TOMARO: If I had one, I
22 positively would have it here tonight. Things
23 came out of left field over the last three
24 years. We don't have the workforce that we
25 used to. I'm currently working with an

1 immigrant lawyer to get a workforce. We have
2 the same problem with PVC piping. It's hard
3 to get ahold of. It skyrocketed through the
4 roof. I mean, you name it, the world's
5 constantly changing. One day, they tell us
6 something, the next day they tell us something
7 else. I'm waiting for a transmission for the
8 last two and a half months on one of my
9 trucks.

10 If I had the funds available to just
11 put the addition on, I would do it, but I
12 don't have the funds.

13 MR. TURK: What are the two
14 pieces of equipment other than the trailers
15 that are mentioned here?

16 MR. TOMARO: There's either a skid
17 steer that would be parked on a trailer or an
18 excavator that would be parked on a trailer,
19 and sometimes a single axle dump truck.

20 MR. TURK: That's one of the two
21 trailers mentioned or that's in addition to
22 the two enclosed trailers?

23 MR. TOMARO: Two enclosed trailers
24 plus two more spots. Originally, we asked for
25 four spaces total and that's what we were

1 granted. That's what we're still asking for,
2 just four spaces. Again, they're not there
3 permanently, they're moving constantly.

4 MR. TURK: Yeah, they're like a
5 daily driver, except their work related.

6 MR. OCHWAT: Can you park the
7 excess equipment or anything that you're not
8 using on a regular basis in those two big
9 bays?

10 MR. TOMARO: No. So the one bay
11 is actually more like a single garage, or it's
12 only just 8.5 by 12. So nothing -- and I
13 don't have the depth in that side of the
14 building, and the other side, same thing. The
15 sewer jet sits in one side, the dump truck
16 sits in the other.

17 MR. FRANTZ: Mr. Chair, just to
18 give you the minutes from the original
19 application to clarify fully. These are the
20 minutes from the 2021 approval that Mr. Tomaro
21 originally received his conditional zoning
22 certificate. It was asphalt paving of gravel
23 area used for parking, no more than two
24 enclosed trailers to be parked on the premises
25 during overnight hours, only parked behind the

1 building and enclosed.

2 So again there's clearly discrepancies
3 between what occurred and impressions of what
4 occurred and what's permitted, but I think the
5 minutes are pretty clear of what was stated.

6 MR. TOMARO: I would say those
7 were Dan Baron's conditions because I always
8 had four parking spaces. The area behind the
9 building was a mud pit with two semi-tractors
10 back there.

11 MR. FRANTZ: I, again, for the
12 record, want to clarify, Exhibit F is the
13 meeting minutes from May 25, 2021 for On-Call
14 Services, Frank Tomaro/Dan Baron, 4751
15 Brecksville Road. So this was your
16 application that these stipulations were
17 placed to, not Mr. Baron. Mr. Baron
18 represented that evening, as a seller, and
19 indicated that your application was going to
20 follow his requirements, and the Commission
21 approved it subject to these requirements.

22 That has morphed over time. As I
23 stated earlier, things have kind of changed,
24 but the original application was approved with
25 these conditions.

1 MS. TOMARO: Excuse me, can I say
2 something. My name is Bernadette Tomaro. I
3 have the same address, 176 State Road,
4 Hinckley. I just want to note that back in
5 2021, when we purchased the building, it was
6 during COVID time, so we had a Zoom conference
7 with the BZ, I believe, and we clarified that
8 with Mr. Frantz, that the footprint that they
9 were looking at and the footprint that was in
10 front of us was two different things. So I
11 know that there were things said that we had
12 discrepancies and we didn't follow the rules
13 and such, but those two things were different.

14 So once I came to Brian to clarify a
15 couple things, we tried to work with them. I
16 believe we worked together. But we were
17 granted the two enclosed trailers. I don't
18 remember exactly the year and month, and we
19 came back, and then we asked for two more
20 spaces, and then also were granted that. So
21 originally -- not originally, but eventually,
22 we were granted the four spaces for outdoor
23 storage or parking. I don't know if those are
24 interchangeable terms, but I just wanted to
25 clarify that.

1 MR. OCHWAT: The meeting minutes
2 from 2021 shows two trailers.

3 MR. TOMARO: And then there was
4 another meeting.

5 MS. TOMARO: Then there was
6 another meeting when --

7 MR. TOMARO: They allowed us
8 additional trailers --

9 MS. TOMARO: -- and then they
10 allowed us to do two additional ones, single
11 axle trailers.

12 MR. OCHWAT: I don't think we have
13 any record of that.

14 MR. FRANTZ: I believe I have them
15 in here. I pointed this out, just to clarify
16 the record that the original application was
17 two enclosed trailers on paved parking area.
18 I would agree that, again, at the applicant's
19 own actions, things changed on the property
20 different than what was approved. We had to
21 go to the Planning Commission after coming to
22 the Board of Zoning Appeals for fence issues.
23 We had to go to the Planning Commission to
24 remedy those things that changed that were not
25 approved, because they were done without

1 approvals.

2 In that process, which occurred in --

3 MS. NAUER: The exhibit you
4 actually had, you noted as Exhibit F, actually
5 belongs to Fleet Fixes report package. The
6 meeting minutes are also included in the
7 On-Call report is actually Exhibit D.

8 MR. FRANTZ: I apologize, I
9 focused on the wrong one.

10 MS. NAUER: My apologies, I just
11 wanted to clarify.

12 MR. FRANTZ: Yeah, I was on the
13 wrong report.

14 MR. CHOJNACKI: Are you looking for a
15 Planning Commission approval, Mr. Frantz?

16 MR. FRANTZ: Yes.

17 MR. CHOJNACKI: For something that's
18 outside of what's permitted outside of what's
19 permitted under the Codified Ordinances?

20 MR. FRANTZ: That's correct.

21 MR. CHOJNACKI: I think you're using
22 a misnomer if you're saying it was approved.
23 Planning Commission doesn't have the authority
24 to approve any variances from the existing
25 Codified Ordinances. That's what this body is

1 for. So from a conceptual standpoint, whether
2 the Planning Commission approved a use not
3 permitted by the Zoning Code is of no legal
4 significance. The legal entity which has the
5 ability to approve that is this body, which is
6 the Board of Zoning Appeals.

7 So I want to be respectful to
8 everyone's time and just clarify that it's
9 good to discuss those issues, but to the
10 extent there was or wasn't an approval, it
11 wasn't something that occurred initially and
12 then changed. As it relates to matters that
13 are not permitted by the Zoning Code, those
14 matters are not something Planning Commission
15 has the authority to a variance on, only this
16 body does.

17 MS. TOMARO: Thank you for that,
18 and we understand that. However, we were
19 asked to with this issue to the Planning and
20 Zoning. That's the reason we went there. So
21 once we had that meeting, a week later, we see
22 the letter from you that the Council practiced
23 a call authority --

24 MR. CHOJNACKI: They called --
25 correct.

1 MS. TOMARO: That they don't
2 approve it. So whether it's the Planning --

3 MR. CHOJNACKI: Council hasn't
4 approved anything. They've only just
5 exercised their call-up authority.

6 MS. TOMARO: I understand that,
7 but when we went to the Planning and Zoning,
8 we were advised by Brian to go with this issue
9 to the Planning, and that's what we did.

10 MR. CHOJNACKI: Got it.

11 MS. TOMARO: They said they
12 approved this and I believe we asked for a
13 year, and everything was approved. So when we
14 leave, we know that everything is approved. A
15 week later, we received a letter from you
16 that, by the way, it's not approved, because
17 they don't have the authority. I don't know
18 that, who has what kind of authority to
19 approve.

20 MR. CHOJNACKI: Got it, and that's
21 why we're here. So we got the right people in
22 the room. So if you ask the Fire Department
23 if you can break the speed limit, they don't
24 have the authority to say yes or no. Neither
25 does the police in that matter, but the idea

1 is the same.

2 MS. TOMARO: Which we understand
3 that one. We don't really understand what can
4 be approved or not approved by Planning or the
5 BZA. So if we are told to come here to
6 Planning, we do that, and we've done that.

7 MR. CHOJNACKI: I'm grateful for
8 that. We are here now doing that, correct.

9 MR. TOMARO: So this brings up a
10 whole other thing. From day one, I should
11 have never gone to Planning and Zoning, I
12 should have gone to the BZA.

13 MR. CHOJNACKI: Well, I think there's
14 probably two different issues that you're
15 dealing with. I don't want to speculate as to
16 the whole process, but ordinarily, the bodies
17 serve two different functions. So as I
18 understand it, in order to operate the
19 business you wanted to operate, you were
20 required to receive a conditional use.

21 MR. TOMARO: Correct.

22 MR. CHOJNACKI: The Planning
23 Commission dictates whether a conditional use
24 is permitted or not. They exercise that
25 authority as a planning function, that's what

1 their job is. They're planning the
2 organization of the Village as a whole. One
3 of the ways they do that is approving or
4 denying conditional uses. The way our Charter
5 and Codified Ordinances have given that
6 authority to the Planning Commission, that
7 authority is limited by what Council refers to
8 and our Code refers to is call-up authority.
9 So the Planning Commission's decision on a
10 conditional use is subject to the call-up
11 authority of Council. So Council gets the
12 ability to exercise that authority or not.

13 In the instance of your application for
14 a conditional use, the application was
15 approved by Planning Commission but Council
16 exercised their call-up authority. They have
17 the ultimate authority. But their call-up
18 authority is predicated on the decision as to
19 whether they're a variance from the Planning
20 and Zoning Code, meaning a deviation from
21 what's permitted or prohibited, is going to be
22 approved by this body. So you're here today
23 for that purpose.

24 So conceptually, the approvals that
25 we've discussed or didn't discuss, those are

1 legal nullities. The actual decisions that
2 will be the subject of whatever Council
3 approved, is predicated on what this body
4 does. So that's the lay of the land for this
5 whole process.

6 From my perspective, one of the issues
7 that I think we need to appropriately frame,
8 and I have struggled with, is whether it's two
9 or four vehicles. This body has got to make a
10 choice as to what they want to permit or
11 approve or deny, outside, with respect to
12 outdoor storage. So whether it's two back
13 whenever whoever did this, whether it's two or
14 four, you guys have to make a decision on what
15 you want to approve or deny.

16 So from a clarity standpoint, what are
17 the items you're looking to receive a variance
18 on for outdoor storage?

19 MR. TOMARO: Four parking spaces.

20 MR. CHOJNACKI: Four parking spaces?

21 MR. TOMARO: Of either truck
22 trailer, piece of equipment on a trailer.

23 MR. CHOJNACKI: So do any of those
24 items fit inside your building?

25 MR. TOMARO: No.

1 MR. CHOJNACKI: None of them fit
2 inside the entire building?

3 MR. TOMARO: One of the trucks
4 would fit inside her, yeah.

5 MR. CHOJNACKI: Is it because the
6 items are so big that they don't fit into any
7 of the four bays that are available, or is it
8 because you have only two bays being used by
9 On-Call?

10 MR. TOMARO: Only two bays are big
11 enough to permit to fit.

12 MR. CHOJNACKI: Are those the bays,
13 just to make sure I understand the testimony
14 correctly, the bays that are currently used by
15 Fleet Fixes, those bays can accommodate
16 anything that you want to store outside, but
17 they're not available to you?

18 MR. TOMARO: Correct.

19 MR. CHOJNACKI: If they were
20 available to you, they could go inside though,
21 right?

22 MR. TOMARO: Correct.

23 MR. CHOJNACKI: So we have four bays,
24 four units. Right now, this property, and
25 ordinarily dealing with this body, you usually

1 act by property, not by applicant. So
2 conceptually, this body's approved whatever
3 you've authorized on a variance for outside
4 storage, correct?

5 MR. TURK: On concrete, correct.

6 MR. CHOJNACKI: Concrete for how many
7 items?

8 MR. OCHWAT: Paved surfaces.

9 MR. CHOJNACKI: Just paved surfaces
10 for two vehicles.

11 MR. TURK: I thought it was for
12 four vehicles.

13 MR. CHOJNACKI: What did you guys ask
14 for?

15 MS. BECA: We asked for four.

16 MR. CHOJNACKI: So you have approved
17 a variance for four vehicles on the property.
18 There's a request for another four vehicles in
19 a different location on unpaved surfaces. So
20 collectively, I think this motion, whatever
21 you guys do, you need to be very precise as to
22 how many vehicles you want to allow for
23 On-Call and how many globally are permitted on
24 this site. These are use variances, they run
25 with the land. That means they last forever

1 unless you put a condition on it.

2 Certainly, just so everyone remembers,
3 this body's decision for use variances is what
4 we're talking about, is subject to automatic
5 review by Council. So you got to go through
6 this process again, if it's approved. If it's
7 denied, you go to court. So conceptually, you
8 have to make this decision on what you're
9 going to approve for this appeal and what
10 you're going to approve overall for the site,
11 because the record is a mess and we need to
12 clean it up. That's it.

13 MR. TOMARO: Thank you for that.
14 So my request is for four parking spaces. Or
15 actually, we're still on the first, gravel or
16 non-gravel, correct?

17 MR. CHOJNACKI: Let's address them in
18 order as they're listed on the application
19 itself. So the first thing that this body is
20 being asked to consider is a variance from
21 Section 1105.19 of the Planning and Zoning
22 Code to permit outdoor storage of two enclosed
23 trailers and two pieces of machinery no larger
24 than said trailers, but not products,
25 supplies, or merchandise of any kind. So

1 you're asking for four, and that's two and
2 two, which would be in addition to the four
3 that you've authorized on the site in the back
4 on paved surface.

5 MR. OCHWAT: On paved surface.

6 MR. CHOJNACKI: Is there any further
7 discussion that this body wants to have or
8 anybody in the public who's been sworn or
9 wants to be sworn, who wants to have on this
10 topic?

11 MR. TURK: I was going to say,
12 on top of those four trailers, you got two
13 tractor trailers or two dump trucks in
14 addition to that?

15 MR. TOMARO: Single axle dump
16 trucks.

17 MR. TURK: That'll be outside
18 though also or they're inside?

19 MR. TOMARO: I don't know. It
20 could go either way. But I'm asking for four
21 outdoor spaces. I don't know --

22 MR. TURK: But you need six.

23 MS. TOMARO: No, four total
24 outside.

25 MR. TURK: Okay, so the dump

1 trucks go inside then?

2 MR. TOMARO: Yes.

3 MR. CHOJNACKI: So the motion will
4 ultimately be on whether to approve a
5 requested variance to permit outdoor storage
6 of two enclosed trailers and two pieces of
7 machinery no larger than said trailers. Do
8 you have any machinery larger than the
9 trailers?

10 MR. TOMARO: No.

11 MR. CHOJNACKI: And no products,
12 supplies, or merchandise of any kind, with the
13 recognition that collectively you've acted to
14 allow merchandise or supplies of some kind
15 already on the property, but for a tenant, on
16 the paved surface.

17 MS. NAUER: If I could just add,
18 for the outdoor storage, I think it was maybe
19 last week or so, there was materials stored
20 outside in the front parking lot. So just to
21 clarify that there's not to be any outdoor
22 products or materials.

23 MR. TOMARO: I think that was the
24 build up construction. That had nothing to do
25 with me. We weren't doing anything.

1 MS. NAUER: Okay, I just wanted
2 to clarify. I thought I noticed them on your
3 property.

4 MR. TOMARO: I think that's set
5 forth saying that they're putting it wasn't --

6 MR. CHOJNACKI: So does someone from
7 this body want to make a motion to approve
8 consistent with the first request?

9 MR. OCHWAT: Well, if there's no
10 further testimony from anybody from the
11 audience, any comments?

12 MR. FRANTZ: Mr. Chair, I have
13 some clarification issues from the
14 administration standpoint that need to go on
15 the record.

16 MR. OCHWAT: Okay.

17 MR. FRANTZ: I want to be clear
18 that the administration has not reviewed this
19 paved area that's been referenced this
20 evening. We had no knowledge of it coming
21 into this meeting. Therefore, we don't know
22 if it meets all applicable requirements of the
23 Code. This gets into the issues that I've
24 explained before. Things are done without
25 approval. So if that paved area, which

1 subsequently may or may not have parking or
2 storage on it, doesn't meet setbacks, we might
3 be right back here in front of this Board,
4 because there are requirements in the Code,
5 and these requirements have been explained to
6 the applicant, about the property setbacks
7 numerous times.

8 So I just want to be very clear. I, on
9 behalf of the administration, have not seen a
10 site plan, have any knowledge of where it
11 begins and ends, and if it complies with the
12 Code, other than the fact that it's hard
13 surface and behind, or to the east of the
14 building.

15 MR. OCHWAT: Thank you. I will
16 ask the applicant a question. Whether you may
17 want to reconsider this, your application,
18 since you're asking for some variances on
19 paved surfaces?

20 MR. TOMARO: What am I
21 reconsidering?

22 MR. OCHWAT: Well, the Village has
23 not received anything of a plan for paving,
24 any details. As Mr. Frantz has indicated,
25 that even if it gets approved or denied, you

1 could still be subject to approval by the
2 administration, on your paving that you have
3 or paving that you would be requesting.

4 MR. TOMARO: I'm at a loss. I
5 thought this whole thing was about me putting
6 paving in. Now I'm putting paving in and now
7 you're telling me --

8 MR. OCHWAT: Well, no. I'm just
9 asking --

10 MR. TOMARO: No, what I was asking
11 for is a variance for parking of four
12 vehicles. Can we stay on the subject of the
13 four parking spaces?

14 MR. CHOJNACKI: Well, to be clear,
15 outdoor storage of two enclosed trailers and
16 two pieces of machinery.

17 MR. TOMARO: Yes. With one of
18 them possibly being a truck, is that --

19 MR. CHOJNACKI: The way the
20 application is, is two enclosed trailers and
21 two pieces of machinery no larger than said
22 trailers. It's your application, if you want
23 to ask for something else, go right ahead.

24 MR. OCHWAT: You're bound by that.

25 MR. TOMARO: Okay, a single axle

1 dump truck.

2 MR. CHOJNACKI: So it would be two
3 enclosed trailers, one piece of machinery no
4 larger than the trailers, and one single axle
5 dump truck?

6 MR. TOMARO: Yes.

7 MR. CHOJNACKI: Do we have that
8 somewhere that everyone can refer to it easily
9 for future reference? I hope so. I see the
10 court reporter smiling for the record.

11 MR. OCHWAT: No further comments
12 or testimony?

13 MS. TOMARO: Excuse me, I just
14 have a question. So are we required now to
15 come back with the drawing or pictures that
16 the concrete is going in for the paving? So
17 I'm confused, because when we left here last
18 time, we were granted, to us that meant yes,
19 you can pour pieces of concrete or whatever it
20 is, and you start construction and then now
21 we're here, and now we need additional
22 paperwork, an additional drawing. So I'm at a
23 loss. How many times do we have to come back?

24 MR. CHOJNACKI: So, unless the
25 administration wants to speak on it.

1 MR. FRANTZ: I would say,
2 conversely, I'm at a loss. Ms. Tomaro, did
3 you and I and Ms. Nauer meet, and were the
4 requirements in the Code for parking explained
5 to you in a meeting during the process in
6 which you went back to Planning
7 Commission? Did we meet and talk about the
8 requirements, setbacks, and about a possible
9 future building expansion and the setback
10 requirements for that; have we gone over those
11 items?

12 MS. TOMARO: I clearly remember
13 you saying something about the building, that
14 if we were to put something, an addition on,
15 then we would have to consult you, make sure
16 that the building or the addition we were
17 going to put on would meet the requirements.
18 Setbacks from the back or the parking lot, I
19 do not recall.

20 MR. FRANTZ: So I am providing
21 testimony on the record this evening that I
22 have informed you of the requirements for
23 setbacks for paved parking areas, for building
24 setbacks as related to possible expansion in
25 some point in the future. I have done that

1 with you and Mr. Tomaro multiple times. I
2 have explained that there are setbacks for
3 parking and that anything that's done on the
4 exterior of the property, must be done with
5 approval authority of the Planning Commission
6 or the administration. I've explained that
7 you need to do things after you get approvals,
8 because there's requirements and multiple
9 requirements throughout the Code.

10 So for my testimony, I'm going on the
11 record stating I have done that multiple times
12 in the past, and very recently, as well.

13 MS. BECA: I have a question.
14 So if I'm understanding --

15 MS. NAUER: Can you please state
16 your name?

17 MS. BECA: Sorry. Angie Beca,
18 230 Trudy Avenue. If I'm understanding this
19 correctly, when we came to the meeting last
20 time to get permission to have parking, and we
21 said that we would pave -- well, they said
22 they would pave parking, are you saying that's
23 not the same thing as submitting approval for
24 the parking lot itself? So there's a separate
25 thing that needs to be done?

1 MS. TOMARO: That's what I'm
2 hearing. That's why I'm confused.

3 MR. FRANTZ: So ma'am, I'll
4 respond to you and say that I have no idea
5 where the area in question is being paved
6 until coming into this meeting tonight.
7 Didn't even know it was being paved. I've
8 learned through testimony of the applicant
9 that there's a paved area underway, and I have
10 sketched it out to the best of my ability and
11 its approximate location shown on this aerial
12 photograph. I am providing testimony that
13 states that I have told the applicants that
14 there are setbacks for buildings, there's
15 setbacks for parking, and I have no idea, as
16 the administrator of the Code, if that
17 parking, that paved area that's going to be
18 used for storage of vehicles in your and your
19 husband's application, if that meets the
20 setback requirement or not.

21 To the best of my knowledge coming into
22 this meeting, the request was going to be to
23 allow for parking or storage of vehicles, on
24 your application and those current
25 application, on non-paved surfaces. If paving

1 has occurred, it will need to be checked for
2 compliance with setbacks under the Zoning
3 Code.

4 MS. BECA: So what I am hearing
5 is the last time, when Bernadette submitted
6 the picture with -- she had planned out where
7 the parking was going to go, that doesn't
8 count. That's what I'm hearing. That's not
9 the same thing as actually submitting real --
10 that's not the same thing as submitting other
11 paperwork?

12 MR. FRANTZ: So during the
13 meeting, it was expressed that maybe this area
14 would be used for parking. It was also
15 expressed there was a desire not to pave it
16 all, forgo the paving. So there's no real
17 clear indication. It sounds like, this
18 evening, the applicant has acquiesced to
19 performing the paving for your application,
20 and has already done it.

21 MS. BECA: No, it's not done
22 yet, it's just dug up.

23 MR. FRANTZ: It's significantly
24 underway and would have been paved if we had
25 not had rain in the last couple days. So with

1 that said, I have no idea if that area that's
2 been paved and used for storage in your
3 application complies with the setbacks of the
4 Code. The Code in the C-2 Zoning District,
5 under 1149.07 has yard requirements for all
6 uses for the paved parking areas that are
7 going to be used for parking for vehicles, in
8 this instance, for storage of vehicles. They
9 have parking requirements.

10 MS. BECA: Okay. So that
11 application can be found online, so it can be
12 submitted before anything is done further?

13 MR. FRANTZ: So the applicant can
14 submit their plan and I'd be glad to do a
15 cursory review to see does it meet setbacks.
16 The rear yard setback in this instance is 30
17 feet. I see Mr. Tomaro shaking his head,
18 because I have advised him of that in the
19 past.

20 MS. TOMARO: Because we did point
21 out exactly the numbers how many feet, and
22 it's back from the property line, and how big
23 the paved area will be, and that's how it was
24 approved. That's why I'm questioning this.
25 Because you did say it was 30 feet setback and

1 then the paved area that we measured out then
2 presented to the Planning and Zoning, it was
3 exactly the area.

4 So I feel like when we come here and
5 then we present the plan, we are approved for
6 something, and then I'm back to square one.
7 I'm not understanding.

8 MR. RUSTIC: I have to say that
9 I'm not understanding a lot of this myself,
10 but I do know that if you submit a plan,
11 you've got a plan to go by and to follow.
12 This is just what I'm hearing here. It sounds
13 like you're going ahead with your plan no
14 matter what and hoping that you can get it by.
15 I mean, that's what it sounds like. You know
16 what your setbacks are. You've been advised
17 of all this and you're moving ahead, and
18 apparently, even without building permits. Do
19 you have a building permit for the pad you're
20 pouring?

21 MR. TOMARO: No.

22 MR. RUSTIC: So you're just going
23 ahead with an unapproved plan and hoping that
24 it'll all work out in the end?

25 MR. TOMARO: I was not under the

1 impression we needed one in the Village for
2 concrete.

3 MR. OCHWAT: Well, you still have
4 to comply with the setbacks, boundary lines,
5 or anything like that for paving.

6 MR. TOMARO: I'm sorry.

7 MR. OCHWAT: I said you still have
8 to comply with the Village's setbacks.

9 MR. TOMARO: Yeah, I'm aware of
10 that.

11 MR. OCHWAT: Mr. Frantz, correct
12 me, but I believe the County does the
13 inspections and the permitting, however, we
14 have to grant the Zoning permit on that?

15 MR. FRANTZ: Yeah, the County
16 inspects building permit applications. I
17 don't believe that they have requirements for
18 the parking lot, in this instance. So this
19 would be a local jurisdictional matter.

20 MR. TOMARO: That's what I'm under
21 the impression of. We have to make sure we
22 comply with our setbacks, but there is no
23 permit required. What I was hoping that I was
24 coming here the original time was, hey, I'm
25 showing you good faith, I really want to

1 comply, and I want to pour the parking lot, so
2 I can say, hey, yes, we're moving forward.
3 We're showing you in good faith that we're
4 putting the parking lot in and now it's thrown
5 back at me like I'm doing something wrong.
6 Maybe I did not get plan approval, but as
7 everyone behind me understands, that's what we
8 thought we talked about and approved and moved
9 forward, let's do this.

10 The question that comes back to is the
11 area in the front, where potentially, I might
12 put a building addition on. But again, I
13 understand Mr. Chojnacki is a little
14 distracted, but we're asking for the four
15 parking lots outside.

16 MR. OCHWAT: Okay.

17 MR. TOMARO: And we will not pour
18 any concrete tomorrow. I'll cancel the pour,
19 and we'll have Brian come out and inspect it.

20 MR. SWAN: Mr. Chairman, I have
21 a procedural question. If we approve what his
22 request is, does it then go back to Council?

23 MR. TOMARO: Yes, because they
24 have to approve. They still have final say.

25 MR. OCHWAT: Hang on, Mr. Tomaro.

1 MR. CHOJNACKI: Any approval of a use
2 variance will go to Council. To be clear
3 though, there's no variance before this body
4 that relates to anything for paving or
5 setbacks. So to the extent there's some
6 misread that's not complied with, you will
7 have to be back here if you're not in
8 compliance with that. Does that make sense?

9 MR. TOMARO: Yes.

10 MR. CHOJNACKI: Unless I'm mistaken
11 and this body's granted variance previously
12 for paving in the rear of the building on the
13 subject property.

14 MR. SWAN: Well, I'd like to
15 make a motion that we approve the variance.

16 MR. SMITH: I'll second.

17 MR. OCHWAT: Well. So are there
18 any further comments or testimony from
19 anybody? Any further comments?

20 (No response.)

21 MR. RUSTIC: Can we go into
22 Executive Session?

23 MR. OCHWAT: Well, seeing that
24 there's no further testimony, I'd like to move
25 to deliberations. If anybody from the Board

1 desires to move into Executive Session, I'd
2 like to have a motion for that.

3 MR. RUSTIC: I'd like to move into
4 Session.

5 MR. OCHWAT: Is there a second?

6 MR. TURK: I'll second that.

7 MR. CHOJNACKI: Just to be clear, the
8 motion is for consultation with legal counsel
9 of the public body for pending or imminent
10 court action. That's the statutory reference
11 that we need to make.

12 MR. OCHWAT: Correct. Ms. Nauer?

13 MS. NAUER: Mr. Swan?

14 MR. SWAN: Yes.

15 MS. NAUER: Mr. Rustic?

16 MR. RUSTIC: Yes.

17 MS. NAUER: Mr. Turk?

18 MR. TURK: Yes.

19 MS. NAUER: Mr. Smith?

20 MR. SMITH: Yes.

21 MS. NAUER: Mr. Ochwat?

22 MR. OCHWAT: Yes. So we will go
23 off into Executive Session at 9:04 and return
24 as soon as possible.

25 (Executive Session held.)

1 MR. OCHWAT: So we'll go back on
2 the record at 9:32.

3 So after deliberation, I want to,
4 Mr. Tomaro, clarify your variance on that
5 first one, because I think there's confusion
6 all around, as to quantities and what we have.
7 I want to make it clear for the record that
8 your variance that you're requesting for the
9 first variance is Section 1105.19 Planning and
10 Zoning Code, permit outdoor storage of two
11 enclosed trailers, one piece of machinery, not
12 two, and one truck, correct?

13 MR. TOMARO: Correct.

14 MR. OCHWAT: I'd like that to go
15 into the record to make sure that's clear.

16 If there are no further questions --

17 MR. FRANTZ: Mr. Chair?

18 MR. OCHWAT: Yes?

19 MR. FRANTZ: I do have some
20 information I'd like to add to the record to
21 supplement my report and provide some brief
22 time for some cross examination of the
23 applicant's testimony.

24 MR. OCHWAT: Okay, proceed please.

25 MR. FRANTZ: Thank you.

1 I've marked here this evening -- I want
2 to first clarify for the record that I did not
3 participate in your Executive Session as a
4 member of the administration.

5 MR. OCHWAT: That is correct.

6 MR. FRANTZ: I've marked for the
7 record this evening, and I'm going to give the
8 applicant a copy, as well as our court
9 reporter this evening, and I'll give each
10 member of the Board Exhibit H of my report.
11 What Exhibit H is, is a document submitted in
12 preparation by the applicant for the Planning
13 and Zoning Commission held in May of this
14 year. What I'd like to ask the applicant is,
15 who prepared this particular document?

16 MR. TOMARO: Both my wife and I
17 did.

18 MR. FRANTZ: The purpose of
19 preparing that document was to provide for the
20 Planning Commission the breakdown of uses
21 within your building, because the issue that
22 was taken to the Planning and Zoning
23 Commission related principally to your
24 distribution of office to the warehousing of
25 products. So this was an exhibit that you

1 prepared to help illustrate what the
2 Commission was looking at, as it related to a
3 breakdown of your building.

4 MR. TOMARO: Yes.

5 MS. TOMARO: No, that was not.
6 That was just a layout.

7 MR. TOMARO: Oh, that was just a
8 layout.

9 MS. TOMARO: That was just a
10 layout.

11 MR. FRANTZ: Understood, just a
12 layout.

13 Providing Exhibit I, I believe, is my
14 next number. I'll give the applicant a copy.
15 This was also provided to the Planning
16 Commission and this is a colorized version of
17 the previous document that you saw. Do you
18 recall receiving this from my office?

19 MS. TOMARO: I brought it to you.

20 MR. FRANTZ: Right, but the
21 colorized version with the various color
22 coding of the breakdown of the previous
23 document, I prepared that, provided it to you,
24 and you provided back to me the square
25 footages; is that correct?

1 MR. TOMARO: Yes.

2 MS. TOMARO: No. I prepared. You
3 wanted color coded and I prepared the color
4 code. You and I were on the phone and you
5 said, okay, what do you want to be whatever A
6 or B or color. And then you said, okay, so
7 let's call this green color, let's call this
8 yellow, let's call -- it was a phone
9 conversation between you and me. So I went
10 home, I colored that as you asked for and I
11 highlighted it on the side, and so they can
12 see the layouts.

13 MR. FRANTZ: I just want to
14 clarify, the actual coloring, I took colored
15 markers in my office and I colored while we
16 were on the phone, and you went back and you
17 put the associated square footages by color.
18 So we agreed on those colors?

19 MS. TOMARO: Correct.

20 MR. FRANTZ: What I want to
21 provide now to the applicant and for the
22 record, Exhibit J, and what this is, is
23 meeting notes from my meeting with the
24 Tomaros, as it relates to preparation of their
25 application for the Planning Commission. This

1 is printed from my reMarkable tablet, which is
2 a paper tablet provided by the Village in
3 which I take notes on. What this says on
4 this, is my handwritten notes and brief
5 summary of our conversation, and you'll note
6 in the second paragraph, "Concrete parking
7 discussion occurred. Frank looking at rear
8 building for additional parking for vehicles
9 (?) type undefined." I put from my
10 perspective an order of importance as it went
11 into the Planning Commission meeting. You'll
12 note down in item number 6, need a site plan,
13 need floor plan measurements and related
14 divisions and related parking.

15 These are my meeting notes and I'm
16 submitting them into the record as Exhibit J.
17 Then I have two final exhibits this evening
18 I want to provide, marked Exhibit K, provided
19 to the applicant.

20 For the applicant, you'll notice
21 there's a received stamp. So this was
22 provided to the Village administration. This
23 was used in discussions about the breakdown of
24 the property, desires of the property. And
25 you'll note that on this, there's measurements

1 for proposed hard surface. Those measurements
2 are 18 by 40. So my question to the applicant
3 is, did you prepare this document?

4 MS. TOMARO: That was prepared
5 before we came to the Planning Commission, and
6 when there were questions arose that when we
7 discussed the 30 feet setback, you said that
8 was correct, and then behind the building to
9 pour concrete.

10 MR. FRANTZ: So I want to be clear
11 --

12 MS. TOMARO: For surfaces you guys
13 approved.

14 MR. FRANTZ: I want to be clear of
15 what you just said. You acknowledge there's a
16 30 foot setback for parking in the rear of the
17 building and that was discussed, and this
18 document was generated to show an area that
19 you would pave for parking behind the
20 building.

21 MS. TOMARO: That was before we
22 came in. You told us about the setback and
23 then we said, fine, this is the setback, we
24 measured it out. That's a possible area where
25 we can pour concrete. It was never said you

1 can't pour anywhere else.

2 MR. FRANTZ: It was a possible
3 area, 18 by 40, that was going to be for the
4 paved surface.

5 So I'll provide then, finally, the
6 final exhibit to my report this evening,
7 what's marked as Exhibit L. These are meeting
8 minutes from the June 28, 2022 Planning
9 Commission, because there has been some
10 discrepancies about what's been said in the
11 past, despite some meeting minutes, and I
12 don't think this was in my initial report.
13 I'll ask that the Board of Zoning Appeals to
14 turn to the final page that's highlighted in
15 green, and this is the motion on amended site
16 plan for the applicant as presented and
17 discussed with the Planning Commission.

18 You'll note that there's discussions
19 about eight parking spaces, three parallel,
20 and three parallel that's going to be used for
21 off street parking for the business itself and
22 customers who come. You'll note in the last
23 two bullet points, "Previously approved (at
24 the 5/25/21 meeting)" which was referred to
25 this evening, "to allow two enclosed trailers

1 as well as now approved two additional
2 vehicles (a single axle dump and a truck with
3 a dump bed) to be parked on hard surface only
4 behind the fence. No outdoor storage of
5 materials, equipment/machinery, or other
6 vehicles" in addition to what was explained.

7 So I just wanted to clear for the
8 record what has been presented, what has been
9 presented and what has been approved for the
10 applicant, as it relates to hard surface, that
11 continues to be non-performed and never
12 mentioned about a building expansion, other
13 than coming into the April 2023 meeting, as it
14 related to the distribution and breakdown of
15 the applicant's existing use, the two-thirds,
16 one-third ratio of office to warehousing of
17 products, which was the principal reason why
18 the applicant was going back to the Planning
19 Commission, because they could not perform
20 that ratio, given the existence of two tenants
21 in the building that did not receive approvals
22 of the Commission or the Administration to be
23 in that space. That was the purpose of going
24 to the Planning Commission. It's clearly
25 identified in the meeting minutes and it's

1 submitted into the record.

2 That's all I have this evening. Thank
3 you.

4 MR. OCHWAT: Thank you.
5 Mr. Tomaro, Ms. Tomaro, do you have any
6 comments? Clearly, the last meeting minutes
7 that Mr. Frantz has highlighted clarifies the
8 types of equipment.

9 MS. TOMARO: It does say that the
10 four parking spaces were allowed on hard
11 surface behind the fence, not behind the
12 building.

13 MR. OCHWAT: Okay.

14 MS. TOMARO: That was under that
15 to Fleet Fixes.

16 MR. TURK: Just a quick question
17 too, on the color coded map. Fleet Fixes,
18 they now occupy Section K now too, correct?

19 MR. TOMARO: Correct.

20 MR. OCHWAT: Any further comments
21 from the Board? Want to review this?

22 MR. TURK: At this time, no.

23 MR. CHOJNACKI: Does the Board want
24 to go back into Executive Session at all?

25 MR. RUSTIC: Let's run with plan A

1 still.

2 MR. OCHWAT: Since there are no
3 further comments or questions from the
4 audience or the Board, we did clarify the
5 first amendment, which I think reflects the
6 meeting minutes, your first request on the
7 variance. Do you agree with those vehicles
8 that we talked about?

9 MR. TOMARO: Yes.

10 MR. OCHWAT: A total of four. So
11 our legal counsel would like to clarify a few
12 things.

13 MR. CHOJNACKI: So speaking on behalf
14 of the Board, I think it's appropriate to do a
15 little bit of table setting for precisely what
16 the Board can consider here tonight.

17 Ultimately, this Board is presented
18 with a unique situation in that the
19 conditional use approval that Council is
20 exercising its call-up authority on, is
21 predicated on a time frame. They've extended
22 that time frame once and we don't know if
23 they'll extend that time frame a second time.
24 So this body is, in the interest of providing
25 the applicants and the Village with an

1 expeditious result to this matter, has the
2 opportunity to make a decision that clearly
3 allows for the Village Council to address all
4 of the issues in one fell swoop, as the call-
5 up authority afforded for the purposes of
6 conditional use, while at the same time,
7 rendering its decision or reviewing the
8 decision of this body, as it relates to the
9 variances that are before it in this case and,
10 perhaps, the 07 case. That's at Council's
11 discretion.

12 So under our Code, if this Council
13 votes to approve a variance, that matter
14 automatically goes to Council for its review,
15 and they pass legislation to determine the
16 variance. The sentiment, as I understand it,
17 is that the presentation tonight has not
18 demonstrated either that the variance can or
19 cannot be granted on the evidence presented.
20 So this Council, in order to allow for the
21 applicant to promptly have this matter
22 addressed, this body is going to issue an
23 approval on all three variances, without any
24 analysis as to the variance factors.

25 You will then go to Council on the

1 issue of a review of the variance. You will
2 be required to address the factors that are
3 set forth in the Codified Ordinances, as well
4 address the legal issues that have not been
5 addressed tonight, and they are the matters
6 that might come before Council on those
7 issues.

8 So what the motion that Council is
9 going to consider is a motion that authorizes
10 an approval of the variances, effectively in
11 protest, on the basis that there's time
12 constraints, but there's also a need to get
13 this matter -- the body does not want this
14 matter to languish any further, but at the
15 same time, it does not want to affirmatively
16 state you've satisfied all the requirements
17 requisite to receive a variance from this
18 body. So the motion is to approve, in name
19 only, the applications as presented and
20 modified through this variance. Then Council
21 will address the issues on a de novo appeal.

22 MR. OCHWAT: Thank you.

23 MR. RUSTIC: Does everybody
24 understand that?

25 MR. TOMARO: No. It sounds like

1 you guys are saying, yes, but no, we don't
2 want to have anything to do with it; we want
3 you to go to Council.

4 MR. CHOJNACKI: Correct. They're
5 saying, yes, we're going to approve it, not
6 because you actually met the requirements to
7 receive a variance, but because there's a time
8 frame on your condition and we need to act
9 within that time frame. You haven't proved
10 your case sufficient to receive a conditional
11 use. If we deny it, they you have to go to
12 court to get a reversal of this body's
13 decision. You're not going to be able to do
14 that.

15 So to give you a second shot at the
16 apple, we're going to approve on principle
17 only, so that your conditional use can be
18 considered by Council as well.

19 MR. TOMARO: Okay.

20 MR. CHOJNACKI: I would entertain a
21 motion to that effect, if Council wants to
22 vote on it.

23 MR. SWAN: Motion.

24 MR. OCHWAT: Do I have a second on
25 the motion from legal counsel?

1 MR. SMITH: Second.

2 MS. NAUER: Motion by Paul,
3 second by Joe or Bill?

4 MR. OCHWAT: No, motion by Paul,
5 second by Bill.

6 MS. NAUER: Mr. Smith?

7 MR. SMITH: No.

8 MS. NAUER: Mr. Ochwat?

9 MR. OCHWAT: Yes.

10 MS. NAUER: Mr. Swan?

11 MR. SWAN: Yes.

12 MS. NAUER: Mr. Rustic?

13 MR. RUSTIC: Yes.

14 MS. NAUER: Mr. Turk?

15 MR. TURK: Yes.

16 MR. CHOJNACKI: So your approval has
17 been granted, but you need to go before
18 Council and present your case. Generally,
19 there's a separate issue the body needs to
20 address, if you're so inclined, and that
21 relates to the 07 application. The issues
22 that were identified in the application for 08
23 indicated there might be some nonconforming --
24 there's some nonconformance that's on the
25 property, with respect to the paving on the

1 property itself. You were approved for two of
2 the three variances you asked for.

3 The third variance, the denial of that
4 variance, if you want to pursue a denial, it
5 would require you to go to court within 30
6 days. So the BZA is considering, if you're so
7 inclined, reopening Case 07 and moving to
8 approve the denial, so that everything will
9 end up before Council.

10 MR. TOMARO: Can we have a few
11 minutes to deliberate?

12 MS. BECA: I don't think they're
13 giving us a choice. I think they're telling
14 us, this is what we're trying to decide, if
15 we're going to take away your approval or not.

16 MR. CHOJNACKI: Well, no, we're
17 actually deciding whether we're going to take
18 away your denial.

19 MR. OCHWAT: I'm sorry, can you
20 come to the microphone please?

21 MR. CHOJNACKI: So you've been
22 approved on two things and those things are
23 going to end up in Council this month, or next
24 month. You've been denied on one thing. If
25 you want to have that denial, in the future,

1 if you want to pursue an appeal of that
2 denial, you have to go to court at this point.
3 So that means you're going to be in Council
4 and in court. We don't want you to be in
5 Council and in court because that's just,
6 procedurally, doesn't make a whole bunch of
7 sense to anybody, especially in light of the
8 fact that there's related matters going before
9 Council on other variances.

10 So to keep everything consistent, what
11 the BZA is considering is reopening and
12 issuing an approval, so that you can get
13 everything in front of Council at the same
14 time, and you don't have to go to court to
15 pursue an appeal.

16 MS. BECA: Can we have that
17 minute to talk, if that's okay?

18 MR. CHOJNACKI: You can have a minute
19 to talk. It's their discretion though. You
20 can weigh in on it, but it's their motion.

21 MS. BECA: So you're not asking
22 me if I want you guys to decide to do this
23 motion or not, you're just telling me this is
24 what we're thinking about doing?

25 MR. CHOJNACKI: You can weigh in.

1 I'm giving you the opportunity to consider the
2 option and if you have thoughts you want to
3 provide that might sway this body, then you
4 certainly have a right to do so. But take
5 your time.

6 MS. BECA: Sorry, my brain quit
7 working like an hour ago.

8 MR. CHOJNACKI: That's okay.

9 (Applicant Discussion off the record.)

10 MR. TOMARO: So I have a quick
11 question. They're approved to run their
12 business. It doesn't effect them. Only thing
13 they still cannot do is park their truck
14 outside on gravel?

15 MR. CHOJNACKI: Negative. There's a
16 conditional use that the Council exercised
17 their call-up authority on. They do not have
18 approval for a conditional use at this point.
19 Council's conditional use approval is
20 predicated on this body acting. The reason we
21 are taking action now and not continuing this
22 or denying the variance is because you are,
23 right now, waiting for Council to act. If you
24 continue to wait for Council to act, you will
25 continue in limbo, as they say.

1 Do you want to take time to talk?

2 MR. TOMARO: So he's, in a sense,
3 not approved to run the business there?

4 MR. CHOJNACKI: No one's approved to
5 run their business there. That's the call-up
6 authority. Conditional use that you applied
7 for that Planning Commission approved, is
8 entirely conditional, meaning condition means
9 it's not certain, there are conditions. One
10 of the conditions of a conditional use in our
11 law in this jurisdiction, is that if the
12 Planning Commission acts to approve a
13 conditional use, it has no legal effect for so
14 long as and until Council either does not
15 exercise its call-up authority within the
16 allotted time frame, or it exercises its call-
17 up authority and then renders a decision.

18 Council exercised its call-up authority
19 for the purpose of this body acting. Does
20 that make sense?

21 MR. TOMARO: Yes.

22 MR. CHOJNACKI: So as long as Council
23 sits there not doing anything, the proverbial
24 sword of Damocles is over your head, right?
25 The axe can go down, the guillotine goes up

1 and your conditional approval is gone. So the
2 purpose of this body taking the action it's
3 taking now is so you can have finality and you
4 guys can operate your business, or not operate
5 your business, or pursue an appeal, whatever
6 you're going to do.

7 But the idea here is that you're in
8 limbo. You've been in limbo for a month. You
9 asked for a continuance, Council gave it to
10 you. You're still in limbo. You haven't
11 proved your case to a sufficient level to the
12 body today. If they deny it, you're in court,
13 and we don't want you in court. We want to
14 give you an opportunity to present your case
15 with the full understanding of the facts and
16 the presentation of the administration. You
17 have that. You arguably had that before
18 today. Right now, we're telling you we're
19 approving it so you get another chance to do
20 it before Council. Does that make sense? And
21 that's the body that decides your conditional
22 use approval, which is can you operate your
23 business, irrespective of outdoor parking or
24 storage.

25 MR. TOMARO: We don't have a

1 choice, I guess.

2 MR. CHOJNACKI: I can't tell you what
3 to do. I'm just telling what we've tried to
4 do. What we've tried to do is weigh the
5 factors and recognize the fact that you guys
6 are trying to run a business in this town, and
7 this is a business friendly town.

8 MR. TOMARO: Really?

9 MR. CHOJNACKI: Yeah, it is. When
10 you play by the rules, it is. I understand
11 that it can be confusing at times. But your
12 sophisticated operations -- yeah, it is. So
13 you got to play by the rules. If you play by
14 the rules and you explain everything, then the
15 Board of Zoning Appeals grants a variance.
16 You didn't prove your case, but they want to
17 give you the opportunity to prove your case
18 before the conditional use expires, and you're
19 out of business and then we're in court on the
20 shutting down of your business, because you
21 don't have conditional use approval.

22 MR. TOMARO: Okay.

23 MR. CHOJNACKI: So if you guys want
24 to take five, take five, take ten, whatever
25 you want to do.

1 MR. TOMARO: There's nothing to
2 discuss. You're not leaving us a choice, we
3 have to do it.

4 MR. CHOJNACKI: Well, no, you still
5 have the choice, but it's not my choice. It's
6 not this body's choice. It's the applicants
7 here, which are the bunch here.

8 MR. OCHWAT: It's 9:56. We can
9 give you until 10:05.

10 MR. TOMARO: Oh, we're good. We
11 have to do it. It's not a -- yes, we agree,
12 or whatever you want me to say.

13 MR. CHOJNACKI: It's not about
14 whether you agree, it's about whether you want
15 to weigh in on the motion that's before the
16 body.

17 MR. TOMARO: We went to go before
18 Council.

19 MR. OCHWAT: So we already voted
20 on 08.

21 MR. CHOJNACKI: 08 has been voted on.
22 07 is to reopen and reverse your decision on
23 the previously denied variance for, I think
24 it's item two.

25 MR. OCHWAT: Item two, that's

1 correct.

2 MR. CHOJNACKI: So a motion to reopen
3 Case 07-2023 to approve a variance from
4 Section 1107.03 (c) of the Planning and Zoning
5 Code, to permit parking on gravel rather than
6 asphalt or concrete.

7 MR. OCHWAT: Is there a second to
8 that motion?

9 MR. RUSTIC: Second.

10 MR. OCHWAT: Ms. Nauer --

11 MR. FRANTZ: I just want to
12 clarify that it was 1177.03 (c), not 1107,
13 1177. Sorry, that's just for the record,
14 that's the current code section.

15 MS. BECA: So I just have a
16 question. At this point, when you guys are
17 done voting, we're going to get a letter from
18 the next group that tells us when to show up?
19 Or they're going to look at the stuff, and
20 then what happens?

21 MR. CHOJNACKI: So the Code has
22 provisions in it that allows for the Council
23 to review within 30 days, any decision to
24 approve a use variance. You requested a use
25 variance. This body is acting to approve it.

1 So then you will have the opportunity to
2 appear before Council for a review of the
3 Council approval. What this body is saying is
4 they want to get that in front of Council, so
5 that they can make a decision. But they also
6 recognize, and they're putting everyone on
7 notice that it does not appear as though you
8 proved your case.

9 MS. BECA: But just for the
10 parking on not permeable surface or are you
11 saying we haven't proved our case to be a
12 business at all.

13 MR. CHOJNACKI: Again, we're not
14 talking about whether you can be a business.
15 We're talking about whether you're entitled to
16 the variances you requested tonight. The
17 conditional use is a separate issue. That's
18 an issue that the Planning Commission issued a
19 decision on. Council exercised it's call-up
20 authority on and also is considering, but it's
21 not considering it until this matter is
22 resolved.

23 MS. BECA: So what I think
24 you're telling me, and I apologize, I know
25 it's late and we're all tired and want to go

1 home, is that after -- not On-Call, but after
2 Fleet Fixes goes to the Council and they make
3 decisions on these three things, then we go
4 back to Zoning to get permission for Fleet
5 Fixes to work out of that building?

6 MR. CHOJNACKI: No. Everything goes
7 -- Council is the last stop. If you disagree
8 with Council, you go to court.

9 MS. BECA: So Council will say,
10 yes, Fleet Fixes can work out of this
11 building, yes or no, and yes or no, if we can
12 have parking outside?

13 MR. CHOJNACKI: So Council had that
14 opportunity, and if they wanted to say yes,
15 they would not have exercised their call-up
16 authority. They acted to exercise their call-
17 up authority, because they weren't sure they
18 wanted to say yes.

19 MS. TOMARO: To the parking?

20 MR. CHOJNACKI: No, to the
21 conditional use.

22 MS. BECA: Apparently to us
23 being there at all.

24 MR. CHOJNACKI: Conditional use. You
25 asked for a conditional use, Planning

1 Commission granted it. Counsel said, we don't
2 know if we're going to grant the conditional
3 use. It's unclear to us, because there are
4 issues with respect to noncompliance with the
5 Zoning Code, which is why you're here tonight,
6 to get variances for that. Council put a 30
7 day time limit on it, initially. You asked
8 for an extension. Council gave it to you,
9 with some grumbling. We don't know if they
10 will say yes again. I don't know. We don't
11 want you to put yourselves in the situation of
12 where they say no, and then you get the
13 variance, but you don't get the use.

14 So a vote in the affirmative,
15 effectively in protest, of the position that
16 this body's been put into, puts everything
17 into Council's lap.

18 MS. BECA: Okay, thank you for
19 clarifying.

20 MR. FRANTZ: Just for the record,
21 I clarified that your case will be likely
22 heard, August 15th, at the Village Council
23 meeting. The Village Council has 30 days from
24 receipt of the Clerk of the Board of Zoning
25 Appeals of this record. They have 30 days to

1 act on the matter. So that 30 days, they
2 generally do things at regularly scheduled
3 meetings, would mean that the second meeting
4 of August, which is August 15th, would most
5 likely be the date in which you'll be at
6 Council for these issues.

7 Now, if that changed, I would let you
8 know right away. Council can change it and
9 they can do it as a special meeting. I don't
10 know, but things are done at regularly
11 scheduled meetings, and the one that they
12 would do this at, most likely, would be August
13 15th.

14 MS. BECA: Okay, thank you.

15 MR. OCHWAT: Any further questions
16 on this?

17 (No response.)

18 MS. NAUER: Calling the roll,
19 Mr. Smith?

20 MR. SMITH: No.

21 MS. NAUER: Mr. Ochwat?

22 MR. OCHWAT: Yes.

23 MS. NAUER: Mr. Turk?

24 MR. TURK: Yes.

25 MS. NAUER: Mr. Swan?

1 MR. SWAN: Yes.

2 MS. NAUER: Mr. Rustic?

3 MR. RUSTIC: Yes.

4 MR. CHOJNACKI: On to approval of the
5 minutes, motion carried.

6 MR. OCHWAT: Okay. So you
7 understand the conditions?

8 MS. TOMARO: I think we do. But
9 so what do actually have to present to
10 Council? Do we need, like, professional
11 drawings? Who's going to help us with that,
12 because I feel like we're going to leave now
13 and we still don't know what we're going to
14 have to do, basically. You guys telling me we
15 have to go to Council, present our case, which
16 one? This is not good enough, this is not
17 good enough, this is not good enough. Who do
18 I go to from here for help that it's going to
19 be approachable or even favorable for Council
20 to even look at?

21 MR. CHOJNACKI: So I think it's
22 important to think about what you have before
23 Council. What you have before Council is a
24 conditional use application, correct? Do you
25 understand that?

1 MS. TOMARO: Yeah, for parking
2 spaces and so --

3 MR. CHOJNACKI: No, no, no,
4 conditional use. Not a variance, conditional
5 use, the use of the land itself.

6 MS. TOMARO: Okay.

7 MR. CHOJNACKI: Do you understand?

8 MS. TOMARO: Yes.

9 MR. CHOJNACKI: Those things Council
10 has to act on. To the extent you want to make
11 a presentation, that's your right to do so.
12 Does that make sense?

13 MS. TOMARO: Yes.

14 MR. CHOJNACKI: You also have these
15 variances, which have been approved,
16 effectively for a nominal reason. If you want
17 to respond and present evidence in support of
18 the approval, you would have the right to do
19 so in front of Council.

20 MS. TOMARO: In writing, do I have
21 do this in writing? Do I have to just stand
22 up in front of them and present my case?

23 MR. CHOJNACKI: So I can't give you
24 legal advice on how to do it, but I suspect
25 Council would sit in a quasi-judicial

1 capacity, like this body did. So you could
2 submit writing and testimony, documents,
3 anything you want to do. One of the takeaways
4 that I'm getting out of tonight is that some
5 of the things that you proposed for the first
6 time tonight, do not comply with the Zoning
7 Code. I don't know if you're complying with
8 the setback on the parking lot you approved.
9 You did make a showing of that. I can't tell
10 you what to do, but I can tell you, when you
11 end up in front of that body, and you're
12 saying we can do this thing, and then the law
13 says you can't do it, they're not going to
14 give you an approval on that. Does that make
15 sense?

16 MS. TOMARO: Yes.

17 MR. CHOJNACKI: Then there are these
18 factors, the factors that Mr. Frantz has read
19 many times. You have to meet all of those
20 factors with testimony, documents, something
21 to that effect. Does that make sense? Does
22 everyone understand that?

23 MR. TOMARO: Yes.

24 MS. TOMARO: Honestly, it would
25 have been a lot more helpful if you were

1 present at the Planning and Zoning Commission
2 meeting and explained a lot of this, so we can
3 actually not sit here for four hours.

4 MR. CHOJNACKI: I'm grateful we're
5 here now. I'm grateful we got some clarity.

6 MR. OCHWAT: Okay. You're free to
7 go or stay for the rest of the meeting.

8 MS. TOMARO: Can we have a copy
9 sent to us or email to us about this meeting
10 and what the next steps that we have to
11 do? That would be helpful.

12 MR. CHOJNACKI: Our Code does have a
13 process whereby you'll receive all that
14 information. It should come from Mr. Frantz
15 or Ms. Nauer.

16 MR. OCHWAT: Moving on.

17 MS. TOMARO: Are we done?

18 MR. CHOJNACKI: We're not done for
19 the night. You guys are, we're not.

20 MR. OCHWAT: We have other -- we
21 have the rest of our agenda. We have approval
22 of the 5-8-23 meeting minutes. Has everybody
23 had a chance to review them?

24 Do I have a motion for approval?

25 MR. SMITH: So moved.

1 MR. SWAN: Second.

2 MR. OCHWAT: Seconded. Ms. Nauer?

3 MS. NAUER: Mr. Turk?

4 MR. TURK: Yes.

5 MS. NAUER: Mr. Smith?

6 MR. SMITH: Yes.

7 MS. NAUER: Mr. Ochwat?

8 MR. OCHWAT: Yes.

9 MS. NAUER: Mr. Swan?

10 MR. SWAN: Yes.

11 MS. NAUER: Mr. Rustic?

12 MR. RUSTIC: Abstain.

13 MR. OCHWAT: Anything from the
14 Director of Planning and Zoning to report?

15 MR. FRANTZ: Given the time, no
16 report, unless you have specific questions.
17 There are tons of things going on, but feel
18 free to call me and I can walk you through it
19 on a different day.

20 MR. OCHWAT: Thank you. No
21 comments from the public. Any unfinished
22 business?

23 (No response.)

24 MR. OCHWAT: Since no unfinished
25 business, I move for a motion for adjournment.

1 MR. RUSTIC: I second the motion.
2 MS. NAUER: Mr. Turk?
3 MR. TURK: Yes.
4 MS. NAUER: Mr. Smith?
5 MR. SMITH: Yes.
6 MS. NAUER: Mr. Ochwat?
7 MR. OCHWAT: Yes.
8 MS. NAUER: Mr. Swan?
9 MR. SWAN: Yes.
10 MS. NAUER: Mr. Rustic?
11 MR. RUSTIC: Yes.
12 MR. OCHWAT: We are adjourned.
13 (Meeting adjourned at 10:11 p.m.)
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1 State of Ohio,)
2 County of Cuyahoga.) SS:

3
4 C E R T I F I C A T E

5 This certifies that the foregoing is a
6 true and correct transcript of the proceedings
7 had before the Village of Richfield Board of
8 Zoning Appeals, at 4410 W. Streetsboro Road,
9 Richfield, Ohio, on Wednesday, July 26, 2023,
10 commencing at 6:00 p.m.

11
12 In the Matter of:
13 Board of Zoning Appeals Meeting

14
15
16
17
18
19 Steven Mengelkamp
20 STEVEN MENGELKAMP
COURT REPORTER

21 FINCUN-MANCINI COURT REPORTERS
22 26380 Curtiss Wright Parkway
23 Cleveland Jet Center, Suite 103
24 Cleveland, Ohio 44143
25 (216) 696-2272
Email@fincunmancini.com

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