

BOARD OF ZONING APPEALS - Minutes of April 28, 2020

7:00 pm ★ Zoom Video Meeting

Minutes are posted on the City Website @ www.cityofvermilion.com (meetings tab/city meeting minutes)

Roll Call: Dan Phillips, Bob Voltz, Dave Chrulski, Guy LeBlanc, Philip Laurien

Attendees: Bill DiFucci, Building Inspector; Steve Holovacs, Council Rep., Guest: Mayor Forthofer

NOTE: OFFICIAL ACTION REQUIRES 3 AFFIRMATIVE VOTES, See COV 1264.02(b); Therefore, *Motions will be stated in the positive (e.g., To Grant... / To Waive... / To Determine...); and a member=s >Yes= vote means Agree and a >No= vote means Disagree.

Dan Phillips, Chairman called the April 28, 2020 meeting to order.

APPROVAL OF MINUTES:

D. Phillips MOVED; B. Voltz seconded to approve the meeting minutes of February 25, 2020. Roll Call Vote 5 YEAS. **MOTION CARRIED.**

An *Oath* of truthfulness was administered to those in attendance who planned to speak during these proceedings. *Dan Phillips* described how meetings are conducted, explained the avenue of recourse available when a variance request or appeal might be denied, and gave a reminder that it takes 3 affirmative votes for an action (motion*) to pass.

NEW BUSINESS:

[R-6] 3939/3937 Woodland Drive; Applicant: Gary Howell (Allow Agriculture as a Use)

Applicable City code section(s) cited:

1270.08 (b) 1 – Permitted Uses – see list; proposed = agricultural use accessory to single family use; variance request to allow agriculture as a use.

B. DiFucci clarified the facts before going into discussion. He addressed the livestock ordinance (Chapter 618.16 ‘Keeping or Harboring Livestock’) as livestock is permitted in the city limits providing that a stable, barn or shed shall not be nearer than one hundred (100) feet to any lot line and not nearer than one hundred fifty (150) feet to any street. Additionally, the definition of agriculture is something on a lot of less than one acre, at least half of which is used for agriculture. It also must be for the use of the property. It cannot be sold.

G. Fisher read letters received from Don Nieding of 715 Foxwood Drive and Jim & Mary Ferguson of 3975 Woodland Drive that are attached hereto and incorporated herein as part of the official record of proceedings.

Ken Cassell read a letter into the record that is attached hereto and incorporated herein as part of the official record of proceedings.

D. Phillips felt this matter was confusing as the board has received so much information within the last eight hours. He asked the building inspector as of today where does the city stand on this position. B. DiFucci said as of now the decision was to present this in front of the board as there is still some possibility that he does not meet the definition of agriculture and possibly may not need a use because it's for his own use on the property. The definition of agriculture speaks to it as being sold; for commercial and more than 50% of the property being used for agriculture. Mr. Howell has 4.2 acres on the lot, which would mean that roughly 2.1 acres would have to be used for agriculture, which meets the definition of agriculture per city code. He isn't so sure he meets the definition of agriculture because the livestock is on his property for his own consumption and use. They will not be sold, which is part of the definition of agriculture use as well as his coop meets the definition for Chapter 618, which says the coop must be 100 feet from the property line and not nearer to 150 feet to any street, so as of now there is confusion as to whether he meets the definition of agriculture and whether the variance is even needed, but if he does get it, then he meets all the requirements that every district has. In every zoning district (R-1, R-2, R-3 and R-4) you make application you're good to go. It's the fact that the property is currently zoned R-6 and agriculture use is not defined as a permitted use. It's not prohibited, and it's not defined. The argument of it not being an agriculture use is still in limbo. They talked with the law director and he agreed it comes to the board on whether it meets the definition of agriculture or it doesn't.

D. Phillips said according to the Chapter 618 "Keeping or Harboring Livestock" he meets the criteria. B. DiFucci said this is very true and yes, he does. D. Phillips asked the boards feeling on where they stand on this issue.

B. Voltz asked if there would be a difference if he only had a small fraction around that coop that would be fenced in versus them essentially being free-range around the entire amount of his property, which in theory would make him use more than the 2.5 acres. B. DiFucci said Chapter 618 requires livestock to be contained inside of a stable, barn, or shed of some sort, so they would not be allowed to be free-range in the city limits, and that containment can't be no closer of 100 ft. within every property line and 150 ft. to the street.

Guy LeBlanc clarified that the question of agriculture use is front of the law director, but then referred to D. Phillips' comment that livestock meets the definition, so is this just their opinion, or is the board saying this does meet the definition of agriculture. B. DiFucci said the job of code enforcement is his interpretation of the code and how he reads it, and his interpretation can be challenged and presented to the board. They researched this issue a lot and the definition of agriculture has come into question and that it's not a use. It's defined as a use if you're selling and profiting by it, and you're not retaining the goods on your own property, so the use question has come into light. The fact that he would like to have a stable or pen meets all the requirements of Chapter 618. He said if somebody came to him in the R-1 or R-2 zoning district, then he would say they were good to go; no questions.

They're allowed in the city limits and if he meets the requirements of Chapter 618, then it's a done deal. Currently, it's not listed as prohibited or permitted and he's not so sure he meets the definition of agriculture use.

G. LeBlanc said other codes do not list all the other exceptions. They say what is permitted and by process of elimination the interpretation is that anything else is not allowed. B. DiFucci said this is correct.

P. Laurien said the way he sees this, is that the definition of agriculture is not appropriate in this case and Chapter 618 covers it. Therefore, he thought the applicant could very well withdraw his application for a variance for agriculture use and apply to the zoning inspector for a permit under Chapter 618 with the zoning inspector's approval. He then thinks the matter would be done at that point. If the zoning inspector doesn't approve it, then the applicant could appeal back to the board of the zoning inspector's decision. He felt this was the right way to handle this matter.

D. Phillips agreed with P. Laurien's statement. D. Chrulski wasn't sure why this issue was in front of them and he thinks that if the applicant withdraws his application and goes forward with this recommendation it would be appropriate. If it doesn't go forward, then he can always bring it back to the board, but he doesn't feel it's the right time for it. G. Fisher said the board would need to be in consensus to withdraw this application since it was presented to them as a variance request. B. DiFucci concurred. P. Laurien felt the applicant had his own right to withdraw the application. B. DiFucci said based on what they just heard; he can withdraw.

Gary Howell said if he withdraws his application, then who decides his fate on this issue. The board said it's B. DiFucci's interpretation of the law. D. Phillips said if he doesn't agree with the interpretation, then he could come back to the Zoning Board. G. Howell said from what he understands, B. DiFucci is fine without having this variance granted. B. DiFucci said this is correct.

G. Howell understands that this issue in the last week has brought on a lot of a pain for everyone and there has been a lot of speculation on what he is going to do. He assured everyone that he has no intention at this time or in the future does he have any inkling or anticipation of putting any four-legged livestock on this property. If this is something the city wants him to sign a paper on, he has no problem doing this. He knows there was speculation of him putting a pig farm on his property based on a Facebook post he put out, but this is not the case. He does a feeder hog with a cousin of his who has a farm in Henrietta, and they put a feeder hog in his freezer every year. He was looking for a blue rain barrel for the hog because his other barrel froze this winter and cracked. He had zero intention of any swine, horse, goat, etc. being on his property. He doesn't want the smell or the hassle, nor does he want his neighbors to bare any of it. He is simply and solely looking for a chicken coop to house a few chickens and ducks for his 8-year old daughter who is doing 4H. This is the easiest animal to be contained and they will always be penned. He has full intentions of building a pen. He said he has a unique piece of property in the city and he's under a different zoning than what is speculated to allow or not

speak of. However, in his opinion he was looking for a bending of the rule of the R-6 zoning, but he assured everyone that he has no intention of driving any property values down, nor does he want to drive his property value down. He loves living in Vermilion and in his setting, and within the Woodlands. He doesn't want to damage that or make Mr. Cassell feel that he is trying to bring his property values down. He said he owns the adjacent property to the east of his property, and he doesn't want those values brought down in any way. He is simply looking for livestock within the requirements of the code.

D. Phillips asked if the applicant can just withdraw his application. G. Fisher said he can withdraw his application, but since the variance request is before the board, then the board should permanently table the variance before them.

P. Laurien MOVED; D. Phillips seconded to permanently table this application, which allows the interpretation of the code to fall under the privy of the city building inspector. G. LeBlanc said he was trying to ask a question before the roll was called. G. Fisher said it was up to the Chairman to allow further discussion. D. Phillips said out of respect he would allow him to speak. G. LeBlanc asked what G. Howell's recourse would be if the city denied this. B. DiFucci said the appeal process would take it to the local jurisdiction of the court. G. LeBlanc asked if it would bypass the building inspector's decision. P. Laurien said in his opinion no, as the building inspector has the right to issue his own opinion and if he feels this matter complies with Chapter 618, then the applicant does not need to come before the Zoning Board of Appeals. Therefore, the motion to permanently table this matter is the correct way to handle this, so the applicant can go back to the building inspector to get this resolved. If it doesn't get resolved and the applicant needs a variance, then he can come back to the board as an appeal to that administrative decision later. Roll Call Vote 4 YEAS; 1 NAY (LeBlanc). **MOTION CARRIED**.

[B-2] 590 Main Street; Applicant: Josh Dewey (Allow driveway less than 10' wide)

Applicable City code section(s) cited:

1276.02 (e) Off street parking requirements for uses not specifically mentioned herein shall be the same as those required for uses of a similar nature. Variance request to allow driveway less than 10' wide.

1270.01 – 1270.06 A1-R4 require hard surface driveway 10' width; proposed = driveway less than 10'

1270.12 (e) (2) (A) Front yard not less than 75'; proposed = 3'; variance request of 72'

Josh Dewey of 590 Main Street explained that he is looking to place a driveway between his house and to the residence south of him. They have 10' at the front of their property, but the house is a little crooked on the property line and they want to extend the driveway back, which puts them under 10' (it's about 9'), so they would like to have a driveway under the 10' code. Additionally, there is a handicap ramp in front of their house, which was put in when the house was a business, so they would like to change it to a porch; changing the house back to a residential use as opposed to commercial.

D. Phillips asked if he wanted the driveway to be 9'. J. Dewey said yes it would be tapered from 10' to 9'. D. Phillips asked if the driveway would be put where the streetlight is located. J. Dewey said this is correct. D. Phillips asked if he would assume the costs of removing the streetlight and J. Dewey said yes, he plans to pay for the streetlight to be moved. D. Phillips asked if arrangements were made with the city to allow this light to be moved. J. Dewey said he talked with the city manager and he had asked for him to have a letter signed by his neighbor to the south as the pole would be going in front of his home. The neighbor has signed off on this. His contractor has spoken with Satellite Electric who had installed the light pole, so they're lined up to do the work whenever he can proceed. D. Phillips asked if he couldn't put the driveway on the north side of his property. J. Dewey said it would be very tight for even a small car. D. Phillips asked if he had more room on the south. J. Dewey said there is more room and he's trying to alleviate some of the parking issues downtown in Vermilion and he would like to squeeze in possibly two or three small cars to pull them off the street. D. Phillips asked if he currently only has on-street parking and J. Dewey concurred. D. Phillips said in the wintertime when the parking ban is in effect he must park on the street and J. Dewey concurred. D. Phillips asked if his plan is to just remove the handicap ramp and J. Dewey concurred. D. Phillips asked how much further he plans on extending the porch. J. Dewey said he is planning to extend towards the sidewalk another 45" roughly, and he measured it off from the edge of the sidewalk to where his porch would be; it would be 86" in line with other porches on their block. D. Phillips asked if he currently has a flower bed and asked if he would be cutting into that. J. Dewey said they would be cutting into the existing flower bed. D. Phillips asked the board if they had further questions.

P. Laurien felt they should vote on the two variance requests separately. He questioned if there was 9' exactly between the two buildings and would the driveway be touching his building and the neighbors to the south. J. Dewey said it would not; it's 9' 2" to the property line in the back corner and the neighbors house is not on the property line. P. Laurien asked how much distance it is to the neighbor's house. B. Voltz said according to the drawings it appears to be about 2.13' at the north closest area. P. Laurien asked if the driveway would be asphalt or concrete. J. Dewey replied concrete. P. Laurien referred to the porch and thought the applicant said it would be 86" from the sidewalk. J. Dewey said correct. P. Laurien said this is 2' from the property line. J. Dewey said roughly as it might be set back farther from his original drawing. P. Laurien asked how far the porch would go out from the bay window and J. Dewey said about 1'. P. Laurien asked if there were any objections from the neighbor and J. Dewey said no.

D. Phillips agreed this is a hardship as it's almost impossible to own a home without a driveway, especially when there are limitations in the business district. He is sure when the restaurants open it will be hard to find a space to park next to his house. J. Dewey said he usually leaves his truck parked and rides his bike to work because he doesn't have an option.

B. Voltz MOVED; P. Laurien seconded in allowing less than 10' of a concrete driveway per the applicant's variance request. Roll Call Vote 5 YEAS. **MOTION CARRIED.**

P. Laurien said he would deny the variance on the porch. He asked for the building inspector's opinion on the established setback line. He thinks it would extend significantly. B. DiFucci said he is proposing to be 3' off that property line according to the drawings and the code calls for 75', so he's not even close, so it needs board approval. G. LeBlanc noted that the statement was made by J. Dewey that he did meet the setback. B. Voltz believed he mentioned it being like other houses in the area. G. LeBlanc said they're saying it's not. B. DiFucci the B-2 zoning district is not like the RS zoning district as it doesn't meet the adjoining setbacks, so whatever he does is a code violation and it's to the boards discretion to allow it because it's close to the neighbors. P. Laurien asked what the proposed dimensions of the porch are. G. LeBlanc said the proposed is 10 x 12 (12 is the east/west dimension). D. Phillips asked how much further he was planning to go out from the existing ramp. J. Dewey said almost 4' from the existing ramp and there is a bricked-in flower bed and that wouldn't change. There would be 86" of flower bed still there. G. LeBlanc asked if it was 86" of the eastern line of the deck to the eastern edge of the flower bed. J. Dewey said it would be 86" from the edge of the sidewalk, so the west edge of the sidewalk up to his property line. It's currently all flower bed and then some. G. LeBlanc asked where the porch is going to be relative to the flower bed. J. Dewey said it's going to go 86" less than the flower bed. B. Voltz said in looking at the drawing it shows a 3' dimension from the property line and he is trying to understand how they get to 86". J. Dewey said he scaled it back from the original drawing, so he's taken measurements from the sidewalk and marked it off based on other properties on his block. B. DiFucci asked what he is proposing to be setback from the property line. J. Dewey replied 86". B. DiFucci said in measuring off the auditor's site, which is not accurate, he scaled off about 13.6' from the property line to the existing deck. Obviously, the drawing from the surveyor is more accurate, so this is where he would base the information off, which is 3' off the property line, which is just inside the concrete sidewalk. B. Voltz said he's basically talking another 4' from what was proposed. P. Laurien said the request is a modification of the diagram that was submitted with the application. Therefore, it's an 86" setback. B. DiFucci said instead of a 3' setback it's an 86" setback. B. Voltz said the request would then be 67' 10" rather than 72' and B. DiFucci agreed.

D. Phillips MOVED; G. LeBlanc seconded to approve the variance request to allow a front yard variance request as amended at 67' 10". Roll Call Vote 5 YEAS. **MOTION CARRIED.**

[B-3] 4550 Liberty Avenue; Applicant: Mercedes Mitchell/Psychic Readings by Lana (Allow Use)

Applicable City code section(s) cited:

[B-3] 1270.13 (b) (1) Permitted uses – see list; proposed = Psychic and mediation readings; variance request to allow use.

Mercedes Mitchell of 3915 Wood Avenue, Parma, Ohio said she came before the board about a year ago for the same variance request which was approved. However, due to family illnesses she had to put her business off. However, since everyone is better, she wants to proceed with the permitted use variance as the first one expired. B. DiFucci said the variance is good for six months, and if no action is taken then it expires.

B. Voltz said he was part of the board when they approved the request, so he has no problems with this request.

D. Phillips MOVED; B. Voltz seconded to approve the variance request to allow the permitted use. Roll Call Vote 5 YEAS. **MOTION CARRIED.**

[R-S] 806 Aurora Drive; Applicant: Mark & Marlene Shepard (Rear/Side Yard Setbacks for Garage; No Footings)

Applicable City code section(s) cited:

[R-S] 1272.12 (c) Rear yard not less than five feet; proposed = three feet; variance request of 2 feet

Mark Shepard of 7556 Deer Path, Brecksville, Ohio said he built a home at 806 Aurora Drive and he is requesting a 3' setback on the rear of his property and 14.3% of the rear yard area for a shed. He said the lot size is small and there is no garage, so the shed will be the only place to store yard equipment, patio furniture, snow equipment and a paddle board. He doesn't wish to store these items in the back yard under a blue tarp because it's not a good look. The current code is written to where the shed can be 7.5% of the total back yard area and his back-yard area is 35' x 32' (1,100 sq. ft and 7.5% of that is 840 sq. feet). He is asking to build a 10' x 16' shed which would be 14.3% of the total area of the back yard.

P. Laurien felt this was a good solution. B. DiFucci said the square footage is not an issue; it's the 7.5% as it's in the A-1 zoning district. He's not in the A-1 zoning district, so he's allowed to have up to no more than 30% of his rear yard coverage. That dimension is 336 square feet and he is proposing 160, so the square footage is not an issue. Therefore, he only needs a rear yard setback variance of 2'. D. Phillips said he came before the board for a garage and the neighbor to the north was not happy with his request. However, he did speak to him about the proposed garage and he was very happy about the shed. M. Shepard said he wrote to the owners of the property to the south. G. Fisher said she heard from them and they are happy with the proposed shed as well.

P. Laurien MOVED; D. Phillips seconded to approve the variance request as submitted. Roll Call Vote 5 YEAS. **MOTION CARRIED.**

[B-3] 5693 Liberty Avenue; Applicant: Jeremy Crawford (Allow Food Truck)

Jeremy Crawford and Joe Jesko of the Pavilion Grill, 5542 Liberty Avenue were present on behalf of their application to allow a food truck at 5693 Liberty. J. Jesko asked the board to allow existing brick and mortar businesses to have a food truck to extend and grow their business on private property in the B-2 district.

D. Phillips said he used to serve on City Council, and they had questioned the intent of some of their ordinances that were written in 1969. However, the food truck ordinance is a new ordinance and conveyed that S. Holoavacs, Council Representative to the board was involved with writing this ordinance. S. Holoavacs explained they started this ordinance in 2018 and it was finished up in 2019. City Council put a lot of work into this ordinance and one of the issues in the downtown was to eliminate food trucks; other than special events. In his opinion, this request is not a hardship since the city allows food trucks to be placed in other parts of the city. It's eliminating them from being downtown to protect the brick and mortar businesses, so he was surprised this request came before them so fast after passing this legislation. D. Phillips asked if Council made it clear in the ordinance that the city didn't want food trucks in the downtown district. S. Holoavacs concurred.

J. Jesko said the main point is existing brick and mortar and the food truck will be on private property, as they're working with Dan and Laura Roth and their hotdog stand. They're looking to put their food truck on this property. They feel it can benefit the city with the unique draw to the property, and the atmosphere it can provide along with the food truck to people inside the city limits and outside the city limits. It allows them to stimulate the economy and patronize other businesses. It will also create more jobs and with the food truck it will allow them to have more product availability for their customers; having more kitchen equipment and more kitchen real estate. It will create three more full time jobs and one part-time job, which will create more sales tax and employee withholding. They are trying to grow their business within Vermilion, and this is private property that is owned, and the food truck is owned by private business, so they're just trying to put a piece of equipment that they spent about \$40,000 for. They quit their jobs and put their retirements and savings into starting this business, and they have \$40,000 worth of equipment that they want to use to expand their business in Vermilion on private property. They're not looking to do festivals with catering or taking their business outside of Erie County and putting tax dollars into a different city. They're looking to utilize their truck in Vermilion on an existing location they're going to expand on. He emphasized that they're really trying to expand off their existing brick and mortar business and if there is anybody else that wants to expand their current operations with a food truck on a private property, they're resources. They're just trying to grow their business and if anybody else wants to do the same then they're here to help them with the food truck process. He said they're looking at how much money they invested with the food truck and they're just trying to expand their business and utilize current assets into making a great attraction to people inside and outside of Vermilion.

P. Laurien asked if the food truck would be parked on the Roth lot off the street. J. Jesko said yes. P. Laurien said as it relates to the issue of competition with brick and mortar businesses, Joe and Jeremy are the owners of the Pavilion Grill restaurant, so

this is an expansion of this business at an adjacent location because they don't have space adjacent to their current location to place their food truck. J. Jesko said the food truck will be the LLC and they have partnered up with Coal & Ice, so Coal and Ice will have the food truck and will own the rights to the food truck. It will be Coal and Ice's private equity, private property, and private materials on the private property. They are just looking to put that business owned property on that location. P. Laurien asked if they will own the food truck or will Coal & Ice. J. Jesko said Coal & Ice will own the food truck because their LLC is a subsidiary and affiliate of the Coal & Ice LLC, so yes, Coal & Ice LLC will own the food truck. P. Laurien asked if the food truck is an expansion of the hotdog stand. J. Jesko concurred.

D. Phillips asked who owns Coal & Ice. J. Jesko said it is Dan and Laura Roth and they just would be going into business with them and doing the food end of it. He said the food truck will be an extension to Coal & Ice as they are limited. They will be able to do more products and drinks, and the food truck will be utilized for hotdogs and gourmet grilled cheeses. D. Phillips thought the original intent of their business was to serve the hotdogs from the Coal & Ice building. J. Jesko said they were looking at the real estate and how much equipment they could put in there, in combination with what they already have invested in their \$40,000 equipment that is just sitting and not being utilized. He said they can't produce that many products in the Coal & Ice building than what they can do from the food truck. They wouldn't be able to do gourmet grilled cheeses or hotdogs. It would be comparison to doing it on rollers and not to the extent of the product they can produce from the food truck. It's really the number of products and availability they can offer to their customers.

G. LeBlanc asked the chairman if no motions can be put forth before the board until the Chairman asks for one to make sure they give ample time for everyone to weigh in. He felt on the Howell matter a motion was made before they got time to go around the table. He said he necessarily doesn't agree with P. Laurien's position on this. D. Phillips agreed and normally if they were in their normal setting he could look to his right and ask or see if anyone had comments, but on Zoom it's hard to see everyone who has their hand up, so he apologized. G. LeBlanc said there are a lot of merits to what Joe is talking about, but he is not in favor of this request mainly because of all the time that was put into the food truck ordinance by city council. There was a lot of thought and regardless of the food truck's situation, this could open the door up to who knows what and any other food truck coming in and selling on somebody else's property. He feels it could be a backdoor approval or permission that would contrast with all the hard work the city council put into this.

D. Phillips asked them if the intent was to take the tires off the food truck and make it a permanent structure. J. Crawford said when he talked to Craig Ward at the Erie County Health Department when asking about options, he mentioned that if the tires were to come off and be a fixed structure, it would be looked at as an accessory building, but he suggested that since the food truck is prior owned and inspected, and an approved food vendor, he would prefer and like the idea of the building being refrigerated for ice-cream and the food truck being on the property being the hot kitchen cooking aspect of the site. As far as taking it off the wheels, it would omit the mobile aspect. D. Phillips asked if they are presenting this to the board in

that this trailer will set on this location for 12 months; will it be permanent business. J. Jesko said it will be there seven days a week for five months duration of the summer and every 45 days they will take it off for normal maintenance. Operating hours are anticipated from 10 am – 11pm. J. Crawford said the idea of leaving the wheels on comes with heated storage to keep it in great condition, like a boat. This would be the advantage of leaving it on the wheels and still allowing it to be mobile. D. Phillips said he received a lot of questions on this with regards to parking, ingress/egress, restrooms.

B. Voltz questioned the utilities; water, drainage, etc. Will they have hoses laying across the site. Is this essentially permanent, or is the means to not have permanent utilities, or still appear to not be at the site all the time. He has reservations. G. LeBlanc said with leaving it overnight, he thought the stipulation on food trucks is that they can't leave them unattended at any time. B. DiFucci said it is being placed downtown where they're not allowed. When they were at the bowling alley it was allowed, and they were given operating hours. If it gets through this board, they still must go before the Planning Commission to address parking and the site preparation and layout. This is one step of two to get their clearance.

Mike Rini said he is an advocate food vendor and has read the ordinances, and the way he reads it he holds the same city status on commercial/residential. He said if the mission is not to have food vendors in the area, this sounds like it's against that. However, if this goes through, then here he comes at his end of his driveway because he's a food vendor and he was to be downtown for a Third Thursday application, which is only once a month, but this sounds like it's daily. He said if this opens to this vendor, you open it up to a lot of other vendors doing this. D. Phillips told him he is the perfect example of the intent they were talking about when they drafted this ordinance. M. Rini said his only mission is a Third Thursday type of mission, as he isn't going to be a food vendor in his neighborhood. It isn't why he chose to be here, and he doesn't think anything they're doing is incorrect and that's not why he is here to speak, but he had a lot of interest in this because it reopens the door for what the city decided. He said he likes the idea of the hotdog stand and another place of business downtown, but this moves from a hotdog stand to a lot of other items. He said he is not in favor or in favor, but he just cautioning... D. Phillips said he is telling them that if they open this door, he might come walking through. He said when he first heard ice cream and hotdogs at this location he thought it was great idea. Anything that brings more people downtown he is all for it, but he is questioning the loophole around a brand-new ordinance that was just drafted to protect businesses downtown. Now, they could say the library can have a food truck, or Mike. He was worried about the parking; where is the parking for this. J. Jesko said just like the Pavilion Grill it's street parking, but parking won't be an issue because it will be on the lot. It's just an existing brick and mortars who wants to expand their business. They have \$40,000 of equipment they put money into and they're just trying to grow their business, so it's not such a hindrance to them. They're just trying to move existing equipment over, so they don't have to spend another \$25,000 they don't have to. D. Phillips said as a businessman he gets it, especially in these times of uncertainties and owning a small business, but they still must look at this ordinance and what's in front of them.

P. Laurien thinks this is a different case. For example, this is not like the library inviting in a food truck into their parking lot. This is an existing Coal & Ice building that will reopen as a new restaurant downtown and basically, they should look at the food truck as if it were a dining car. How would they feel if this was an old-fashioned stainless-steel dining car that was put on the site adjacent to Coal & Ice so they could have a larger menu? It's not a different business. It's the same business but a different structure. One is brick and mortar and the other is a chassis base food truck on wheels. He thinks this makes it a little bit more appropriate because it's not in competition of the Coal & Ice business; as it is the Coal & Ice business. So, to him he thinks it makes it a little more appropriate and he owns a Bed and Breakfast one block away, and he thinks it's good that this vacant lot is being put back into a use that will attract people to the downtown. He feels most of their traffic will be foot traffic of people already here walking around downtown. It may be an attraction that is otherwise not already being met with a hotdog stand. From this advantage point, he can certainly see this.

G. LeBlanc agreed with Phil's points as there is a lot of merit to this, but they just can't look so narrowly at this application. As to Mike's point, this is changing the ordinance that was passed by the city and it won't apply just to these guys and their investment. He said he feels for them, but it's a very broad impact that would happen, which is why he's against it.

S. Holovacs agreed they have a lot of money in a piece of equipment that is just setting there, but this ordinance doesn't allow them downtown, but it does allow them in other parts of the city, so this isn't saying it's a hardship by saying they can't be in other parts of the city. It does allow it in other areas. He said they used to be at the bowling alley, and they could put it back up because it's allowed by ordinance. Also, they talk about putting the food truck there, but it's not a structure they're getting property taxes from. Every other building downtown that has a building, pays property taxes. Will this mobile unit pay them property tax – it doesn't. If they brought in an old trailer from a dining car, what are they going to do – they're going to put a foundation under it and make it a permanent business. This one has wheels on it, and they can pull it out when they want, so it's not doing what city council asked – they're not going to pay everything other businesses must; sewers, water, everything else. If it can do all that, then he doesn't have a problem with it because then it becomes another permanent business downtown.

J. Jesko said they are paying this because it's part of the business; it's just an extension of the kitchen, so they are paying the sewer, water, taxes because the truck is part of the business. It's just an extension of the building. B. Voltz said it would not be a part of the valuation though. J. Jesko said they think they can generate more sales and revenue through more product and availability, and they will have two more full-time employees.

D. Phillips said they look at hardship when coming before the board and this is tough, and he feels for them. He has had dinner at their restaurant and it's fabulous. They can still fit a food truck in other places within the city, but it's hard for him to

decide on an ordinance that was just written. There was a lot of work put into it by City Council and for them to look the other way and say ok – for him he is having trouble with this.

J. Jesko said they have two closing points in that he understands the option to go somewhere else, but the growth of their business and where it's going has presented itself, and he thinks it will be a great opportunity and attraction to Vermilion. They will not be able to produce the same amount of product and customer service or menu without this food truck on this property. So, if they put the money and monetary value and all this kind of stuff aside, just what it can offer for Vermilion. This is an option that has presented itself. They are no longer in contract with Pence, so they don't have any other option to go there, and this opportunity presented itself and they think it will be good for Vermilion.

G. LeBlanc MOVED; D. Phillips seconded to allow the food truck in the B-2 zoning district in expansion of their existing brick and mortar business. Roll Call Vote 3 NAY (Phillips, LeBlanc, Voltz); 1 YEA (Laurien); 1 ABSTENTION (Chrulski). **MOTION FAILED/APPLICATION DENIED.**

[R-S] 267 Roxboro Road; Applicant: Alexander Roussos (Rear/Side Yard Setback for Garage; No Footings)

This matter was tabled to next month as the applicant was unable to access Zoom.

[A-1] 3130 North Ridge Road; Applicant: Lance DeShuk (No Fence)

Applicable City code section(s) cited:

1476.05 All outdoor swimming pools shall have a fence not less than three feet high and not more than six feet high erected to enclose a pool.

Lance DeShuk of 3130 North Ridge Road explained he is requesting a variance, so he doesn't have to put a fence up around his above ground swimming pool. The property is fenced on the west edge and they have no properties to the east, no properties to the north, and no homes to the north/east/south. The only home close is the house to the west with an existing fence. D. Phillips asked how many acres his property is on. L. DeShuk said it's two acres. D. Phillips asked the building inspector if he's required to put a fence around the pool, even if it's above ground. B. DiFucci said this is correct as the code reads: not less than 3' high, even though the side of the pool is higher; it's 54". The way the code is written now, which was passed in 1967, it says that each swimming pool must be enclosed by a fence 3' high to keep people from falling in. D. Phillips said he has the cemetery to the east of him and two vacant lots, and there's a fence over by the cemetery. L. DeShuk said there is a fence surrounding the cemetery. D. Phillips said if somebody came from the east, they would have to jump the fence at the cemetery, go through two vacant lots, go through shrubs and then climb up his pool, which is 54". He asked what is on his back property. L. DeShuk said he has an open field behind him, a wooded area, and Cooper Foster Park Road is to the north. To the south of him is North Ridge Road

and the Strawberry Farm is across the street. P. Laurien asked if he would be building a deck around the pool. L. DeShuk said eventually, but it may be a year or two out. P. Laurien asked if he will just have a ladder on the outside of the pool for now. L. DeShuk said yes, a locking mechanism ladder was purchased, and it has a door that covers the stairs which locks, so you can't access the stairs of the ladder.

G. LeBlanc asked the building inspector to explain the height dimensions of the pool again. B. DiFucci said the pool is 54" high on the sidewall, and per code he is still required to put nothing shorter than a 36" fence. He said you're not going to fall into a 54" pool. D. Phillips said when he went out to look at the property, he noticed he's a State Highway Patrolman, so it's probably one place you don't want to pool hop. B. DiFucci said the code says it's to prevent persons from falling into the pool. However, the 36" requirement is still in place. G. LeBlanc was concerned and they have discussed the empty lots, and to him this is moot because somebody could build there tomorrow with a lot of toddlers running around, but if the height of the side of the pool is higher than the fence he doesn't understand the concern. B. DiFucci agreed and said this code should be revisited.

D. Phillips MOVED; D. Chrulski seconded to approve the variance request for no fence. Roll Call Vote 5 YEAS. **MOTION CARRIED.**

[R-S] N.E. Corner of Highbridge and Parkside Reserve; Applicant's Name: Robert Andrews – PP#'s: 01-00-002-122-016/01-00-002-122-017 (Rear Yard Setback)

1270.09 (e) (2) (B) Rear yards not less than 30'; proposed = 20'; variance request 10'

G. Fisher read a letter submitted by Kenneth Cassell, President – Cassell Realty Company which is attached hereto and incorporated herein as part of the official record of proceedings.

Robert Andrews of 963 W. 30th Street, Lorain, Ohio explained this variance request is being redone from last year as he wasn't able to get everything done last summer, so basically the original variance that BZA accepted last year expired, so he is again requesting a similar variance on the back part of the property, which is normally a 30', but he is asking for 20'making it a 10' variance request. D. Phillips said he remembered this property last year and asked what they approved last year. R. Andrews said the board approved his back-property variance and this is a corner lot and there's a 30' variance on Highbridge and Parkside Reserve, and the backside would require a 30' as well, and the board accepted a 22' variance last year. In the interim time period, when looking at the models, a couple of them had a 30' width on them, so he is looking for 22' on the backside in case he goes with that model. Therefore, he's asking for 20' on the backside.

K. Cassell questioned the entrance of the unit to be constructed and asked what would happen there – will another variance be required on the front yard. B. DiFucci said if it's an open stoop/uncovered entrance then there is no variance needed. It does not apply to the setbacks. If he decides to put a covered porch over

it, it would encroach into the front yard setback and then he would be back for a front yard variance. R. Andrews said he doesn't plan on putting up a covered porch.

D. Phillips said he read K. Cassell's questions and the board doesn't determine what type of house he puts there. They look at the variance itself.

B. DiFucci noted that Mr. Andrews is on the Planning Commission agenda for a lot combination on April 29. R. Andrews said there are two lots which needs to be combined into one.

G. LeBlanc asked if the plot plan as shown encompasses both properties, shown as one. B. DiFucci said it shows the two lots with one home on one. B. Voltz clarified that the variance request is essentially the variance they granted last year, just dimensionally it changed by a couple feet? B. DiFucci said this was correct. D. Phillips said they approved a 12' variance, and this year he is asking for a 10' variance.

B. Voltz MOVED; D. Phillips seconded to approve the variance request of 10' as submitted. Roll Call Vote 5 YEAS. **MOTION CARRIED.**

Adjournment:

D. Phillips adjourned the meeting after no further business was entertained.

2020 MEETINGS:

4th Tuesday monthly (except December) - Next: **May 26, 2020** @ a time/location TBD

Gwen Fisher, Certified Municipal Clerk