



MINUTES OF THE ZONING & PLANNING BOARD OF APPEALS

MONDAY, JUNE 19, 2023, 4:30 PM
City Hall, Room 604 - The Harry Maier Room.
Virtual attendance is also available via Zoom.

A. ZOOM MEETING INFORMATION.

I. This item contains Zoom information, instructions, and a link to the Virtual Comment Form.

B. ROLL CALL.

I. Members: Noel Halvorsen - Chair, Barb Dorff, Steven Schuchart, Corey Bogenschutz, Joshua Koch, Benjamin Andrews

Present: Steven Schuchart, Noel Halvorsen, Barbara Dorff, Corey Bogenschutz , Joshua Koch, Benjamin Andrews.

Excused: None.

Present: Ald. J Brunette.

Noel Halvorsen joined the meeting at Regular Business Appeal 23-15.

C. APPROVAL OF THE AGENDA.

I. Approval of the agenda for the June 19, 2023, meeting of the Zoning & Planning Board of Appeals.

Moved by Steven Schuchart, seconded by Joshua Koch to approve the agenda.

Motion Passed.

Yes- Steven Schuchart, Barbara Dorff, Corey Bogenschutz , Joshua Koch, Benjamin Andrews,

No- None, Abstain- None.

Not Present: Noel Halvorsen

D. APPROVAL OF MINUTES.

1. Approval of the minutes from the May 15, 2023, meeting of the Zoning & Planning Board of Appeals.

Moved by Joshua Koch, seconded by Benjamin Andrews to approve the minutes.

Motion Passed.

Yes- Steven Schuchart, Barbara Dorff, Corey Bogenschutz , Joshua Koch, Benjamin Andrews,

No- None, Abstain- None.

Not Present: Noel Halvorsen.

E. REGULAR BUSINESS.

1. Election of Vice-Chair of Board of Appeals.

Steven Schuchart and Benjamin Andrews nominated Barb Dorff as Vice-Chair. Barb Dorff asked for other nominations. A vote was taken and Barb Dorff was elected as Vice Chair.

2. (Appeal 23-15) Consideration with possible action on the variance request submitted by Kyle Bunker and Richard Bunker, property owner and applicants, to create a primary residence within the front yard setback in a Low-Density Residential Zoning District (RI) in the 400 Block of S Huron Road (Parcel 21-7785-1) (Ald. J. Hutchison, District 2).

Chair Noel Halvorsen affirmed the Board of Appeals Board Members on having any conflict of interest. All Board members affirmed that they do not.

Chair Noel Halvorsen affirmed the Board of Appeals Board Members on receiving any communication about this matter. Barb Dorff received an email from Alder Hutchison stating that he has no concerns with this matter as the Alderman.

The remaining board members affirmed they had not received communication about this matter.

Chair Noel Halvorsen affirmed Kyle Bunker and Richard Bunker.

Chair Noel Halvorsen affirmed Jon Leroy.

Speakers:

Jon Leroy

Kyle Bunker- 470 Earnhardt Ct

Richard Bunker- 470 Earnhardt Ct

Moved by Barbara Dorff, seconded by Joshua Koch to grant the variance for a primary residence within the front yard setback in a Low-Density Residential Zoning District (RI) in the 400 Block of S Huron Road. The applicant did satisfy the required variance findings by the Board of Appeals.

Motion Passed.

Yes- Noel Halvorsen, Steven Schuchart, Barbara Dorff, Joshua Koch, Benjamin Andrews, No- None, Abstain- None.

3. (Appeal 23-16) Consideration with possible action on the variance request submitted by Tom and Nancy Dudek, property owners and applicants, to create an accessory building within a Floodway District at 2468 West Point Road (Ald. J. Brunette, District 12).

Chair Noel Halvorsen affirmed the Board of Appeals Board Members.

Chair Noel Halvorsen affirmed Nancy Dudek, Tom Dudek and Jon Leroy.

Speakers:

Jon LeRoy

Noel Halvorsen

Nancy Dudek- 2468 West Point Rd

Tom Dudek- 2468 West Point Rd

Ald J. Brunette

Moved by Joshua Koch, seconded by Barb Dorff to deny the variance for an accessory building within a Floodway District at 2468 West Point Road. The applicant did not satisfy the required variance findings by the Board of Appeals.

Motion Passed.

Yes- Noel Halvorsen, Steven Schuchart, Barbara Dorff, Joshua Koch, Benjamin Andrews, No- None, Abstain- None.

4. (Appeal 23-18) Consideration with possible action on the variance request submitted by Ben Vanderkinter, property owner and applicant, to create a wider parking stall within the front yard setback at a single or two family residence at 3035 Brook Park Drive (Parcel 21-3718) (Ald J. Grant, District I).

Chair Noel Halvorsen affirmed Ben Vanderkinter and Jon LeRoy.

Speakers:

Jon LeRoy

Noel Halvorsen

Ben Vanderkinter- 3035 Brook Park Dr

Moved by Joshua Koch, seconded by Steven Schuchart to deny the variance for a wider parking stall within the front yard setback at a single or two family residence at 3035 Brook Park Drive. The applicant did not satisfy the required variance findings by the Board of Appeals.

Motion Passed.

Yes- Noel Halvorsen, Steven Schuchart, Barbara Dorff, Joshua Koch, Benjamin Andrews, No- None, Abstain- None.

F. INFORMATIONAL.

I. Date of the next meeting: July 17, 2023.

Discussion between staff and legal regarding the next meeting.

G. ADJOURNMENT.

Moved by Board Member Noel Halvorsen, seconded by Barbara Dorff to adjourn.

Motion Passed.

Yes- Noel Halvorsen, Steven Schuchart, Barbara Dorff, Corey Bogenschutz , joshua koch, Benjamin Andrews, No- None, Abstain- None.

VERBATIM MINUTES

- Okay. I will call this Monday, June 19th Zoom meeting, or I'm sorry, Zoning and Planning Board of Appeals meeting to order. And we will take roll call. Noel Halvorsen. We expect him to come. Barb Dorff, here. Steven?

- Present.

- Corey? Corey Bogenschutz?

- Corey you're-

- Here. Sorry, I was muted. Here.

- Okay. Thank you. Joshua Koch?

- Here.

- And Benjamin Andrews?

- Here.

- Welcome. All right. Approval of the agenda for the June 19th, 2023 meeting of the Zoning and Planning Board of Appeals. Do I hear a motion to approve?

- I motion to approve.

- Second.

- Okay, so motion to approve by Steve, second by Josh. Is that who it was, or was it-

- That was me.

- It was you, okay. All right. Any discussion? All those in favor say aye?

- [Board Members] Aye.

- Opposed nay? Okay, motion carries. The agenda is approved. Approval of the minutes from the May 15th, 2023 meeting of the Zoning and Planning Board of Appeals. Any discussion? I'll entertain a motion for approval.

- So moved.

- Moved by-

- Josh.

- By Josh. Is there a second?

- I'll second.

- Second by Benjamin. All right, all those in favor say aye?
- [Board Members] Aye.
- Motion carries. We are on to regular business. So do you want to, item number one first?
- Item one's an election of the vice chair.
- Okay. Item one is the election of the vice chair of the Board of Appeals. Are there any nominations for vice chair?
- I'd like to nominate Barb for vice chair.
- Thank you. I accept the nomination.
- I'll second.
- Second.
- Okay, any other nominations? Okay, nominations being closed, there is a motion by Steve to nominate Barb Dorff as the chair, and that was double seconded. So I don't know who gets credit, I'll give it to Benjamin.
- Okay.
- All those in favor say aye?
- [Board Members] Aye.
- Opposed nay? Okay, and in my first meeting as vice chair, I'm chairing the meeting. All right. Congratulations.
- I thought I had to study this first. All right, guys. We're gonna do this.
- We did this 'cause we know you're good under pressure.
- Yeah. Regular business. So I'm gonna-
- Right on cue.
- Let me do the overview at least, come on, I'm psyched up to do that and then I'll give it to you. I just...
- Okay.
- You missed it.

- Oh, awesome. Congratulations.

- And then I'll hand this off to you. Just let me . The Zoning and Planning Board of Appeals hears and acts on appeals for variances from city zoning code requirements. The members of the board are appointed, and the board acts as a quasi-judicial body during these appeals, which means that appeals are presented like a case is presented in court. The board acts as judge and determines whether to grant the appeal by majority vote. For each item we will hear from the applicant and staff, as well as any additional witnesses where appropriate. If you are the applicant for an item on tonight's agenda, please come and take a seat at the table when your item is called and we'll invite you. And now I will turn this over to Chair Noel.

- Thank you. Welcome. And... Where, we're on item-

- We are, yeah, we're-

- C then?

- We finished this.

- Okay.

- We're number two.

- Number two.

- And then we're up to read agenda item, and then the commentary.

- Okay. All right, so up next is Appeal 23-15, consideration with possible action on the variance request submitted by Kyle Bunker and Richard Bunker, property owner and applicants, to create a primary residence within the front yard setback in a Low Density Residential Zoning District, R1, in the 400 block of South Huron Road, Alderman Hutchison, District 2. All right. And then this is my first time looking at this here.

- Yeah, I know, right?

- This here. Yeah, I know. My next, just.

- Just read through the conflicts-

- The conflicts, okay. It is the goal of the Board of Appeals to provide and conduct a hearing that is fair in form, appearance, and substance. To ensure that this hearing satisfies these goals, each member of the board of appeals please confirm the following for this appeal stating, "I confirm." I do not have any conflict of interest in this matter. I have not received any communication from any person or party about this matter.

- I can confirm the first, but not the second.

- Okay.

- So if you wanna go through one by one and everybody just-
- Maybe do it by one.
- All right. I do not have a conflict of interest in this matter?
- I confirm.
- I confirm.
- I confirm.
- I confirm.
- I confirm.
- I have not received any communication from any person or party about this matter?
- Can confirm.
- You can't?
- Can.
- I confirm.
- I confirm.
- I confirm.
- Okay, and I did receive a communication from Alder Hutchison, who also sent an email that Jon could read, just that he has no concerns with this. He has not gotten any negative feedback about it. And so he, you know, he has no objections to this at all, as the alder in that district.
- Having received that communication, do you feel you can still remain unbiased and impartial?
- I do.
- Great. And then, so, I think we're ready to have the petitioners, Kyle Bunker and Richard Bunker, please join us here at the table. Thank you for joining us this evening. Please state your name and address for the record.
- Kyle Bunker, 470 Earnhardt Court, for about two more days.
- Richard Bunker, 470 Earnhardt Court.
- Great. And do you swear or affirm that the testimony you are about to receive, you are about to

give, will be the truth?

- Yes.

- Yes.

- Great. All right, so before we hear from you, we're gonna hear from our staff. They're gonna tell us a little bit about the situation, and then we'll ask questions of staff, and then we'll come to you.

- Mm hm.

- So Jon, Jon, do you affirm or swear that the testimony you are about to give will be the truth?

- Yes.

- Thank you. Proceed.

- Okay. So our parcel in questions is here in the 400 block of Huron. What you are seeing here is a flag shaped lot, where the star is at. What you are noticing is a driveway which leads to an accessory garage. There is not a primary building on this property at the moment. This is an accessory garage. The applicants are looking to create a primary building on the front of the property up along the street. So this is a very illegal, nonconforming lot as it is right now. You wouldn't typically have a lot created where it is only a accessory use. But this was here in the past and legally created. And they're looking to place now an actual residential building in the front of the property. What's at play here is 44-554, Section 2. So as you can see, where at least 50% of the frontage of lot has been built. The front yard setback is established by the average of the homes, the primary homes, on the lots. If in that area there is a setback, which is 20%, more or less, than what you would like to see it, you can take that number out of the formula. So with all this in mind, you can see the parcel right here, the existing accessory structure and the driveway entrance. This is the front of the property along Huron. This is what has been supplied to us by the applicants. You will note that they initially put here a 15 foot front yard setback between the existing structure, which is actually 2,000 square feet, and the proposed residence. After talking with the applicants when the site plan was denied, they did move the structure to go, to be set back to 22 feet, and we'll get to that in a moment. So they're requesting 22 feet for a front yard setback. So I'll go ahead and just note, these are our block, our structures on the block itself for primary structures. They're 38 feet, 22 feet, the subject property, 55 feet, 123, and this last one is 19 feet off of the property line. What we do to create the front yard setback is take all the averages of the lots, and at that point we get a number, that if you then take the remainder of lots and it's over either less or more than 20%, you can toss that anomaly out. So when these all averaged up, it ended up that 38, 22, 55 and 19 all were within that 20% range. We took out the 123 number because they didn't want to have their house set back any further. That got the average down to 37 feet between those buildings. So that's where the setback is established for this block. So any new house is to be built at 37 feet past the right of way. With this in mind, talking to the applicants, the house next door is 22 feet from the front yard setback. So the point of this is to try to keep a form and structure in the neighborhood to where it's a consistent form. And obviously on blocks like this, it is a bit different than a lot of other places. The home that was set back further away was the old farmhouse on this block itself. And when you first initially start out putting homes onto a block, the homes, the parcels where you have less than 50% built up, you could set it back much further or put it close to the setback. It's your choice. Once we've gotten to past 50

plus one, then the front yard is established. So when talking with the applicants, made it known that your neighbor is 22 feet. At that point, if you asked for 22 feet, you might have a better shot of getting this variance, because at that point you were no longer past their front of the house. You were set back, then, or at the same plane as the neighboring property. That isn't the same way for everybody though. The neighbor to the north is at 55 feet, and it's getting in line with that existing accessory garage. Going back to here, they need to maintain for the sake of building a home within the zoning code, at least three feet between the accessory structure and a primary residence. It becomes 10 feet depending on how much of the buildings have been fireproofed. And the accessory building was not fireproofed. So in reality, to meet building code, any structure has to be at least 10 feet away from that existing accessory structure, or it needs to be modified to become fireproofed. So what you're seeing right here is the property at 15 feet off of the front yard setback. They've asked and requested to make it 22 feet, and the code would put it at about 37 feet. What would that leave between the buildings? A little less than five feet between the buildings themselves, with this particular building. Now this is what they've requested. It doesn't mean it has to be this way. The building has not been built yet. But this particular building would be less than five feet if it were to be set back at 37 feet.

- So is that another variance, then, that has to be granted?

- No. No. So for what we're describing right here, within Chapter 44 of the code, our requirement is three feet. So if the building, anything you built right there that was, be that close for the builders, who have a fully separate code, it needs, then, to be fireproofed, to keep that building within 10 feet. Yeah.

- So it's gonna, they're gonna have to fireproof the building?

- To keep it less than 10 feet, yes. Yeah, it would have to be-

- But then the way they, with the 22 feet, it will be less than 10 feet?

- If it's 22 feet, with what they have.

- Yeah.

- Right now, yes. It would be, sorry, greater than 10 feet at that point.

- Oh, it would be-

- Greater than 10 feet between the buildings, yes. If you put it at 22 feet, greater than 10 feet.

- Okay.

- No longer requiring the fireproofing.

- Got it.

- On the proposed structures.

- Okay.

- Jon, do you have any more presentation?

- I do not.

- Any other questions for staff? Jon, what's, oh, go ahead.

- No, no, I, let's just-

- Wave it off?

- Yeah, yeah.

- Jon, what's the, if the building, if the house was moved to exactly 10 feet from that existing accessory building, what's the front yard setback that's given in the plans?

- Right. So this is where I have not received how wide the house is exactly. So we'll have to go bring it back to the applicant to note, just, I can make a determination, but on this drawing, we don't have the exact measurements of what the house is itself. So I was using approximate right there. We had 15 feet was, so it'd be somewhere between 15 and 20 feet if we had it at 22 feet from the garage, from the back of the house to the, so from the existing accessory garage to the house at 22 feet would be somewhere between 15 to 20 feet between the structures.

- Okay. So if there was another five to 10 feet back, it would be 27-

- Correct.

- Then at 32 feet off of the right of way.

- Yep.

- Okay. Thank you. Can you go back to the street frontage with aerial? The one with the setbacks that you had, if you would be so kind. You know, my understanding with the average setback calculation, it's like, you know, when houses are jogged a little bit from one to the other? I used to live in a house on Doty Street where all of the houses to the west of my house were set back one distance, but all exactly the same. And all the houses to the east were different, and the front of my house actually jogged so that it conformed, splitting the block, right? That was pretty neat. And that's the sort of thing I think we're thinking about when we're looking at these average setbacks. This block here, I struggle to see any sort of line here. Like if we drew the average line here, it wouldn't make any sense to the actual distances of those houses. It's just, they're just, each one is completely different it seems like to me. And I mean, do we really just allow whatever to happen until half of them get done and then we say, "Okay, now we gotta lock it in"? That I'm not quite sure I get that. And it seems to be creating some challenges here. Can you comment on that a little?

- Oh sure. So going back to the idea of why do you start, you have a front yard setback for all buildings. 15 feet, that's what, that's I think part of why the pictures came into play, saying, "Hey, how about 15 feet?" It then notes, if the block has been built up, you need to stick to the average. I would

say that for most contemporary subdivisions, developers put into place where the buildings are pretty much in line. This is a different story because of the age of the homes. It's a wide variety in this area, of both older homes and newer homes, and the road going through a few years, well, a few decades ago, unlike say a typical city block where those have been platted for decades, if not well over a century in the past.

- And it looks like in this case that accessory dwelling, or that accessory garage, was built relative to a cul-de-sac that's nearby or something like that too. It looked like it was connected to-

- Right.

- In terms of circulation to adjacent properties.

- It's this building right here that it was all part of one at one point in the past, both this parcel that's onto the Earnhardt cul-de-sac, this was all, you'll notice Bunker, Bunker, Bunker. These were all part of one large property at one point.

- Got it.

- Could you close that blind? It's just, sorry. It's just really hard to read. See there it's a lot clearer.

- Do you have any other questions for staff?

- I've got one quick one. So you said before that 15 feet is technically, if there was no other established line, would be legal, correct?

- Correct, it's 15 feet for a building, the primary building itself, and 20 feet to the garage door.

- Okay. 'Cause I'm just looking at you guys just playing out all the multiple properties that are listed for Bunker. Our, with the decision we're making here, are we making any sort of precedent as far as what could attribute to that other property in the future?

- Right. So the one to the south, wherever this building ends up, will go into the new average for that.

- Okay.

- Any other questions? All right, thanks, Jon. Let's turn to our petitioners and hear from you, your take on this situation and what it is you want to do and how you might help us understand whether or not this is a grantable variance.

- And before we get started, if you can just position the tablet so that we can your face on the Zoom.

- Oh.

- Perfect. Thank you.

- Then you're on Zoom meeting.

- Oh.

- Have to watch myself .

- Well, I understand it's a very weird property. I've lived there since 1st grade. It's definitely different than when I grew up. Huron was still a two lane road. But as it got developed it got very crowded and a little weird. But we're hoping that by matching our neighbor that it'll still look regular, and then not have just an accessory building that doesn't really match the rest of the street, fill it in, it'll look more like the neighborhood.

- Anything to add?

- Yeah. That one there, for, that other house at, bought it in '97. And like I said, Huron Road was a cow pasture road. There was a blue house, my house, the white house across the street, and that was it. When they put the road in, they moved, they took another 15 feet to widen it and all that. So that got me a little shorter. Dorothy's house, the one to the north, that lot was so deep you could move that house back that far and you know, beyond. , but she has a real deep backyard, yet, kinda the way the street comes in behind. Now, I own the one to the south, and that's 120 feet I believe. So if you have to go 37 feet, you'd have to file for a variance to put a deck on the back of it.

- Yep.

- So I'd like to keep 'em all at 22, them two. So my house is 40 feet, the one is 40 feet deep or wide, with the garage too. Which would give me roughly about 18 feet for the backyard.

- Well, that depends a bit on the garage.

- To the back of the other garage. And I talked to Kyle, my neighbor to the south, and Dorothy, the neighbor to the north, they have no objections on it.

- Thank you. Any questions for our petitioners?

- Is the accessory building yours as well?

- Pardon?

- Is the accessory building yours as well?

- Yes.

- Okay.

- Took out one cake between the two properties, so it's not direct any more.

- Any other questions? Corey, any questions?

- Trying to think if it would be a relevant question or not, but it doesn't, it, I'm just noticing that the name, so I'm guessing that this is, Richard, this is your son Kyle's house is it, that's getting built?

- Yes.

- Yes.

- Okay. That's kind of the piece of the story I was kind of missing, like why are we building this house here? Like was it gonna be for like rental purposes or some, but it's a primary residence you're looking at for your son. So that makes more sense to me now.

- Yeah, and the buyer of my house really didn't want the garage, so.

- Any other questions? All right. Well, we'll deliberate a little bit and see what happens here. Thoughts, members, anybody? Looking at some of the concerns here relative to our factors of preservation of intent, exceptional circumstances, preservation of property rights, absence of detriment, and hardship?

- Oh, I'm sorry.

- Yes, go ahead.

- That's okay. Chair, so I can take a stab at a few of these. For the preservation of intent. It seems that the intent of most of the lots is that there's a primary residence, that would make it consistent with the rest of the lots. And so that to me would be within the spirit of the purpose and intent of the regulation, for the district in which it was requested. So I could say yes to number one.

- Mm hm.

- To number two, the exceptional circumstances. And this is my thoughts on that. If someone else has other thoughts. But these houses have been built over a great number of years, and at various degrees per feet from the building, from the building and the road, right? So it is all over the place on this particular road. And so there's a great deal of variance on that block as far as where the houses are put. The exceptional circumstance is that there's a building already on the lot, and you have to be aware of the fire hazard with that building. So I felt I could say yes, that there is enough exceptional circumstance. Am I thinking right?

- Yeah.

- I could add to that a little bit, given that the way the lots are structured, basically, is like the plots were drawn after buildings were already existed. So there were already uses of the property there, so now to conform to today's standards, the way the lots are laid out is a little bit more difficult.

- That would add one. I guess I would just piggyback onto that, that even the packet here this month says, point blank, that this lot is an anomaly within the city. So I think we've got, you've got an exceptional circumstance here. This is something that's not consistent to the neighborhood, it's a goofy neighborhood, but this lot itself is certainly unique in that circumstance.

- It seems to be the case.

- So I think for number three, preservation of property rights, in that, on that lot, there are, the property right is to have a residence. Is this variance necessary for the preservation and enjoyment of the same substantial property rights which are possessed by other properties in the same district? I'm not sure. I need help. I think it's yes, but I can't-

- I...

- Well, I can take a stab at it I think. In order to preserve property rights, what I heard from Jon was that there's already a legal non-conforming use in the sense that the only thing on this lot is an accessory structure. And in order to gain some degree of compliance by building that residential structure on the lot, that gets rid of that prior non-conforming use, so to speak. So I think it enhances and preserves the property rights by bringing that non-conformity back in line.

- Agree.

- How about the absence of detriment?

- I think that's definitely yes, because I think it's good that it lines up with the house next door.

- Yeah, right.

- And that it looks good. It will not create a detriment to the adjacent property, and will not impair or be contrary to the spirit, purpose, and intent of this chapter. So I think it's a good placement as far as, it will look pleasant.

- Yeah, just considering they're so varied throughout that area, and then, you know, this is great that it lines up with one of the households, but you're not gonna get all of them.

- So there's a little consistency. So I could say yes to that one. And then hardship, I, for me, that allowing, there's an accessory building there. That was on there, it's a nonconforming property. In order to have any kind of a backyard, you need to have some separation between that, in my mind, to use your backyard as anyone else would use a backyard, then some separation between that accessory building and the home. And so I think that if we could, if we had to go 37 feet back, that would really limit the backyard, and that would be a hardship that is not brought on, that is not self-imposed or based on economic grounds, 'cause there are other buildings there. That's why I would say yes to number five.

- And I would note, too, we heard from the alder saying that they had not heard any complaints or anything like that. I think that bolsters argument for, that there's no public, you know, nuisance or absence of benefit or a detriment to the community by granting this variance. Well, that sounds like, members, you have looked at this and found that perhaps passes the test. Do we, I guess one of the things we should ask is, do we-

- Corey's got a question.

- Oh, Corey's got a question.

- Sorry, I didn't want to interrupt while you were speaking. So the only thing that popped in my head right now is, considering, again, that four of these lots are owned by Richard Bunker, in the future, what impact would that have if these properties are sold with regard to that accessory building currently is more connected to the cul-de-sac property? Now, with the new property going on there, with the new residence, how will that affect if, I mean in the future this sells or what impact are we gonna be placing on the future of these properties?

- That's a great question. I guess, you know, looking at it, it's not split and it's not straddling a lot line, it's fully on this parcel that we're talking about, the subject parcel. So I would assume that if it were conveyed in the future, the garage would be conveyed, along with the primary residence.

- And if I'm correct, he said earlier that he had actually taken out that path in between, so it's not continuous anymore. So that connection between the accessory building and the other residence is no longer there.

- Oh.

- Oh, okay, that...

- That makes it-

- It makes it easier then.

- Yeah, since it's a standalone. Is there anybody else here wishing to speak on this matter, either for or against the petitioner's request? Just wanted to make sure we didn't have anybody in the audience that wanted to speak. Anybody online who wanted to speak, either for or against this request? All right, well, it, you know, if there's anybody who cares to make a motion with regard to this request, I'd be happy to hear it at this point.

- I'd like to move to approve this request.

- And that motion is subject to the discussion of all the elements that we just discussed, one through five?

- Yes, it is.

- Great. Is there a second to that motion?

- I'll second.

- Any further discussion of the motion? Hearing none, all in favor say aye?

- [Board Members] Aye.

- Opposed? Motion carries. Thank you, gentlemen. You've got your variance.

- Thank you.

- Thank you for your time.

- Just come up...

- Yes.

- Item three, Appeal 23-16, consideration with possible action on the variance request submitted by Tom and Nancy Dudek, property owners and applicants, to create an accessory building within a floodway district at 2468 West Point Road, Alderman Brunette, District 12. Members of the board, can you affirm or confirm that you do not have a conflict of interest in this matter?

- Yes, I confirm.

- I confirm.

- I confirm.

- I confirm.

- I confirm.

- And have you received any communication from any person or party about this matter, or you have not?

- I have not.

- I have not.

- Have not.

- I can confirm I have not.

- Okay. Great. And for our petitioners, would you please state your name and address for the record?

- Nancy Dudek, 2468 West Point Road.

- Thank you.

- Tom Dudek, 2468 West Point Road.

- Thank you very much. Do you swear or affirm that the testimony you're about to give will be truthful?

- Yes.

- And do you swear or affirm that the testimony you're about to give will be the truth?

- Yes.

- Thank you. Okay, as we did last time, we're gonna hear first from staff, and then do some Q&A with them, and then we'll have a conversation with you. Jon, do you swear or affirm that the testimony you're about to give will be the truth?

- Yes.

- Thank you, sir. Please proceed.

- Okay. So the property you're looking at right here is on West Point Road, where the star is. The variances in question is for Section 44-1169, permitted uses within a floodway district. There are 11 permitted uses that you can build up within a floodway district itself. Accessory buildings are not a permitted use. The applicant is looking to keep an existing building in the floodway area. You'll note in your packet the 11 different uses that are acceptable by the code. We can look at that specifically, but it's not accessory buildings. So the background is, back in 2018 there was a building permit that was applied for, to put an accessory shed in the backyard of the property. Site plans, they were submitted, and you'll note them right there, and approved back in 2018, to put a shed in the back of the property. Now the placement was right there because of what's called the floodway and the floodplain districts that are in the backyard of this property. There's very limited area that an actual accessory building could be placed in this area without actually heading into both the floodplain or the floodway. So those plans were approved in 2018. However, the applicants did not place that shed in that area that was approved. They placed it into the back of the property. You can see right here, and that puts it into the floodway itself. So to give a little background as far as floodway and floodplain. In the floodplain, if you happen to have a letter of map amendment and you put in fill that goes two feet or more above floodplain, you can develop within that area. In the floodway, it is extraordinarily limited to any sort of placing a building inside of that area, because it's as its name determines, it's a floodway. So the waters of a flood are likely to pass through. So there were FEMA flood maps that were published back in 2009 for this area, and it showed this map that we're seeing right here. And it leaves some upland area behind the property, and that's what was approved by the city back in 2018 for a shed. However, as noted, the applicants placed the shed then in the rear of the property back over into the floodway. So there was some back and forth as far as orders to remove the shed. It's my understanding that back in around 2020, 2021, because, as I said, you know, flood maps were up, were put into place in 2009. City staff knew that in the coming years or months there would be an update to the flood maps. And it would be possible that the map would change, and this building would be removed or put into a floodplain, have a different category, to where maybe this could actually stick around and not be in the floodway. So there was an agreement to allow the orders to stay for the time being until the updated FEMA flood maps came into play. Back on May 9th of this year, the maps were updated. This property remains the way that it was. The majority of the backyard is in the floodway. A part of the backyard is in the floodplain. And there's a part of the backyard where the site plans were approved that is upland outside of the floodplain. So with this in mind, then, the order is there to remove said structure on out of the flood area. Now, note this image right here was taken from an elevation certificate that was performed, I believe back in 2019, to verify that the area was in the floodway. It is. That was part of the elevation certificate, which you happen to have in your packets. These are some additional photos that were placed, that were given to us here today, by the family, showing the existing shed and some of the conditions out there. So I know there's some sloping that heads downhill. This makes sense that you'd have some

upland up by the house itself and it slopes down back towards the creek. So it's Beaver Dam Creek that's adjacent to the property over by Southwest High School. This is a side view looking to the east of the property, of the area where there's some upland. This is sort of looking west to that same area, but just a 180-

- And before you go from this, Jon, that's the area where on your original approval, they were placing the shed.

- Correct. So I'll go back up to these two, and so, where you are not seeing any blue, that is outside of the floodplain. And that's what you're seeing with those dashed lines in this approved site plan from back in 2018, the dashed line is the floodway. The other blue line that is just to the north of the shed is the floodplain. And they show the shed being somewhere between both the building and the floodplain itself. So, yeah, that's what you're seeing in this area right here. And there's one last photo of the existing shed, and then the down slope. So what's at play here is this was placed in an area of the floodway after regulations were known from decades ago. And buildings like this are not allowed in the floodway.

- Questions for staff? Go ahead.

- So is the reason that it's not allowed in the floodway, is it because you're not allowed to obstruct flood waters, or that flood waters can cause problems somewhere else? Why? Why isn't it allowed?

- Right. So in the floodplain you can add some fill in, and essentially take your structure, and try to get it out of harm's way.

- Okay.

- In the floodway itself, that's where the floodwaters are to go. So it's trying to not, you don't add fill in those areas because that would add an obstruction that would dam up the area to where more flooding would occur beyond it. So there's a floodway which is much more restrictive than the floodplain, which is still pretty restrictive.

- And it's about, is it about safety? Is it about not flooding areas that shouldn't be flooded?

- Sure. It is about safety. It's about property values for both that property, to make sure it does last, and up and downstream, yes.

- An obstruction in the floodway could conceivably create a damming effect that then floods other properties adjacent, maybe causing damage to residences or appurtenances to it.

- Right. That were not either in the floodway or floodplain because now it creates artificial dam around it, making the flood area even larger.

- Right. Other questions for staff?

- Those regulations on what could be done on the floodplain and the floodway, that's federal, correct?

- Right. So that comes from, the maps themselves are made by FEMA. FEMA, DNR, and the municipalities work together to create ordinances that we use the weight of to keep our insurance rates the way that they are, that are dictated by the DNR. The city has some leeway to change some things around, but it's very limited. You can take it to a board of appeals and ask for potential, for a variance. But as a city, to go ahead and keep our standing with the DNR and with FEMA, we have to enforce these laws, or these ordinances, to keep structures like this out of the floodplain.

- Okay.

- I will note, and I think the neighbors will, or the Dudeks will note this as well, there are some buildings that are legal, nonconforming structures in the floodway. They do exist. But the, I'm taking this back in 2009, there were flood maps before that as well, but we have clear evidence that these maps are from 2009. There was a structure built between 2009 and today. The maps have been updated. They have the same mapping as it was in 2009. So it's a pretty clear, we do not allow structures to be built unless it's one of the I I accessory structures that you can have within a floodway. And most of those are related to, say, putting up docks to access water, things of that sort. But not buildings.

- And is it correct that, that the city's compliance with things, including permitting buildings within floodways, or their maintenance of drainage ways, and you know, not along, that that impacts the flood insurance premiums of the people in the community?

- It does, yeah, correct.

- Yes, that's correct.

- In what way does it do that?

- Well, when the municipality has to do these things, to my understanding, it's just all part of a scoring factor that then contributes to the premiums that are paid by-

- Percentage of compliance.

- Yes, we have a very extraordinary and tedious check here this past year. Every five years we go through FEMA, and we are audited annually, and then we have a five year check to see what we've done as a city to help alleviate flooding and to have best practices and that sort. And so what we do affects what we can score that makes our rates either higher or lower.

- Okay.

- And so we were pretty pleased to keep our same rate that we had here based off of what we've done and the goals in the future, to keep on making things better to try to get that rate even better here in our next five year span.

- Thank you.

- Understood. Any other questions for staff? All right, let's turn to our petitioners. Would you care, please, to tell us in your words why we should grant this variance?

- The reason to put it in that location instead of the other one was, it is right directly back of our garage we were gonna have to take a tree down, the only tree we have that shades our deck.

- I was told by FEMA, I should've called you, permit that can be handled at the local level as it's on a floodplain. Well, their criteria was, if it doesn't interfere with the natural flow of water, we don't care what you do.

- Recording in progress.

- Sorry, guys. Go ahead.

- And if any of you people were, if you felt you could stop by my house and I'll have a cup of coffee ready, if you look at my backyard, you will have to admit that this would be the natural place that you would put that shed. And as far as property values and affecting the neighborhood, no, they're all, they support me on that. The one right next door, we can't count it, because that's my son who lives there. So. But other than that, the neighborhood, a couple of people said I wanna watch them put that up. He enjoyed it. I mean they, it was done in one day. But it hasn't detracted from anybody in our neighborhood.

- And so we don't have backyard that way, because we only have side neighbors, 'cause our back is Beaver Dam Creek.

- It's the creek, right?

- And it's a parkway.

- Mm hm.

- So it's, the city owns 50 feet on each side of the creek. So we live there, and the house next door, where our son lives now, and where we live now for over 50 years and we've never seen water there, in that park.

- Beaver Dam Creek was overflowing in the springtime. But it's only happened since the city put a new culvert in by the school.

- Before that, when we moved there, and they had the big round metal culvert, our kids would play in there. Now, I think it was in 2009, The city put in a culvert, it's cement and it's narrow. So sticks block it up, and then the creek backs up, but it doesn't come in our yard, you know, it has 50 feet on each side it to go to.

- So the flooding doesn't get past to you?

- Right.

- I will admit, that I'm just a bull-headed old truck driver. When I was going to get a permit, Paul Neumeyer I think it was-

- Mm hm.

- And he said, "Well, where are you gonna put it? You know, there's a floodplain." I wasn't aware of that. And I said, I showed him on the chart where I put it. And obviously you can't do it, because FEMA won't let you.

- Right.

- Well, I talked with FEMA. I went down to Chicago. And those people, they won't put their name on a piece of paper and sign it, because then they're gonna wind up in a meeting like this. But they're, they said as far as floodway, all they're concerned about is, is it gonna impede the natural flow of water. You know, if you look at my property, it doesn't. In fact, the natural flow of water way, down the hill from West Point goes past my shed out to Beaver Dam Creek.

- Mm hm.

- I just... Something happens since this all started, now I'm, this is it. I used to drive a truck.

- He drove that till he was 79, he's at 81 now. So two years ago he had to get off the road.

- That's what my dad did too.

- So it's just, it would be, to put it off at the back of the drive, then it would have to be fireproof, because it's gonna be close to the house.

- Yeah. I don't know what that regulation is. I'd have to defer to staff on that.

- Yeah. Can you put that one up, where it shows the deck and the back of the garage? There. That's the tree that shades the deck. So that tree would've had to come down. And then that other little shed, that's the next door.

- That's next door.

- So we would have to drive on their property to get in our shed. 'Cause there's not enough feet. That shed is 16 feet long.

- All right. Does anybody have any questions for our petitioners?

- So when you were told that you couldn't put it in the floodplain, you went to FEMA and asked them?

- Yeah.

- And they said they didn't care. Did you then go back to the city?

- Yeah.

- And what did they say?

- Paul said I have to move it.
- Mm hm.
- And he came and some inspector came and...
- Brenda Seidel came.
- With that, and each time I got a \$50 fee I had to-
- They inspected it 36 times. We paid \$1,800 in inspection fees.
- Mm hm. Okay.
- While I was trying to persuade to leave it where it was.
- Mm hm.
- I invested, I don't know, she keeps track of it.
- Yeah.
- But I figured, well, I'm gonna prevail at some point.
- We thought it was settled, then they were gonna rezone it, but we didn't get that.
- Right, when they put out the new maps?
- Yeah.
- Right.
- And how long has it been there?
- Since 2019.
- Okay. So about four years.
- Any other questions for the petitioners?
- The reason for the larger shed? I mean, you mentioned how you'd have to go on the property to use your shed. If you put it at the backside of the house, what do you, I guess what do you store in there that requires, that would require you to go on your neighbor's property to have access to the shed?
- Well, the way you'd have to place it would be, so the door would be, the entry would be facing their property. So that entrance would be facing the neighbor's property.

- Okay.

- We'd have to have a slope going up to it, and then we'd have to drive on the neighbors in order to go up the drive.

- I think the question was, what are you...

- So is it like lawn equipment? What, I guess, why the large structure?

- We have our lawn tractor in there and we store our patio furniture in the winter and stuff like that.

- Do you keep like a trailer to load it up or do you just drive it out and drive it in?

- You drive it and then drive it out.

- Okay.

- Any other questions for the petitioners? Is there anybody else here to speak to this matter? Either for or against? Alderman Brunette.

- Sit down or?

- Come on up and join us at the table.

- Thank you. I appreciate you allowing me.

- And before you begin, please state your name and address for the record.

- Alderman Jesse Brunette, 2595 South Trillium Circle.

- Do you swear or affirm that the testimony you're about to give will be the truth?

- Yes.

- Thank you.

- Thank you-

- Alder, could you turn your tablet towards yourself? Thank you.

- How's that?

- Perfect.

- Okay, well thank you for allowing me to speak. I have been involved with the Dudek family for a few years, ever since this all happened. And I can't recall the specific details. I will say that they did over the last, maybe two years ago, three years ago even, did exercise good faith in trying to resolve

the issue. Did have numerous conversations with them, trying to help them navigate through this process, and at that time trying to figure out which way? Do you go to the board of appeals? Do you go through the inspection department? And they had been working closely with Mr. Neumeyer, who is now retired, trying to figure out the process. And I do recall specific conversations with Mr. Dudek and Nancy, trying to work out a solution with FEMA. It was their understanding that the authority would come from the city government, the city government could grant the variance. For whatever reason, two years ago perhaps it was the hope that this would be removed from the floodplain, the property, and that's where we're at now. So I think that they would've resolved the issue, they were hoping for a favorable outcome. I will say that they did pay the inspection fees, \$1,800. I did witness with my own eyes the \$1,800 of receipts as they're making \$50 payments. So now, given the circumstances that Mr. Dudek's in, looking for some flexibility. I personally have no issue or concern. I, as a alderman, I have no issue or concern, but I respect the authority of the board as you kind of make these tough decisions.

- Thank you.

- But since he's retired now we're on a fixed income, so there isn't gonna be any extra. The inspection, well, the inspection fee went up to 75.

- Any questions for Alder Brunette? All right, let's begin with some deliberation. Do we have anybody out from the audience who was, want to speak for against this request? Or online? Okay. All right.

- Before the board begins deliberations, if I could, could you give me access to put my screen up on the Zoom please?

- Sure.

- So for the board's understanding, the floodplain is actually a separate part of the zoning code and there's actually, its own separate provisions in there about the board of appeals and the standards that you use to grant variances when it, when it has to do-

- Sure there is. Of course there is. Of course there are, since you spend so much time going over the elements you're used to, and now I'm gonna throw a monkey wrench in the whole thing.

- Oh, good to know.

- So, just bear with me here while I share this. So...

- I had my statement all ready to go, and now you're changing the rules.

- I know. Well, I mean, Corey, do you expect anything else from me? So, this is-

- Jon, could you minimize the window of people there so we can see all the text?

- And I can try to make it a little bit bigger but it moves the screen briefly.

- Is that okay?

- Sure.

- Okay. Okay, so there are actually kind of three separate elements, three separate like sections that you have to think about. So this is the first section, that all of these elements have to be convincingly demonstrated. And we can go through. So a lot of these kind of mirror some of the other standards that you're used to. But there's some other things. Obviously the second one is, it's directly related to the Floodplain Ordinance, which is where this, the floodplain maps are approved and all of those related issues come from. And you'll notice also that if the variance were to be approved, the map actually has to be amended. Before I move on, did you have a question?

- I did.

- Okay.

- Is the definition of hardship the definition we are used to of hardship, or is it a different definition of hardship?

- I believe it's the same. It's not separately defined in this section of the code, which typically means that we use the commonly understood definition. In this case, the hardship would be whatever the difficulty is in compliance with the ordinance.

- So the hardship has nothing to do with how much it costs the person or the inconvenience of the person. My understanding it's, a hardship is, the complying with the municipal code is not self-imposed?

- That's correct.

- Nor is it based on economic grounds.

- Solely on economic grounds.

- Yes.

- Solely on economic grounds.

- Solely, yep. And so this, I'm actually skipping ahead to the third element here, but there's actually strict limitations on what variances cannot be granted by the board under the floodplain. And if you see number two specifically says it can't be a hardship based solely on an economic gain or loss. And then number three is, what the other thing we're used to seeing, which is that it can't be self-created.

- Created.

- Created, okay.

- Can you go back to the ordinance please?

- I sure can. Yep. This is gonna be a little bit of a process. So I appreciate everyone's patience as we

go through.

- So, in number two, now, given what Jon said earlier and my understanding of the process, this is probably more just giving me an understanding than it is an actual question. So every time a new FEMA map comes up, you have to, you negotiate with the DNR and FEMA to, and they create like a boilerplate ordinance?

- Right, so-

- That you eventually slowly modify and adopt, and at what, what is the interval for that? Is it 10 years? Is it?

- It's when the GeoMaps get updated and that was, for this process, 14 years ago.

- Okay. Is that typical or?

- It's pretty typical.

- Okay.

- And the ordinance itself did not change much.

- Yeah.

- So the attorneys got involved. Sort of changed some words around. But for the most part-

- Probably made it worse.

- But for the most part it stayed in line with A, what it was before, and B, what the DNR recommends.

- Okay. And then, so hardship due to the adoption of a floodplain ordinance, this wasn't put in there for the original floodplain ordinance, it's for every renewal.

- I'm sorry, can you?

- So it says the hardship due to adoption of a floodplain ordinance. To me that makes it sound as if at the time of adoption. Or am I misreading that? Which is entirely possible.

- No, that's right. So, but basically we, every time we get new maps, we get a new-

- You gotta readopt?

- Yeah, and we do the, and and I'm sorry, not new maps. We got a new like bottom to top ordinance from the DNR that we have to-

- The boiler plate thing that you-

- And so we basically like scrapped the old one. Replaced it with this one.
- Replaced it, okay. All right.
- So while a lot of the provisions are the same, it's-
- Technically a new ordinance?
- Exactly.
- Okay, understood. And then number three, contrary to the public interest. So we were discussing earlier about the city's insurance rates and the, I assume FEMA has a score for flood for everyone in that neighborhood that their insurance uses in order to determine rates?
- I can speak to that, if that's so-
- That would be...
- Now, I'm trying to be as truthful as as I can be-
- Yeah, yeah, yeah.
- As far as knowing, 'cause I don't know every last detail.
- Yeah.
- But they take the cumulative of what we have as a city for things like non-conforming structures and structures that could be apt to flooding. And the more that you have in these things, the more you get dingd and your insurance rates for the city go up.
- Okay.
- So can you give me... Can you give me some kind of a gauge or a way to understand how much harm the city would come to where we'd grant that variance in that case? I know I'm asking you a hard-
- No, I don't wanna give, 'cause I can only give a ballpark on that one. I would note this. So this is clearly in the floodway. There was an elevation certificate that was made that shows it feet below the floodway itself.
- Okay.
- It is in there. We have what are called letter of map amendments for places that are on floodplain fringes, where places do get taken out and removed by a map because a surveyor went out to the property, did a survey and found, because FEMA's doing this for the whole nation.
- Yeah, yeah.

- And they're very close, they're pretty accurate, but they're not exactly accurate for every last part. This property had the certificate done to try to get it out. It didn't meet it.

- Okay. Thank you. I appreciate you at least attempting. I'm just trying to get an idea on the impact of yes or no, it would have on the city. 'Cause that goes, at least to me, the public interest.

- I would have some detail for kind of the FEMA and setting rates and stuff. A lot of times when they're determining rates with regard to the risk that's present, they a lot of times are looking at like 10 year flood plans, 50 year flood plans, 100 year flood plans. The Dudeks mentioned earlier that they'd lived there for 50 years, have never seen a flood or enough of water to contribute to a flood. But within probably the last 100 years, this area has probably had a 100 year flood or maybe a 500 year flood. So a lot of times FEMA is using that information in their calculations and determinations on how they're setting these zones. So when Jon mentioned, like they're usually pretty detailed or pretty accurate with these ones, they've got hundreds of years of data that they've used on to determine these risks and these . And a variance such as this to approve, to make a change for a shed, unfortunately probably wouldn't do the city a benefit. It would not be within the public's interest to make a change like that to our map, because it could affect those rates.

- Thanks, Corey. Can we move forward?

- Yeah.

- We have with this here. Just let's-

- You bet.

- Let's hold other questions right now as we go through this, and we can go back to the next section. So I'm assuming that the number four that says it's consistent with 44-1043 is the actual-

- This is just the statement of purpose for the Floodplain Ordinance. It's here, if you guys wanna look at it in a little bit more depth at any point, just let me know. It's just these however many, nine subsections. Do you wanna look at 'em real quick? Do you have a response one way or the other?

- No, I just read-

- I'm reading these.

- Yeah.

- Okay.

- Yeah.

- Yes.

- Okay, moving on to-

- The other thing, then, under B, these are another set of criteria that have to be met. And things,

but obviously you can read them for yourselves, but it won't cause an increase in the regional flood elevations. It has to have been shown the applicant had sufficient cause by the applicants. The hardship not only has to be a hardship, but it has to be an exceptional hardship.

- So this is in addition to the other?

- Mm hm.

- Yeah, this is, so these are kind of like the baseline, and then there's...

- In addition.

- I didn't draft it. This is one of those-

- No, I'm just asking, I'm not criticizing, I'm just asking.

- I don't know why it was split up, but they are additional requirements that have to be met.

- So I'll take a crack at it with the caveat that I'm reading the ordinance as requiring a showing of everything, or all of those factors. And I'm seeing that compliance with the ordinance was possible. In fact, back in 2018, there was a site plan that was reviewed, accepted, and had been approved for where the shed was to be placed. And the shed wound up not being placed there. I'm also not seeing any unique characteristics of this particular property. It looks to me like the floodway, at minimum, is impacting at least the neighboring two parcels. So I take it probably three neighboring parcels at least. So I take it that this is a floodway that's impacting the entire neighborhood. So I don't know that I'm seeing, for my purposes, the unique property characteristics that justify a deviation from the ordinance in this particular circumstance. So because I'm seeing at least a couple of reasons or a couple of factors that are not satisfied, I would have a hard time approving this.

- I hear that. Let's go on to C, though. Just there's a couple more strings attached to this process here for us. So we will not also grant a variance that would do these things.

- These look like the regular variance things mostly.

- Yes. Yep, so you see the impact of the rights, the property values of other persons in the area. You can't actually grant a variance without first amending the applicable maps. So if the board decides to grant the, that it is intending to grant the variance, you would have to hold it and we would have to go about getting those maps amended first.

- And the map amendment is still subject to their approval?

- That would actually go through Plan Commission I would imagine?

- So that would be, it's an extraordinary situation where a variance is granted to essentially take a letter of map amendment and say it does not count right here. So it had to go through what's called a letter of map amendment with FEMA. Typically when that happens, and you are amending a map, it's because a surveyor goes out to the property and determines it actually is above a floodplain. In this case, we'd be saying the floodway does not exist in this particular area.

- For this parcel?
- Yes, for this parcel, yeah.
- Is there more beyond item six here?
- Item six is the last one. And then the last, Sub D is just about notice to the applicant. Those are all of them.
- How long do you think that process would take, to go through?
- For a LOMA?
- Just rough estimate.
- For the overall process?
- Overall process. If we said yes, how long would it take to get the map amended, get approval by them, get it back here, and then I assume we'd have to re-vote on it again?
- Months.
- Months, okay.
- But not years?
- Not years, no.
- Okay.
- He might not be here in years.
- Well, the other thing too, I imagine, is this is something that Plan Commission or some other body would have to do. I don't know that the Plan Commission would see the same with us where we'd grant a variance to say, "Okay, let's ignore FEMA's flood maps and floodway maps for this particular property."
- It wouldn't go through Plan Commission.
- Okay.
- It would be the extraordinary circumstance, because we have other map amendments that come to us on occasion. Typically this is for a floodplain, where people put in fill in the plain itself to then build homes. You have seen flood over on the east side, with the homes in the old north or along the bay, until those homes got removed from the updated flood maps. Many of those homes were taken out. But you see that in floodplain areas. Floodways are a different story, because you can't develop in those areas. And so unless you, there's a, there could have been a potential for this area

to have reverted from a floodway to a floodplain. Then if it was a floodplain, you could have another separate action to put fill in the property to then get that area out of the floodplain. But that's not the case here. It's in a floodway.

- And I just have one more question here for staff. Jon, if this shed as it is built were picked up and moved to the back of the garage facing the yard, is the size of it bigger than what was originally permitted? Or would it fit outside of the floodway at that location?

- So it was a 12 by 16, which was noted on the plan itself. I see thirteens written on your, on your plan. Is your existing garage 16 by 13? Or sorry, shed?

- No, I think-

- 13 feet high.

- Right, 13 is the height.

- It's the same, so there are permitted and approved plans that can place the building in the upland.

- So if somebody could help them move this to their, granted they've got tree issues and patio issues and other things like that, but it could fit there. This existing shed that was built could be picked up and moved-

- Correct, yep. There are approved plans.

- Any other questions for any of the parties involved in this business?

- I had a question.

- Go ahead.

- So, we're in the floodplain, so wouldn't that reduce the value of our property? Our taxes have never gone down over the years.

- I'm not sure what's the correct answer to that.

- I think that's a question for the assessor.

- Just wondering that, because that...

- I mean, in theory-

- I mean, our property value has gone up. You wouldn't think it would go up being...

- Yeah, but maybe it's the adjacency to the creek, you know, and that you've got that amenity, that public amenity behind you. There's a whole bunch of things. We're not the board of assessors here. We're the board of appeals. So we're gonna turn to deliberations here and see what we can work out. Anyone want to make any case for or against, take any action, make a suggestion or a motion?

- I guess I kind of started it before. I guess it would amend that thought that, or add to that thought that I think that granting this variance is contrary to the intent of the ordinance, which is to prevent development in the floodway. For those reasons, as well as the reasons I stated before, I would move to deny this variance request.

- I'd second the denial.

- There's a motion and a second to deny the request.

- Who was, I'm so sorry. Who was the alternate for now?

- Corey's the alternate right now, but now that we have-

- Oh.

- Yeah.

- Oh, so, I shouldn't be voting, sorry.

- That's okay. Thanks, Corey. I kinda forgot about that.

- Yeah. I did as well.

- All right, so we've got a motion on the floor. Is there a second?

- Can I speak to it?

- Absolutely.

- All right.

- If you make the second.

- If you second for the purpose of discussion.

- Oh, if I second it for, okay. All right, I'll second it for the purposes of discussion. I have to agree with what you said about this concern. I feel horrible, because I wish I could say yes to you. I, as a fellow human being, I just, my heart is breaking for you right now. I also know that in the beginning you were told, you submitted a plan, you were told this is where you could put it and you chose not to. And you were very honest about that. And I sincerely appreciate your honesty. I have to sit here now as a judge and I have to follow the law, and according to the law, as I understand it, and I have put a lot of thought in this at home and when I came here, because I'm like, I always like to get to yes, I always like to find a way to say yes, and I am sorry, but I can't find a way to say yes. So I am seconding this motion, not just for the purposes of discussion, but because I do agree with it, and I'm very sorry. And we still have to vote, but I wanted you to know where I was coming from.

- Any other discussion on the motion? Hearing none, all in favor say aye?

- [Board Members] Aye.
- Opposed? Motion carries. Sorry, we deny your request for a variance.
- Is there anything the city can do to steer them toward any help in getting it moved?
- You're working with the inspection folks again, who will have to do the orders. I know when it comes to things like this we're, and it's been a long process, but if you keep on showing that you are gonna move it somewhere else to try to limit the sort of fines, it's something that's considered. So if you can show in good faith that you're trying to move it, or it's not that you're gonna move it tomorrow. So I'd say work with the inspectors to see if there's a timeline that can make this work to where it's, lessen the burden on you to make it happen.
- Yeah. How much time have I got now? I was, now, I'm tied to this fricking chair, so I can't do it myself. Well that's my son over there. He's in his truck in Virginia right now.
- I understand on a personal level that that's the case, but the orders have been there for now pushing five years at this point.
- So we've held for a bit.
- It's been held, yes.
- Because of the map amendments. Is this something where, you know, you and the inspection department can work it out, say let's make it another year before the thing's gotta be actually moved so that they can find time to get some help?
- But it's not something that I can personally just decide. I will talk with the inspection folks, though. The general vibe when it comes to inspection folks is if there's legitimate good process to try to make and rectify what's happening, is in occurrence, you have some plans and you're looking to ask folks to help you out, that timeline can be prolonged.
- Yes.
- To make it to where it's not, where you're not putting the fines on. They want to see progress. So as long as there's progress in some type or form, I think there'd be some sort of potential to help facilitate this along.
- I know some folks looking for some volunteer work in September that maybe we could make that a project.
- Yeah.
- If somebody wants a shed, you can have it.
- You almost have to, to put it up, if you move it, .

- Well, you guys will have to decide that, I guess.
- I really wish we could decide differently, but it's just, this isn't the first time we've had to turn down good people who have tried to do the right thing. And it's the thing we don't like to do here. But in this particular circumstance, considering the floodway, there's just...
- Yeah, that whole area, there's two, three much bigger than my shed that, right alongside of the creek.
- Well, my understanding was those were put in before the flood map.
- There are some that are grandfathered in.
- And had yours been in there earlier, you know, before the the floodway map, you'd be grandfathered too, but we can't control that.
- I'm sorry, but we've gotta move on to the, end the conversation and take care of the next agenda item.
- Okay.
- Thank you for being here.
- Thank you very much.
- Next up, Appeal 23-18. Consideration with possible action on the variance request submitted by Ben Vanderkinter, property owner and applicant, to create a wider parking stall within the front yard setback at a single or two family residence at 3035 Brook Park Drive in Alder Grant's District I. And please, welcome, state your name and address for the record.
- Ben Vanderkinter, 3035 Brook Park Drive.
- Do you swear or affirm that the testimony you're about to give will be the truth?
- Yes.
- All right, so we're gonna hold with you again for a little bit and we'll talk to the staff first. Jon, do you swear and affirm that the testimony you're about to give will be the truth?
- Yes.
- Well there was a pause?
- Oh, no, sorry. I was just talking right there, so yes, I do.
- You know I'm hard of hearing, be positive about it.
- Please tell us about this request.

- I think the board needs to speak to conflicts.

- Yeah.

- Oh, sorry. Yeah. Thank you.

- We all help each other, and save each other.

- Thank you, Corey.

- All right, board members, I am going to ask you to say I confirm to the following two statements. I do not have a conflict of interest in this matter?

- I confirm.

- I confirm.

- I confirm.

- I confirm.

- Confirmed.

- I have not received any communication from any person or party about this matter?

- I confirm.

- I confirm.

- I confirm.

- I confirm.

- I confirm.

- Okay. All right Jon, go ahead.

- One second. Yeah. So the property in question here is at 3035 Brook Park Drive. This will be a two part question that the board will need to consider, because there are two different sections of the code which are being questioned. So the property owner is looking to create another parking stall within the front yard setback, and then also looking to have a variety of issues with 44-1746, Subsection 3, Subsection C, where the width of the driveway of the garage, the driveway shall be tapered between the garage or edge of a legal uncovered parking space in the property line starting at a minimum of five feet from the parcel when leading to an uncovered space, the driveway width shall be the least possible needed and shall not exceed 25 feet in width at the property line. And so the site plans that were shown show two different concepts and we'll get into that a bit as far as where there's some variation on that. So you're seeing right now an overhead of the corner lot. This

is the building itself. This is a shed in the backyard. This is a fence. This is looking at the property from the front yard. You'll notice the vehicle parked in the driveway and another image here of the two stall garage with the two legal parking spaces out front and the two that are inside of the garage. So the property owner is looking and gave us two different things to look at here. They want to put a parking stall within the front yard.

- Can you zoom that?

- Yeah. By the fence, if you could. I guess I'm looking at the real picture.

- Lower right hand corner there, too, you can zoom that.

- Right here.

- Now we're nowhere near the-

- That's the shed.

- Yeah.

- The shed is right behind there.

- Zoom in. There we go.

- The shed.

- So this is a, the blue is the existing area of the house. And this is not to scale, but it's what you're seeing right here is a shed near the property line. The sidewalk cakes. This does not show the existing actual tapers, the flares that you see on most every driveway out that street itself. But the applicant is looking to put in a parking stall alongside the driveway that does not lead to a legal parking stall. So, in the front yard setback, you ought to have driveway spaces that lead to legal stalls. What would those be? Garage stalls or a drive that leads to the side or rear yard of your property. So this does not lead to a front yard parking stall. The one exception we have for attached stalls are when it's a single stall garage. At that point you're allowed to have the front yard exception, unless it's in front of a point of entry into the house. So the applicant is seeking relief to put in an extra stall alongside of the driveway. Also doing something that is different here insofar that asking for the width of the overall drive area to be larger than 25 feet at the right of way. And then having the actual funneling of the cars to go the opposite way that it typically would. Remember they'd flare out onto the roadway itself. This is asking to flare in to the existing driveway. So normally you would have your sidewalk and it would go out to allow for a turning radius of the vehicle so it does not disrupt the curb or the grass nearby. This would actually be the opposite of that, where you would funnel in towards the roadway itself. As a note, well this is one of the few things that the Department of Public Works, when it comes to working inside the right of way, where you can have a variance for it. There are no specs where the DPW allows for a driveway to go and have its, rather than having its flares going out towards the road, to go in. It should be the flare being five feet, or two and a half feet on both sides, flaring out towards the roadway, not in towards the driveway.

- That flaring in is typically something we're doing on the other side of the right of way line for a

wider driveway.

- Yeah.

- It comes to the line.

- Yep. So this is having an hourglass shape. What was being proposed is back into the driveway. If you've got a question right now, I can try. This is, there's a lot going on with this one.

- There is.

- And just to be clear, guys, I submitted two requests just because this is my preferred request. Jon has been very patient and worked with me a lot, so thank you for that. But he proposed the second option, which is something I would consider. But, yeah, so just to be clear, I kind of bunched a lot into this one, and I apologize for that, but figure I got one shot, I may as well make it the biggest one I can. So thank you for your patience.

- Do you have a question right now or no?

- Why would you have flared it? Like why would you do that? Why would a person want it to flare that way? I mean I'm gonna ask you later.

- Yeah.

- Okay, sorry.

- Let me talk to staff right now, but I'm asking for clarity from Jon right now.

- The applicant will get into it, but I think it's a safe way.

- Oh, okay.

- Yeah.

- Okay. It's a little, okay.

- So as noted there is a second option that was presented. I want to note that within the code we are supposed to, if a variance is presented, is to take the least possible variation to the code itself. So this is going back to our Section 44-1746, sub 3, sub C. There's actually two parts to it, there's some clarity with this one. So it says both if you have a triangle taper it needs to happen five feet past the right of way and taper then to go beyond 25 feet, and at the right of way the max it can be is 25 feet. So what's being shown right here is another request that's a variation of that to where you wouldn't have, well, the applicant has shown there'd have to be a normal typical flare for a driveway to go back out at the right of way, I'm sorry, at the apron. But to have one wide driveway that would've come, 'cause if this were to be approved, it'd be a legal parking stall, legal parking stall, legal parking stall. In the future, the reason why that's there is these are sidewalk cakes. Your sidewalk cake should go and be one straight line for the folks who are in DPW. They don't want to see things at different angles, 'cause it's hard for them to keep uniform construction methods. This would keep this more in line

with the more uniform construction method. It'd just be a wider driveway. Now all that said, these are what the applicant is suggesting. I do want to note that the city reviewed this and came back with two ideas that are meeting the code that would accomplish getting extra driveway space. So as noted, you can have a parking stall alongside your garage if you have space. It just can't be in the front yard setback. Now there is a shed right there. The shed would have to be moved. And I want to note this was part of a variance years ago to allow that shed right there, somewhere back in the teens, a variance was approved for this property to allow the shed to be placed in the spot where it's at. 'Cause normally an accessory building would not be allowed to be that close to the front right of way. But there is space on the property, as I'll zoom out, for a shed to be moved. Too far out. To where it can be moved and you could have the space to meet the code. I'm gonna zoom back in now. And just show what could be done. So your right of way line, your property line is right about here where your sidewalk cake is in play on the map. Just in case we're all on the same page, your sidewalk cake is this area right here. Pretend the sidewalk went through. That's your property line, the sidewalk could go from the future. That's why the cakes are placed in that area.

- We'll discuss why it's called a cake another time.

- I like that it's called a cake.

- Yeah. This part that's closer to the house is approximately the property line. This part back here is the back of walk. That's where your flares typically start and they go flaring out two and a half feet on both sides. So going back to what could be done to create a triangle taper to a driveway that's wider than 25 feet. A triangle taper could exist to where it goes and extends five feet beyond the right of way line, and then creates a parking stall alongside the garage. And then the applicant also wanted to put an extra two feet in on the side, which is legal. It's going back to this photo, this line right here leads directly to the garage. We've had this in the past, we had it our last meeting. You can extend your driveway two feet beyond your garage door. So initially the applicant asked for more than that. Would you consider making that down to two? The applicant. So he did update his plans to make that to where this side would be two feet. The difference between what he's asking for, though, is that the taper would start in a normal code past the property line. He's asking for relief to have that two foot line go down to the actual apron itself. A second option that would be within the code would be to expand the driveways. Remember the driveway can be 25 feet wide at the right of way line, 30 feet out at the curb and gutter itself. So right now the driveway is about 17 feet wider, 'cause it has the two stall garage. He wants to make the extra parking stall to the north and have that little bit of space in the south. So if you kept the same driveway on the southern edge and then expanded that driveway to the north some more, you could make it 30 feet at the road, taper it down, go to the sidewalk cake, and then make another taper to where you're now at 25 feet at the right of way. Go back up to the north and create a legal parking stall. So you could do that as well. In both situations, in this case, it would be legal. We wouldn't be here today.

- Yeah.

- But it would require moving the shed. The issue, so we have two things that come into play. The one I think that's just more obvious and is not as convoluted is he is requesting a third parking stall, that stall being in the front right of way. It doesn't lead to a legal parking stall. The second being this question of just where does this property line hit at, sorry, this driveway hit at the property line? He's had two options. The city has come back with two other options to this and it's up for you to try to make heads and tails of what's going on here. So I expect plenty of questions on this, so please

go ahead and fire away.

- I mean it just, it seems so similar to the ones we have never granted, ever, that we would allow this parking space to be in the front yard like that. I don't recall. I mean we always say no to that. Why? I mean why, can you explain-

- Well, except when it goes to a stall on the side of the garage.

- Oh yeah. Well, we wouldn't be here-

- Oh yeah, if it goes to-

- If that were the case.

- Yeah. Yeah, if the shed were moved it would be no problem. So did you make the applicant aware of that?

- Yes. Yep.

- Okay. All right. And you just still thought, so you just thought you'd give it a shot?

- Yes.

- Okay, all right.

- I'll talk when I have-

- fine.

- I will note, I didn't put as part of this package, there's a lot, there are some, and it was not in your package itself, but it was on this PowerPoint. There are other houses in this neighborhood who have had legal nonconformings to where there are another driveway stall that's placed alongside. So it is not like it doesn't exist. It does in this neighborhood.

- Yeah.

- I know.

- And I know that doesn't mean that it goes, and he explained that to me.

- Yeah.

- But I understand-

- There's a number of contractors I think who will wink and nudge and put a driveway for you.

- Absolutely.

- And we've had to force people to tear those out.
- Yeah.
- I understand. I don't wanna do that, that's why I'm here.
- Other questions for staff? Other questions for staff? Jon, can the property owner here put a driveway in on the cross street?
- Oh, on the, rubbing out the north south route to east west?
- Yeah.
- No, it's one per parcel for a single family.
- Even not a corner?
- Yeah. If it was a duplex you could, yes, but not for a single family.
- Any other questions for staff? Sorry, I'm like, I feel like . All right, well let's hear from the petitioner. Tell us in your own words why we should grant you whichever one of these flavors you wanted to have done.
- You bet. First of all, I want to thank you all. This isn't kissing up, but thank you for your time. Second of all, I did apply for a variance to have the shed put here in 2008. It was a little bit earlier. But either way, it is a 12 by 20 shed on a concrete poured slab. So moving it, although hardship is financial, that's not a good reason. I know that. I understand from when I applied for this one. But really what I'm looking at is I have three teenagers and I am running out of parking, because I have a 16, 15, and 13 year old. So with that said, I'm looking for an adjacent parking stall in the front of my yard, or I will call it the side, but the front of the property. And the reason why, I did have a contractor come out and say, "Yes, we could pour you a slab, but it has to taper to the right of way." And although that's okay, it doesn't allow that third car to enter and exit the driveway with another car in it. So without driving across the lawn or doing whatever. So with that said, my original proposal was to just go out, taper it to the road. Again, there are several other examples in the neighborhood, and I thought, well, let's give it a shot. Jon has been very patient, again, explaining the differences. And I wouldn't be opposed to widening the driveway to a full three stalls. The disadvantage with that is if I'm gonna do that, I'm just gonna tear the whole driveway out and pour in three stalls. I'm not gonna pour a new slab and a 40 year old old slab next to it. I would just gut it, pour it all, which is fine. I'm not opposed to that. Unfortunately, I put the garage door on my shed on the side of the shed facing north. If I put it on the end of the shed, I would see that that would lead to a legal parking stall because it would be into a shed that I could legally park it.
- Would it?
- Well, the shed is 12 by 20 it, what's that? Well maybe, I would only assume, I apologize. I don't, I'm not trying to speak for the rules.
- Oh, that's interesting.

- But at least that's my understanding. Maybe not. I'm not looking to take up and pour half of my side yard in concrete. I just wanna get another place to put a car. I've been cited several times over the last almost 30 years of living there for parking on the street, parking in the setback, parking in the right of way, parking, wherever, just because, whatever, I mean, I forget a car out on the street, a lot of reasons. So I don't want to do that. I don't want to, you know, get into that. But that's really what I'm asking for. And I just ask for the thoughts and ideas. If it's not allowed, I'm fine with that. I'm not disgruntled. I'm just, you know, and I get it. You have to play by the rules. So that's what I'm looking for, guys.

- Thank you. Any questions for the petitioner? All right, let's deliberate. Thank you. We've gotta consider five factors, not 17 as with the floodplain.

- Not a flood plain.

- That's a tough one, guys.

- Yeah, that was really bad.

- That's brutal, I get it. And your job isn't easy. I understand.

- But those factors are the preservation of intent, exceptional circumstances, preservation of property rights, absence of detriment, and hardship. So does anybody have any thoughts on how those elements come to play with regard to this item? And do they allow us to grant a variance?

- I'm having a hard time getting these. This is all self-inflicted.

- Yeah, no, I, hey-

- And you've got legal options.

- I just, I can move the shed and I can pour a big slab.

- Maybe, I mean, talk to Jon. If you could just knock a door on that side. You know, if you could do that, I mean if, I mean Jon will tell you whether or not that works, but... Yeah, this is just, I mean, your kids don't have to have cars.

- Like I said, these are all, I understand from the variance last time, I mean, it can be cutting down trees and I can't worry about like, I get all that, so.

- Yeah, yeah.

- Mm hm.

- You gotta work within your confines.

- Yeah.

- And I mean, I do have sympathy, but there's a lot of people who have these outside patches. My neighborhood's full of 'em too.

- Yep.

- So if we can, let me just ask if any board members see a way forward with those five factors? Is there anybody who wants to take a shot at any of them, or do some of you tend to agree that maybe we don't have the ability to do that today?

- I'm having a hard time getting that.

- I wish I could.

- It's okay.

- Yeah, I don't see-

- Hey, no hard feelings, guys.

- All right, so is there anybody who wants to take an action with regard to this requested variance?

- I guess I would move that for all the reasons just discussed, I would move to deny both of the requested variances under, I believe it's under 1746 and 1747.

- All right, there's a motion to deny Appeal 23-18. Is there a second to that motion?

- I'll second.

- Motion and a second. Any other discussion on the motion? Hearing none, all in favor say aye?

- [Board Members] Aye.

- Opposed? Motion carries. Sorry, sir, you have been denied a variance.

- Check out that door thing.

- Hey, no problem. I mean, again, I appreciate your guys' time. Thank you very much.

- Thank you.

- Thank you very much.

- Have a wonderful evening. And thank you, Jon.

- And feel free to call, whenever, we'll find a way to make it work.

- I'll go back and review stuff and see where we're at. Again, thank you, guys.

- Thank you.
- Thank you much.
- Have a great evening.
- We appreciate it.
- Hopefully you get outta here on time. Take care.
- Take care.
- Good night.
- Next up is informational. The date of the next meeting is July 17th, 2023. Do we need to close the floor? I'm assuming it was opened at the top of the meeting?
- It was not. We don't have to open the floor for quasi-judicials.
- Okay, sweet.
- I do have good information for you all.
- Good.
- So one, welcome. And secondly, you were asking for some information on trainings, and UW-Stevens Point has one coming up here in July, they let us know last week. It's an online meeting on Tuesday, July 11th.
- Oh, okay.
- It is from 6:00 PM to 7:30 PM. It's the same one that we're, we've got in touch with UW-Stevens Point to see if they'd do one here in person. It's the same presentation they give, both in person and online. Obviously if it's in person, there'll be more follow up questions that could probably be more relatable here. We're gonna still try to get them, but if you want to, I will email the links to all of you tonight to that meeting itself.
- It's 6:00 to 8:00 PM?
- 6:00 to 7:30. So the ones that are in person-
- Even at night, that's great.
- Yeah, you don't have to watch eight and 10 year old softball.
- Don't, don't.
- Hey, I coach that.

- Hey. My wife coaches the team. I get it.

- Yeah. And this is shorter than the ones that are in person. The ones that are in person are typically about three to four hours, depending on what they have for time. So this is a bit more abbreviated. It's gonna cover what you have. So you all have now the hard copy packet.

- Thank you so much.

- And it's gonna be another refresher of that. And what we have to have seen here for what, there was a meeting in Waupaca in May. Same format all the time that they go through. Please feel free. I think I might join in too.

- Yeah.

- Have a good Tuesday night.

- Yeah, I'd be the same way. That'd be great.

- That's awesome. All right, well there's no other business before us this evening. I'd entertain a motion to adjourn.

- So moved.

- Second.

- We are adjourned. Thank you.