

**BOARD OF ZONING & BUILDING APPEALS
CITY OF AVON
MEETING MINUTES FOR OCTOBER 5, 2022**

ROLL CALL

The meeting was called to order by Chairman Ladegaard at 7:02 p.m. in Council Chambers.
Present: Michael Bulger, Bill Hricovec, Mark Ladegaard, Chauncey Miller, Kurt Schatschneider
Staff: Jill Clements, Zoning Enforcement Officer; Pam Fechter, Planning Coordinator; John Gasior, Law Director; Nicole Rambo-Ackerman, Planning Clerk
Absent: Duane Streator, Safety Director

REVIEW & CORRECTION OF MINUTES

Mr. Miller moved, seconded by Mr. Schatschneider, to dispense with the reading of the minutes of the regular meeting held on September 7, 2022 and to approve the minutes as published. The vote was: “AYES” all. The Chair declared the motion passed.

REPORTS & CORRESPONDENCE

ADDITIONS & DELETIONS

Ms. Fechter asked the item #5 be deleted at the applicant’s request. They have looked at their site plan and accommodated the required parking so no variance is needed.

Mr. Miller moved, seconded by Mr. Hricovec, to delete item #5 for the Thomas English Development request from the agenda at the applicant’s request. The vote was: “AYES” all. The Chair declared the motion passed.

Mr. Miller moved, seconded by Mr. Hricovec, to approve the agenda as amended. The vote was: “AYES” all. The Chair declared the motion passed.

APPEALS & REQUESTS

1. Jai & Divya Singh; 3636 Split Rail Lane; 18-22

Representative: Divya Singh, owner

Proposal consists of an existing shed in the side yard. Request was tabled at the September 7, 2022 meeting.

The following variance is requested:

1. A variance for an accessory structure in the side yard; code does not allow, applicant proposes an accessory structure in the side yard, Section 1262.08(b)(1).

Mr. Miller moved, seconded by Mr. Bulger, to remove the request from the table for the following variance for 18-22; Jai & Divya Singh; 3636 Split Rail Lane:

1. A variance for an accessory structure in the side yard; code does not allow, applicant proposes an accessory structure in the side yard, Section 1262.08(b)(1).

The vote was: “AYES” all. The Chair declared the motion passed.

Ms. Singh was sworn in. Ms. Singh applied for a variance to keep their shed where it is. When they started working on the project, she had an injury and they got busy with her surgeries so getting approval for the shed slipped their minds. According to what she had been told, the shed needs to be moved six feet from where it is currently and they are asking for a variance to leave it where it is. Mr. Ladegaard clarified that the shed should be moved behind the house. Ms. Singh said the shed would need to be moved six feet to be behind the back of their home. Mr. Ladegaard asked if that was correct. Ms. Singh further explained that the back of the shed is six feet from the back of the house. After the vote, Ms. Clements clarified that the front of the shed will need to be moved behind the back of the house within 60 days.

Mr. Schatschneider moved, seconded by Mr. Hricovec, to approve the request for the following variance for 18-22; Jai & Divya Singh; 3636 Split Rail Lane:

1. A variance for an accessory structure in the side yard; code does not allow, applicant proposes an accessory structure in the side yard, Section 1262.08(b)(1).

The vote was: "NAYS" all. The Chair declared the motion denied.

2. Paul & Shannon Laurenzi; 3575 Kensington Drive; 56-22

Representative: Paul Laurenzi, owner

Proposal consists of an attached garage.

The following variance is required:

1. A 20 ft. variance for front yard setback; code requires 50 ft., applicant proposes 30 ft., Section 1262.04(d)(1).

Mr. Laurenzi was sworn in. Mr. Laurenzi said he has a small garage that seems smaller because there is an entryway to their basement in there as well. He collects and restores cars and has eight cars that he wants to store. He did not think the proposed garage would obstruct anyone's vision because Queen Ann's Way is a dead end for the park. He spoke to both neighbors and they did not have a problem with the proposal and it would keep cars out of the driveway. The new garage would have the same siding and door as the current garage. Mr. Ladegaard said the variance request is a little larger than what they typically grant. Mr. Laurenzi said he has a big side yard and the garage would also provide some privacy for their existing patio. Mr. Laurenzi said the proposed width is 28 feet and Mr. Ladegaard asked if he would reduce it by half. Mr. Laurenzi did not think it would be worth it to build the building at that dimension. Mr. Ladegaard said it would still be 30 feet back though. Mr. Laurenzi still wanted a double car garage and proposed a 20-foot wide building. Mr. Ladegaard said they could try but he did not support that. Mr. Laurenzi pointed out that a 14-foot wide garage is a single-car garage and Mr. Ladegaard pointed out that the applicant already has almost 800 square feet of garage space. Mr. Laurenzi said it is a two-car garage because there is a step to the back that leads into the basement. Mr. Ladegaard said his limit would be 16 feet wide. Mr. Laurenzi wants to install a double lift to put four cars in there. Mr. Hricovec thought the request was excessive and suggested making the narrower garage that is two cars deep. Mr. Laurenzi did not want to obstruct the side door that they use to get large items in and out of the basement. He thought that a lot of other four car garages are being built in Avon and believed the property allowed for it. Mr. Schatschneider asked if the garage could be installed in the back yard. Mr. Laurenzi thought it would look nicer as part of the house but he would consider installing it in the back yard if it came down to that. Mr. Laurenzi asked for a 20-foot wide garage. Mr. Ladegaard said the variance requested would be for 20 feet since the house is already at the required setback.

After the vote, Mr. Laurenzi asked if the Board would consider a garage in the back yard. Mr. Ladegaard said he would need to submit plans for that. Mr. Laurenzi asked what he would be comfortable approving and Mr. Ladegaard said he thought 16 feet was generous. Mr. Laurenzi asked if the Board

would vote on a 16 foot variance. Mr. Gasior said the Board could make a motion for 16 feet if they wanted to. Ms. Rambo-Ackerman asked if something needed done to rescind the previous motion before making another motion. Mr. Gasior said the motion technically failed so it is over. If a member voted to reconsider and the motion passes, the Board can make a motion on a 16 foot variance. If no one makes a motion to reconsider then the applicant would need to come up with another plan and submit it for BZBA's review. Mr. Gasior said the applicant could do a combination plan in the back yard and in the setback. Mr. Laurenzi said the Collins on the corner lot built a four car garage. Mr. Gasior said the property to the east belongs to the Metroparks and that should be taken into consideration. No motion was made to reconsider.

Mr. Schatschneider moved, seconded by Mr. Miller, to approve the following variance for Paul & Shannon Laurenzi; 3575 Kensington Drive; 56-22:

- 1. A 20 ft. variance for front yard setback; code requires 50 ft., applicant proposes 30 ft., Section 1262.04(d)(1).**

The vote was: "NAYS" all. The Chair declared the motion denied.

3. Kevin Maggioli; 3571 Bellcrest Drive; 57-22

Proposal consists of an inground swimming pool.

The following variances are requested:

1. A 5 ft. variance for distance of an accessory pool from the main building; code requires 15 ft., application proposes 10 ft., Section 1478.03.
2. A variance for a structure located in the utility easement; code does not allow, applicant proposes structure located 2 ft. 9 in. inside easement, Section 1248.19.

Ms. Clements asked that the proposal be tabled until the November meeting.

Mr. moved, seconded by Mr., to table the following variances requested for Kevin Maggioli; 3571 Bellcrest Drive; 57-22 until the November BZBA meeting:

- 1. A 5 ft. variance for distance of an accessory pool from the main building; code requires 15 ft., application proposes 10 ft., Section 1478.03.**
- 2. A variance for a structure located in the utility easement; code does not allow, applicant proposes structure located 2 ft. 9 in. inside easement, Section 1248.19.**

The vote was: "AYES" all. The Chair declared the motion passed.

4. Matt McQuality; 36261 Wendell Street; 58-22

Representative: Kyle Klein, contractor, 133 Northfield Drive, Elyria, OH

Proposal consists of an 18 ft. by 18 ft. pavilion attached to the house.

The following variance is requested:

1. A 14 ft. variance for rear yard setback; code requires 50 ft., applicant proposes 36 ft., Section 1262.04(d)(4).

Mr. Klein was sworn in. Mr. Klein said a 14-foot variance is requested on the back of the house. The next door neighbor built a pavilion that is unenclosed with a shingle roof and the applicants want the same thing. The property behind them is non-buildable and Willoway is behind that. Mr. Ladegaard thought the HOA owned the land behind them. Mr. Hricovec asked if the HOA approved the project, Mr. Klein believed the HOA is waiting on the BZBA's decision. Ms. Clements added that the Highland Park HOA requires all roofs over patios to be attached to the house.

Mr. Bulger moved, seconded by Mr. Hricovec, to approve the following variance for Matt McQuality; 36261 Wendell Street; 58-22:

- 1. A 14 ft. variance for rear yard setback; code requires 50 ft., applicant proposes 36 ft., Section 1262.04(d)(4).**

The vote was: 4 “AYES” and 1 “NAY”, Mr. Schatschneider voted “NAY”. The Chair declared the motion passed.

5. Thomas English Development; 36290 Detroit Road; 59-22

Deleted from the agenda at the applicant's request.

6. Russell Cross; 2296 Pendleton Court; 60-22

Representative: Russell Cross, owner

Proposal consists of an existing shed located within a utility easement.

The following variances are requested:

1. A 2 ft. variance for side yard setback; code requires 5 ft., applicant proposes 3 ft., Section 1262.08(b)(2)(B).
2. A variance for a structure located in the utility easement; code does not allow, applicant proposes structure located 12 ft. 6 in. inside easement, Section 1248.19.

Mr. Cross was sworn in. Mr. Cross is requesting a variance to keep the shed where it is. Mr. Ladegaard asked if the applicant had a permit for the shed, Mr. Cross said he did not. Mr. Cross said Ms. Clements measured what was needed. Mr. Ladegaard said the shed needed to be five feet from the property line. Mr. Cross said he met the required five feet because the fence was installed 30 inches from the property line so there was room to maintain the space between the fences. Mr. Ladegaard asked Ms. Fechter if the HOA would need to approve the shed placement since Ms. Clements stepped away from the meeting briefly. Ms. Fechter believed the HOA would need to let the applicant know if the shed needed to be moved if work needed to be done, Mr. Cross said he would have no problem with that. Mr. Ladegaard asked if the storm sewer easement for the City would be impacted. Mr. Gasior said that would need a separate approval from the Service Director. Mr. Schatschneider asked why the applicant could not move the shed if he is willing to move it if work needs to be done. Mr. Cross explained that there is an irrigation system that would need to be revamped since it was installed around the area where they were going to be put the shed. Mr. Cross said the shed can be moved but it would be costly. Mr. Ladegaard said the shed would need to be installed about 16 feet from the property line. Ms. Clements said the HOA was asked to sign off on the last case where a shed was approved in a utility easement. Mr. Ladegaard wanted to confirm the City would not have to approve it since the storm sewer is the City's easement. Mr. Gasior pointed out that the HOA agreement requires the HOA to maintain the storm sewer but it would be the City's responsibility to maintain if the HOA defaults on that. Because it defaults to the City, Mr. Gasior said the Service Director should approve it. Ms. Clements confirmed the shed would need to be 15 feet off the rear property line. Mr. Cross said the shed is built six inches off the ground to allow water to flow under it. He was willing to do whatever the Board needed him to do but thought 15 feet is a long distance. He said his back yard does not hold any water and the shed is on blocks so it will not impede the flow of water. Mr. Ladegaard said the concern is for the land behind the home to be accessed by machinery. Mr. Cross said the area can be accessed by the dead end outlet and he believed there is plenty of room for machinery to get in the area between his fence and the woods. Mr. Ladegaard said that is something the Service Director could look at and determine before approving the placement.

Mr. Cross had the fence installed 30 inches from his neighbor's fence so there is enough room for a 28-inch mower and a weedwhacker to maintain the space. Ms. Clements confirmed that the five foot

required setback would be met if the fence is set off the property line 30 inches and with the space between the shed and the fence, so the first variance is not needed. Mr. Gasior said the Board could approve the second variance contingent on approval from the Service Director and the HOA. Mr. Cross said he was not sure if his HOA needed to approve the location or not since this is the first time he has had an HOA. Mr. Gasior said the applicant needs to ensure the HOA knows about the location of the shed in case they need to access the area. Mr. Cross thought everyone in the area had sheds in the same location and Mr. Gasior thought that was worse since they would all need to be moved. Mr. Cross said that was why they built theirs above ground in case they need to move it and to allow water to flow under it. Mr. Schatschneider added that this could have been avoided if the applicant would have applied for a permit.

Mr. Miller moved, seconded by Mr. Bulger, to approve the following variance for Russell Cross; 2296 Pendleton Court; 60-22 contingent on approval by the Service Director and Homeowners Association:

2. A variance for a structure located in the utility easement; code does not allow, applicant proposes structure located 12 ft. 6 in. inside easement, Section 1248.19.

The vote was: "AYES" all. The Chair declared the motion passed.

7. Tim & Anita Harris; 36302 Wendell Street; 61-22

Representative: Cassidy Harris, 36302 Wendell Street, Avon, OH

Proposal consists of a new fence.

The following variance is requested:

1. A variance for zero setback for a fence; applicant proposes connecting fence to neighbor's existing fence, Section 1294.08(a)(3)(B).

Ms. Harris said she was in attendance on behalf of her parents, Tim & Anita Harris, and was sworn in. Ms. Harris read a text from her dad which said "The variance is requested to attach our fence to the next door neighbors' since the connected portion would be on his property. He already provided a letter that it was okay to do so. He doesn't want to have to maintain a strip between his property and ours if we run separate fencing, same for us."

Mr. Schatschneider moved, seconded by Mr. Hricovec, to approve the following variance for Tim & Anita Harris; 36302 Wendell Street; 61-22:

1. A variance for zero setback for a fence; applicant proposes connecting fence to neighbor's existing fence, Section 1294.08(a)(3)(B).

The vote was: "AYES" all. The Chair declared the motion passed.

8. Bill & Stephanie Fischer; 3216 East Creek Court; 62-22

Representative: Bill Fischer, owner

Proposal consists of a driveway extension.

The following variance is requested:

1. A 12 ft. front yard setback for a driveway extension; code requires 20 ft., Section 1262.08(c)(2).

Mr. Fischer was sworn in. Mr. Fischer is requesting a variance to install a driveway extension and pour some concrete to the back deck area.

Mr. Miller moved, seconded by Mr. Schatschneider, to approve the following variance for Bill & Stephanie Fischer; 3216 East Creek Court; 62-22:

1. A 12 ft. front yard setback for a driveway extension; code requires 20 ft., Section 1262.08(c)(2).

The vote was: “AYES” all. The Chair declared the motion passed.

9. Avon Brewing Company; 36383 Detroit Road; 63-22

Representatives: Mathias Hauck, owner of Avon Brewing Company, 35475 Keller Drive, Avon, OH; Forrest Paige, HSB Architects, 2599 Church Avenue, Ohio City, OH; Megan Engelmann, 2213 Garden Drive, Avon, OH; Joe Misencik, 2209 Holly Lane, Avon, OH; Tony Moore, Ward 3 Councilman, 3653 Kensington Drive, Avon, OH; Martin Hasenstaub, 2216 Holly Lane, Avon, OH; Gene Welsh, 2219 Garden Drive, Avon, OH; David Brenneis, 2213 Garden Drive, Avon, OH; Bill Greaney, Misencik Funeral Home

Proposal consists of a new restaurant and brewery.

The following variances are requested:

1. A variance for 110 parking spaces; code requires 263 off-street parking spaces, applicant proposes 153, Section 1292.04(d)(8).
2. A 14 ft. variance for parking setback from the street right-of-way for Detroit Road; code requires 20 ft., applicant proposes 6 ft., Section 1270.06(a)(1).
3. A 14 ft. variance for parking setback from the street right-of-way for Garden Drive; code requires 20 ft., applicant proposes 6 ft., Section 1270.06(a)(1).
4. A 14 ft. variance for parking setback from the street right-of-way for Holly Lane; code requires 20 ft., applicant proposes 6 ft., Section 1270.06(a)(1).

Mr. Hauck and Mr. Paige were sworn in. Ms. Fechter explained that the original plan shown during the informal presentation for Planning Commission showed 611 seats which required 305 parking spaces. At the time, staff told the applicants that was too many parking spaces and it would need to be reduced. The latest parking plan shows 442 seats, requiring 221 spaces and 153 spaces are proposed to be built.

Mr. Paige said the initial proposal had around 600 seats and they have been reduced to 442 seats. Currently, 153 spaces are shown in their lot which are as many as they can fit reasonably due to concerns about patrons parking on the nearby residential streets, Garden Drive and Holly Lane. Additionally, they have a shared parking agreement with Misencik Funeral Home to the northeast of the property and Kim’s Martial Arts studio across Garden Drive from the property. According to the code, shared parking agreements must allow both businesses to access each other’s parking lots and half of the spots in both parking lots could be counted as parking spaces. In addition, the applicant is proposing to develop a third area at the back of the site sharing the property line that would provide 35 parking spaces. Altogether, that would provide 222 parking spaces when the code requires them to have 221 spaces. The number of seats shown in the brewery has been reduced to meet the number of required spaces with the shared parking spaces included.

Ms. Fechter said she received a call from the owner of the dance studio and she will not approve the shared parking agreement. Mr. Hauck said the tenant approved the agreement. Ms. Fechter said the tenant cannot agree to it. Ms. Fechter explained that the owner said 273 students attend the studio from 4:00 to 9:00 p.m. Monday through Friday and there is not enough parking. The owner asked Ms. Fechter to add that she would not allow this “over her dead body.” Mr. Gasior assumed the tenant could not speak for the use of the owner’s spaces since owners generally own the property and make the decisions. Mr. Hauck was under the impression that it was up to the people currently occupying the space to make the decisions. Mr. Gasior would need to see the lease in order to determine if the tenant has authority to enter into agreements. Mr. Hauck said the tenant signed the paperwork and was happy to be part of the process. Mr. Hauck explained that the number of seats was not reduced just for this purpose. Mr. Gasior asked how many spaces would have come from the dance studio, Ms. Fechter said 18. Mr. Paige said that would put them 17 spaces short of what was required. Mr. Hauck said the plan shown at the

informal presentation was just a concept plan which has been more formalized throughout this process. The applicants have been working diligently with space confinements and table alignments to make sure the space would be comfortable.

Mr. Ladegaard asked if a written agreement has been received for the two Misencik Funeral Home parking areas. Mr. Gasior asked to see the agreements. After looking at the documents, Mr. Gasior noted that the agreements say “details of the agreement to follow.” Mr. Hauck said that was in terms of getting through the year but Mr. Gasior said that is what is critical here. Mr. Gasior said the agreement sounds great but there is no clause making it irrevocable. He was concerned about a variance being granted based on a revocable agreement. The shared parking agreements would have to be more detailed. Mr. Hauck said he was told he did not have to have the shared parking agreement until two days prior to the meeting. Mr. Gasior said they did need to have it but no one contacted him to find out if the agreement was sufficient for the City to accept.

Mr. Hauck said they have six years of historical data. There is a large patio space that would not be used part of the year. From October 15 through May, they are almost completely indoor dining only. During rainy or cold months, the seating capacity would be reduced to 348 seats, putting them under the required amount for their current establishment. From June to August, they use 50% indoor and 50% outdoor seating. Mr. Hauck knows most people sit outside when it is nice outside and overflow seating is inside and they will only go somewhere that has enough parking. He does not anticipate that being an issue. He apologized to Mr. Gasior for the parking agreements and said he was told several times that just a signed agreement by the parties was needed. He summarized that 153 spaces are shown, with 35 shared spaces on Bill Greaney’s property, which is above the required spaces for winter seating. The outdoor space would be mainly used when it would be half indoor and half outdoor seating and he did not anticipate it being full. He did not think the restaurant could handle that capacity since the kitchen is not set up for that.

Mr. Gasior said Mr. Hricovec is abstaining from the discussion. He did not think the Board could act on the proposal based on the quality of agreements presented and suggested the proposal be tabled until the agreements are satisfactory to the Legal Department. Mr. Hauck said the other property owner is in attendance and Mr. Gasior said that was good. Mr. Gasior asked if one of the areas in question was constructed yet, Mr. Hauck responded that nothing is constructed yet. Ms. Fechter thought Mr. Gasior wanted to know when the additional parking lot at Misencik would be constructed, whether it would be done as part of the applicant’s project or separately. Mr. Hauck said the additional parking area would be done at the same time, whether it is fully blacktopped or as is. Mr. Gasior said the applicant would need to get permission to use that property since it is not theirs, which is usually done through a lease or easement and would need to be in perpetuity. Mr. Gasior preferred the documents be submitted before the Board made a decision and they would need to be recorded. Mr. Hauck appreciated the feedback but said he presented the same plans a few months ago and now he is finding out about these a couple nights before this meeting. Mr. Gasior said there was a lot of legality involved and said legal counsel should be consulted to see what legal obligations there are to use someone else’s property. He added that it would be helpful for the applicant to show they have easements or permission for them to use someone else’s land when presenting their project. He said the applicant is proposing their project which includes portions on neighboring property and one of the owners would not allow shared parking but the tenant would. Without knowing what the lease says, Mr. Gasior could not determine if the tenant had the ability to agree to the shared parking or not. There are several things that he needed to be satisfied about before having a conversation about the exact number of spaces there would be and what the variance would be for.

Mr. Gasior asked if the Board wanted to talk about the setbacks without knowing what the exact parking spaces needed were. Mr. Ladegaard said the setbacks could change which could further impact the parking. Mr. Gasior thought the applicant needed more help, such as legal advice or contacting him to explain the requirements further. He suggested the Board hear from audience members.

Ms. Engelmann, Mr. Misencik, Mr. Moore, Mr. Hasenstaub and Mr. Welsh were sworn in. Ms. Engelmann was representing several neighbors who were unable to attend the meeting, as well as Valerie, the owner of the building across the street at the corner of Garden Drive and Detroit Road. Her home is 164 feet from the Avon Brewing property. Mr. Gasior asked what Valerie's last name is, Ms. Engelmann replied "Man". Ms. Fechter asked if she meant "Marr" and Ms. Engelmann said it is actually Marr. Ms. Engelmann continued by saying that at least one business noted as sharing their parking spots had no idea their property was presented as shared space and does not approve. Ms. Engelmann said Ms. Marr is planning on installing chains to prevent this from happening because she needs her patients to have access for parking for emergency medical care. She noted that the buildings on the plan are mislabeled, Ms. Marr owns the building marked as the dance studio and the building shown as Kim's Martial Arts is actually the dance studio. Ms. Engelmann believed Kim's Martial Arts rents space from the school board. She concluded that the other businesses have not been made aware of nor approved the plans presented. Ms. Engelmann said the existing businesses, the dance studio, doctor's office, martial arts studio and funeral home, already use all of their parking spaces and overflow onto the Avon Brewing lot at their peak times in the evening. The peak times are the same peak times as the restaurant. Several people she spoke to stated that they had issues with parking when they rented Avon Isle, located next to the current Avon Brewing location. They found out Avon Brewing is using the Avon Isle lot as overflow parking when their guests were unable to find parking for the event hosted at the rented community city-owned space. She asked what the applicant planned to do since they are already running into a space count problem. She is concerned that emergency services would be slowed down, through traffic would be more of a problem and vehicles would be parked in front of their homes if customers park wherever they can as they do at the current location. She thought it was an irresponsible business move to rely on neighbors to shoulder the overflow parking. If there is a verbal agreement for shared parking there is no way to ensure that agreement is upheld if the business is sold. She hoped the applicant reconsidered their proposal to provide their customers a safe place to leave their vehicles without getting towed.

Mr. Moore said he received calls from residents regarding this proposal. He read an email from Kathy Robertson that he received that morning:

"Good morning, I am not able to attend tonight's Planning Commission meeting, however, I am very concerned about ABC's parking and street variances. I live at 2213 Holly Lane and we are already affected by the City pool in our back yard and now our front yard will be affected. Our two concerns were mentioned at the very first meeting and we were told that it was a huge lot and parking would not be an issue. We were also told that there would be a standard distance between parking and the street, appears we were wrong on both issues. Shared parking with the dance studio and Misencik Funeral Home is not a solution. Both of those businesses would be putting their overflow into the ABC lot, this creates even less parking. Having parking changed from 20 feet to six feet from the street is huge. It presents a safety issue for residents walking down Holly Lane behind the brewery. It also puts cars' headlights much closer to residential homes on the street. It also puts pedestrians much closer to traffic when walking down Detroit Road. I am not against ABC building on the lot, I'm against them putting in more than what fits on the lot. Thank you for reading. Hope the residents' concerns will be acknowledged by the Planning Commission."

Mr. Gasior asked for a copy of the email from Kathy Robertson and the letter read by Ms. Engelmann to include in the record.

Mr. Hasenstaub is a 30-year resident of Holly Lane. When coming home from work, he sees cars parked overflowing from the funeral home and filling up the front section of the brewery property. He also sees parents parking in the lot after dropping their kids off for dance classes. He was concerned about cars cutting the corner at Garden Drive and Holly Lane. There have been many times when one cannot see the car coming up Garden Drive to turn onto Holly Lane cuts the corner and cuts other vehicles off. If parking is allowed on the section from Garden Drive to where Holly Lane turns, that would be a problem. If there are cars with trailers or recreational vehicles turning, they would not be able to make the turn if cars are parked there. He would love to have the applicant as neighbors but does not want to have cars parked on his street. He moved from Lakewood and he does not want that for his house here.

Ms. Engelmann said a traffic study was being done on Tuesday from about 8:00 a.m. to 5:00 p.m. She did not think the traffic study done at that time would accurately show peak time traffic. It started after the morning rush and ended before the evening rush.

Mr. Misencik agreed with his neighbors' comments. If the shared parking is acquired for the funeral home parking area, he wanted a six-foot maintenance-free privacy fence to be installed from the sidewalk along the northern portion of this property. This would keep headlights from shining on his property and prevent trash from blowing over. He also asked if the stormwater from the pie-shaped piece of property would be included in the drainage for the brewery. Mr. Gasior said that would be an engineering issue to be addressed during the final development plan review. Mr. Misencik saw the buffer area proposed by the applicant but wanted a fence installed along the L-shaped area of the funeral home parking area.

Mr. Welsh thought the 235 proposed spaces were based on experience, size of the building and occupancy. If the business is successful, he wanted to know where the patrons would park. Available spaces include the dance studio which is full in the evening, the dentist, the funeral home but there may be a funeral at the time and the street. The successful business would have a significant impact on the neighborhood and granting a variance for parking would exacerbate the situation. He asked that the variance not be granted.

Mr. Hauck said they are trying to be good neighbors and are trying to look at the full scope of the project. For nine months out of the year, they will have more than enough parking for inside seating only. The exterior patio would only be used during June, July and August. The size of their kitchen means their seating numbers would not change, just where they sit. They have 153 parking spots proposed which is 120 spaces more than they have at their current location. That is based on one car for two people, which may happen. The property is in the French Creek District which asks for shared parking. The applicants have been working on the proposal since May and spent \$5,000,000 on the property so they want it to be nice draw for people to visit. He did not intend to go against the neighboring property owner and did talk to the tenant about the parking at the dance studio. He did not think chaining off their lot would help anyone. He asked that the setback variances be voted on so they can adjust if needed. He thought the parking variance was small and would only be needed for three months out of the year. Mr. Hauck said the parking setbacks are in line with what is currently there and the surrounding businesses.

Mr. Paige said the parking setbacks historically have been where they are proposed. The parking on Garden Drive was right along the sidewalk and right-of-way line. The parking on Detroit Road is five

feet from the right-of-way line. The parking is proposed to be 20 feet from Holly Lane and there was no parking in that area previously. The setback is meant to keep cars away from the sidewalk and street and keep a buffer between the parking and the neighborhood and streets abutting the parking lot. Instead of the 20 feet setback, the applicant is proposing a fence and evergreen tree line. He believed the thickened vegetation buffer with a fence would provide more protection from sound, headlights and garbage than the setback would. The setbacks along Detroit Road and Garden Drive are proposed to be similar to those on the other side of Detroit Road and Garden Drive. The setback along Holly Lane is reduced but the vegetation buffer is proposed to reduce the light and sound traveling off their site into the neighborhood.

Mr. Brenneis was sworn in. He is 164 feet from the property and is excited to have the establishment there and not have to look at the empty lot. He would like to have 12 months out of the year and believed the applicant said they would only be busy for three months out of the year. During those three months, his kids would be playing outside. He thought they could have a great restaurant and not be so big. He hoped the Board voted the proposal down.

Mr. Bulger asked if it would be a fence and vegetation or a vegetative fence. Mr. Hauck said the plan shows vegetation and a fence. Mr. Paige said it would be a low fence with an evergreen tree and vegetation buffer. Mr. Hauck said the fence would be a split rail fence. Ms. Fechter tried to clarify that Mr. Hauck was saying he has enough parking to accommodate the interior seating but three months out of the year he would be short in order to do the indoor and outdoor seating. Mr. Hauck further commented that during the three months of the year, six years of data show that the number of people does not change, just their seating habits. During those three months, 50% of their revenue comes from interior seating and the other 50% comes from patio seating. They proposed a fully enclosed patio as required by code and are trying to give people seating options during the summer months. The seating is for tables with table service.

Mr. Welsh asked where the 235 parking spots came from. He is interested in protecting the community which would be impacted if the variance is granted. Mr. Paige explained that the zoning code requires one parking spot for every two seats in a restaurant in the French Creek District. Typically, zoning codes are conservative because they are trying to avoid overflow parking on abutting streets. That does not take into account families of four or larger parties traveling in the same vehicle. The code does not take into account percentages based on historical data but thought the additional pieces of information should be taken into account when making a decision. Ms. Fechter explained that the code actually states that one space for every two seats or one space for every 50 square feet of floor area must be provided. If using the calculation based on floor area, only 92 spaces would be required. They had to use the larger number of spots required. Mr. Hauck said the 92 spaces would not have been sufficient. In general, restaurants do not seat more than 75% of their area. Mr. Hauck explained that if every seat in the restaurant was filled, they would need all of the parking. He thought the 153 spots was more than what will be needed because 4,000 square feet of the building will be brewery only with a maximum of six employees in it. 3,000 square feet of the space will be the beer garden area which will not have table service, leaving only 7,000 square feet of space used regularly.

Mr. Hasenstaub did not think a split rail fence would prevent the headlights from shining south into the homes. Mr. Hauck said in addition to the trees already there, evergreens would be installed. Mr. Hasenstaub does not have an issue with the setbacks but was concerned about headlights at night. Mr. Paige said the vegetation would help shield the headlights from getting to the neighboring properties. Mr. Hasenstaub still wants to be able to enjoy his yard. Mr. Paige thought the vegetation would do more to stop the headlights than the setback would. Ms. Fechter said there are buffering options in the

landscaping code section. Mr. Gasior said the final development plan would address the buffer area but his meeting is just for the amount of parking spaces and the setbacks.

Mr. Misencik did not think the six feet of evergreen buffering would be sufficient. He preferred the 20-foot setback be implemented and opposed the six-foot proposed setback.

Mr. Greaney was sworn in. Mr. Greaney said their piece was purchased just before Avon Brewing bought their property for a future expansion. There are no plans for the expansion right now. Mr. Greaney said he would enter into an agreement with Mr. Hauck for full-time usage of the property to meet the Legal Department's requirements. He wanted to point out that some people may be walking or riding bikes to the restaurant as well. He noted that the property adjacent to his proposed parking area is commercially zoned so it would abut commercial property. The house is located on the residential area towards the back of the property. Staff confirmed that the neighboring property is partially commercially zoned. Mr. Greaney said they have been trying to clean up the property they recently purchased and received multiple complaints about that. He thought the landscaping would look very nice. Mr. Ladegaard asked what Mr. Greaney thought about the proposed setbacks. Mr. Greaney has not looked at the proposed setbacks compared to what is required. He thought if the building was moved back, there may be room for more parking in the front. Ms. Clements said the French Creek District is supposed to have 20-foot setbacks but most of the businesses along Detroit Road have setbacks of 10 feet or less, but the proposed building setback is fine.

Ms. Engelmann said she lives 164 feet from the lower corner of the property and her daughter's bedroom faces the property. When vehicles pull into the lot and at the traffic light, lights shine into her bedroom, so she would like to see the 20-foot setback. She thought a six-foot setback was a huge push and thought the landscaping and fencing will be lovely and will do its job when it is filled in.

Mr. Ladegaard suggested tabling the variance request for the number of parking spaces but go ahead and vote on the setbacks along Detroit Road, Garden Drive and Holly Lane. Mr. Hauck said they would not be able to meet any deadlines if they have to go to BZBA in November and into December. Mr. Paige proposed reducing the number of seats to meet what they have with what is shown in their lot and the shared space with Misencik Funeral Home. The code states that a deferred parking area of 20% of the lot provided could be proposed if 80% is built during the initial construction. If they reduce the number of seats to be compliant with the two to one ratio, that would probably be the path they pursue. Ms. Clements said the variance for parking spaces would be reduced from 110 spaces to 68 spaces with no shared parking agreement. Mr. Ladegaard wanted to vote on the three setbacks before the parking spaces since that could be impacted. Mr. Schatschneider suggested a ten-foot setback along Detroit Road with some grass installed, Mr. Paige agreed. Mr. Schatschneider suggested keeping the 20 feet on Holly Lane. Mr. Hauck said the landscape buffering would not be required if the 20-foot setback is met. They were proposing it as a compromise when requesting the variance. Mr. Ladegaard said the second variance would be voted on first for a ten-foot variance.

Before the vote for the third variance, Mr. Schatschneider asked if buffering would be required no matter how far the setback is. Ms. Clements said he would have to install a buffer because it abuts residential land. Mr. Hauck was saying the lights would travel off the property if the setback were six feet or 20 feet. Ms. Clements said the applicant can pick the type of buffering that is installed since the code does not specify what needs to be installed.

Mr. Hauck did not think the change in parking setbacks would change their parking count because they were trying to provide enough space for customers to drive around the lot. Ms. Fechter asked if the

parking space variance could be voted on contingent upon a shared parking agreement being executed with Misencik Funeral Home. Mr. Gasior said that was helpful but he wanted to see a recordable document prior to the Board voting. Mr. Hauck asked about the 20% deferred parking allowed. Mr. Gasior had not looked at the deferred parking requirements since it was first brought up at the meeting. Mr. Gasior said the deferred parking would be fine if the applicant owned the land, but they do not in this case. Mr. Hauck asked if a motion could be made based on Mr. Greaney's agreement under oath at this meeting and a verbal agreement between the parties. Mr. Ladegaard thought he needed more time to look at it all. Mr. Gasior thought the number of spaces requested would only be 33 if the shared parking agreement was in place. Mr. Hauck agreed unless they decided to decrease the size of the building which they would do. Mr. Gasior thought there was a lot of room for agreement but not at this meeting. He wanted the document granting the applicant permission to use the Misencik Funeral Home lot recorded on the Misencik Funeral Home property. Mr. Hauck asked if the motion could be made contingent on all of the requirements being done prior to the October Planning Commission meeting since that will be the third time in front of that board. Mr. Gasior asked if the change in setbacks would impact their parking, Mr. Paige said they would have to redesign the lot to see how the parking space request changes. Mr. Gasior said the Board would need to see the revised plan and shared parking agreement so they can approve exactly what they are looking at. The Board is quasi-judicial so they make final decisions that would be reviewed at the Court of Common Pleas. Mr. Hauck said they are set to go before Planning Commission on October 19. Mr. Gasior said Planning Commission could approve the final development plan contingent on variance relief at that point. Mr. Hricovec asked if the applicant could also redesign the building so the variance was not needed, Mr. Gasior said they could. Mr. Paige said they would just need to reduce the number of seats in the building, not reduce the building size. Mr. Hauck said they have over 60 spaces more than what is needed based on the building square footage and the parking variance requested is for the worst-case scenario because they wanted to be clear about what they are proposing. There is a possibility of scheduling a special meeting prior to the Planning Commission meeting.

Mr. Miller moved, seconded by Mr. Bulger, to approve the following variance for Avon Brewing Company; 36383 Detroit Road: 63-22 as amended:

2. A 10 ft. variance for parking setback from the street right-of-way for Detroit Road; code requires 20 ft., applicant proposes 10 ft., Section 1270.06(a)(1).

The vote was: 4 "AYES" and Mr. Hricovec abstained. The Chair declared the motion passed.

Mr. Miller moved, seconded by Mr. Schatschneider, to approve the following variance for Avon Brewing Company; 36383 Detroit Road: 63-22:

3. A 14 ft. variance for parking setback from the street right-of-way for Garden Drive; code requires 20 ft., applicant proposes 6 ft., Section 1270.06(a)(1).

The vote was: 3 "AYES" and 1 "NAY". Mr. Ladegaard voted "NAY" and Mr. Hricovec abstained. The Chair declared the motion passed.

Mr. Schatschneider moved, seconded by Mr. Miller, to approve the following variance for Avon Brewing Company; 36383 Detroit Road: 63-22:

4. A 14 ft. variance for parking setback from the street right-of-way for Holly Lane; code requires 20 ft., applicant proposes 6 ft., Section 1270.06(a)(1).

The vote was: 2 "AYES" and 2 "NAYS". Mr. Schatschneider and Mr. Ladegaard voted "NAY" and Mr. Hricovec abstained. The Chair declared the motion denied.

Mr. Miller moved, seconded by Mr. Schatschneider, to table the following variance for Avon Brewing Company; 36383 Detroit Road: 63-22 until the next meeting:

**1. A variance for 110 parking spaces; code requires 263 off-street parking spaces, applicant proposes 153, Section 1292.04(d)(8).
The vote was: 4 “AYES” and Mr. Hricovec abstained. The Chair declared the motion passed.**

COMMENTS

ADJOURN

Mr. Miller moved, seconded by Mr. Schatschneider, to adjourn the meeting at 8:52 p.m. The vote was: “AYES” all. The Chair declared the motion passed.

Mark Ladegaard, Chair

Nicole Rambo-Ackerman, Clerk

Date