

The Board of Zoning Appeals of the City of North Royalton met on **May 18, 2009**, to hold a Public Hearing, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price **at 7:30 pm**

Present: Chairman Neil Price, John Ranucci, Paula Recker,  
Councilman Dan Kasaris, Prosecutor Donna Vozar,  
Zoning Inspector Joe Hartman,  
Secretary Julie Broestl.

Chairman Price: Can I have a motion to excuse Tony Caraballo for cause?

Moved by Dan Kasaris, seconded by Paula Recker, to **excuse Tony Caraballo from the BZA meeting of May 18, 2009, for cause.**

Chairman Price: Call the roll.

Dan Kasaris; Yes.  
Paula Recker: Yes.  
John Ranucci: Yea.  
Chairman Price: Yes.

**Ayes – all. Nays – none.**

**Motion carried. (4-0)**

**(BZ09-04) Matthias and Karen Dost and Rushmore Construction** request a variance to **Chapter 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard, and Height Regulations”**, of the City of North Royalton for relief from the **side yard setback requirement** for a **detached garage** that they wish to construct on their property which is located at **10757 Akins Road, PPN 484-05-004**

Chairman Price: Anybody wish to speak?

Donna Vozar: Mr. Chairman. For the audience, this is the time which the applicant comes forward and presents their case, or for any neighbor, or anyone else, to come forward to give testimony.

Mr. Matthias Dost approached the microphone.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Dost: I do.

Chairman Price: Name and address?

Mr. Dost: Matthias Dost. 10757 Akins Road. We need additional garage space there. I have two daughters who both drive. One is driving now and the other one will shortly be driving. I have an attached garage to my house now but I think it would be nice to have additional garaging space. If I look at the site I notice that if we build the garage where it was suppose to be it would be too close to our house. It would look very narrow. Also on the right side is a septic tank and it would be too close to the garage. And if we had to do something down the road to the septic tank I would like to have some room there to go into that area. Also I have a deep lot but I do not want my garage to go too far into the back for security reasons. My girls are supposed to park there and I want them to be close to the house. That is basically my case and why I am asking for five feet more to the left.

Chairman Price: Thank you. Anyone else?

Timothy Kraynick approached the microphone.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Kraynick: I do.

Chairman Price: State your name and address.

Mr. Kraynick; Timothy Kraynick, 10037 Akins Road. As far as their property goes, it is probably one of the better properties in the neighborhood. It is very kept up on Akins Road. As far as anything he is going to do I am going to stand behind him and say that it is going to be top notch. It is not going to be something that will take away from anyone else's property on the street.

Chairman Price: Okay, thank you. Anybody else?

Larry Antoskiewicz approached the microphone.

Mr. Antoskiewicz: Councilman Ward 5. I just want to express the opinion of a couple of residents that did call me about the subject. Although Mr. Dost keeps his property well and all that, they feel that he doesn't need the five feet to build the type of garage he wants. He has plenty of room there on the side, as well as the back, and some believe that he doesn't need to crowd it over into the neighbor's yard. There have also been some issues in the past that I have had that people have complained about as far as grading issues. That was another concern that they asked me to bring up tonight.

Chairman Price: Thank you Larry. Anybody else?

Pete Ragone approached the microphone.

Mr. Ragone: Pete Ragone, the contractor that possibly could be building the structure.

Chairman Price: Address please.

Mr. Ragone: 8042 Albion Road.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Ragone: I do. Reason why I came up here is as far as the concerns with the drainage, there is a swale that runs approximately three feet, two to three feet from the property line where we are going to be putting the garage on the high side of that swale. So, even though we are putting the garage there it will not hinder the drainage of the water going down the property line from the front to the back.

Chairman Price: This property here is where the swale will be between the garage and the property line?

Mr. Ragone: That's correct.

Chairman Price: Thank you. Anybody else? I need a motion.

Moved by Paula Recker, seconded by Dan Kasaris to move BZ09-04 to the regular order of business.

Chairman Price: I have a motion and a second. Call the roll.

Paula Recker: Yes.  
Dan Kasaris: Yes.  
John Ranucci: Yes.  
Chairman Price: Yes.

**Ayes – all. Nays – none.  
Motion carried. (4-0)**

**(BZ09-05) Paul Blair** requests a variance to Chapter 1286 “Nonconforming Uses”, Section 1286.06 “Extension Prohibited”, paragraph (a), Section 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard and Height Regulations”, of the City of North Royalton for relief from the nonconformance and **side yard setback requirement** for a **deck** that he wishes to construct on his property which is located at **8410 Ridgedale Road, PPN: 489-01-025.**

Paul Blair approached the microphone.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Blair: I do.

Chairman Price: State your name and address.

Mr. Blair: Paul Blair. 8410 Ridgedale Road. I came here for a variance about a year ago and asked for a variance to put an addition onto my house. My lot is 65-foot wide by 672-foot long. So, I got the variance last year to put the addition on, which was three feet from my neighbor's property to the north. The neighbor didn't have an issue with that and everything has gone well. But, what I would like to do this year is put a deck on the back of the new addition. Which would be actually five feet from the property line. It is going to be 24' x 26' and five feet off the property line. Again, last year I got a variance to be three feet off the property line for the addition.. Now, I am seeking to go 5-feet off the property line this time. The only thing that's back there is a garage on the neighbor's property. He is about three feet from the property line. So we would have a distance of 8-feet between his garage and my deck. That is all I have.

Chairman Price: Thank you. Anybody else? Can I have a motion>

Paula Recker, seconded by Dan Kasaris to move BZ09-05 to the regular order of business.

Chairman Price: I have a motion and a second. Call the roll.

Dan Kasaris:: Yes.

John Ranucci: Yes.

Paula Recker: Yes.

Chairman Price: Yes.

**Ayes – all. Nays – none.**

**Motion carried. (4-0)**

**Public Hearing was adjourned at 7:43 pm**

The Board of Zoning Appeals of the City of North Royalton met on **May 18, 2009**, to hold an Open Meeting in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price **at 7:43 pm**

Present: Chairman Neil Price, John Ranucci, Paula Recker,  
Councilman Dan Kasaris, Prosecutor Donna Vozar,  
Zoning Inspector Joe Hartman,  
Secretary Julie Broestl.

Chairman Price: Can I have a motion to excuse Tony Caraballo for cause?

Moved by Paula Recker, seconded by Dan Kasaris to **excuse Tony Caraballo from the BZA meeting of May 18, 2009, for cause.**

Chairman Price: Call the roll.

Dan Kasaris: Yes.  
Paula Recker: Yes.  
John Ranucci: Yea.  
Chairman Price: Yes.

**Ayes – all. Nays – none.  
Motion carried. (4-0)**

Chairman Price: I need a motion to approve the minutes of April 27, 2009 as submitted?

Moved by Paula Recker, seconded by Dan Kasaris to approve the minutes of **April 27, 2009 of the Board of Zoning Appeals.**

Chairman Price: Motion and a second, call the roll.

John Ranucci: Yes  
Paula Recker: Yes.  
Dan Kasaris: Yes.  
Chairman Price: Yes.

**Ayes – all. Nays – none.  
Minutes approved (4-0)**

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: I would like to make a motion, actually a courtesy motion, to move the two new businesses forward before the old business because Taco Bell will be a much longer issue. The residents are welcome to stick around and listen if they so choose, but it would give them the opportunity to leave after their issues are discussed.

Moved by Paula Recker, seconded by Dan Kasaris, to move the new business to the front of the agenda and the old business second.

Chairman Price: Call the roll.

Paula Recker: Yes.  
Dan Kasaris: Yes.  
John Ranucci: Yes.  
Chairman Price: Yes.

**Ayes – all. Nays – none.  
Motion carried. (4-0)**

### **New Business:**

**(BZ09-04) Matthias and Karen Dost and Rushmore Construction** request a variance to **Chapter 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard, and Height Regulations”**, for relief from the **side yard setback requirement** for a **detached garage** that they wish to construct on their property which is located at **10757 Akins Road, PPN 484-05-004.**

Moved by Paula Recker, seconded by Dan Kasaris to approve a variance of 5-feet less than the minimum side yard setback requirement as prescribed in Section 1270.05 of the Zoning Code with regards to this proposed detached garage.

Chairman Price: A motion and a second. Discussion?

Dan Kasaris: Mr. Chairman. I would like to ask Mr. Hartman a question?

Chairman Price: Go ahead.

Dan Kasaris: With regards to the swale between the two properties, will it be sufficient to handle the water run off from the garage?

Mr. Hartman: I believe it will be, yes.

Dan Kasaris: Have you gone out and looked and examined the paperwork? What do you base your opinion on?

Mr. Hartman: The type of work that Rushmore does. I'm familiar with his work in the past and if he says that the swale would be enough to handle the run off from that garage, I would say yes. Particularly with the fact that I did view the property.

Dan Kasaris: The Ward 5 councilman indicated that he receives complaints regarding drainage in the area. What type of complaints has the Building Department received regarding that?

Mr. Hartman: I personally have not received complaints. Complaints for drainage is a tuff thing in the City because everyone k knows that we have problems with drainage. In that particular area it is possible but I can't recall getting any complaints regarding that particular property.

Dan Kasaris: Thank you.

Chairman Price: Anybody else?

John Ranucci: Mr. Chairman. When I viewed the property this afternoon and walked through there, and I have to agree with the applicant with the practical difficulties especially with the septic tank being right in the center of the backyard. With the house also cutting off the area would make it difficult to get some heavy equipment to do any work back there. The main practical difficulty, and being a father of young daughters, I would like to have the garage closer to the house as much as possible. It stays with the character of the neighborhood. Some other homes in the area have basically the same set up as this. I will be voting to approve this variance as is.

Chairman Price: Anybody else?

Dan Kasaris: Mr. Chairman. I believe the City Engineer has provided us with a letter that should be entered into the record and a drawing. I believe the City Engineer feels that the applicant doesn't need the variance.

Chairman Price: Memo dated May 14, 2009, from Mark Schmitzer.

Paula Recker: Mr. Chairman Price:

Chairman Price: Paula.

Paula Recker: I would like to ask Mr. Hartman a question if possible. Mr. Hartman, based on viewing the property myself and also based on the testimony given by the applicant this evening in regards to this septic tank, if this garage was put in the location that Mr. Schmitzer is suggesting, my personal feeling is that it would interfere with the septic, am I wrong with that assumption?

Mr. Hartman: The Building Department has nothing to do with septic tanks. I don't know the exact location of the septic tank. I don't know how wide the filter bed is, and how deep it is. I personally can't answer that question.

Paula Recker: Does my memory serve me correct that if anyone is going to replace their septic system that per EPA rules they have to be larger, I believe that is the correct term, larger?

Mr. Hartman: Yes, you have to have dual tanks and the filter bed has to be larger.

Paula Recker: Then they would take up more space than they originally did, is that correct?

Mr. Hartman: That is correct.

Paula Recker: Thank you Mr. Hartman. I would like to ask ward 5 Councilman, Larry, and I am not going to attempt Larry's last name, I never get that name right. I apologize. As a member of the citizens flood committee member a number of years ago, I know we did not study any major flooding down in the area of this home and that area. What kind of flooding issues have you been approached with in that area?

Mr. Antoskiewicz: I've been approached by residents to the west of there. They have had issues in the past when things have been added to this particular residence, that they have been graded higher, and everything else and the promise of a swale on their side which they never received.

Paula Recker: Graded how wrongly?

Mr. Antoskiewicz: It got raised up. Again, I'm speaking for the resident who is

Paula Recker: That's fine. I'm sure you have observed this.

Mr. Antoskiewicz: That is part of their complaints. In the past it has been done and raised up and they felt that the grade was raised up and no swale was put there when they were told that there would be. So, to this day they have water issues. Now, on the opposite side with the new garage and being closer to the house that lives there.

Chairman Price: Larry, with the drainage concern when you are looking at the house is it on the right side or left side of the house?

Mr. Antoskiewicz: The initial complaints that I have had has been concerned with the west side or the left side. I'm sorry, it depends on how you look at it I guess. If you face the house it is on the right, on the west side of the house.

Chairman Price: The non-driveway side. Thank you.

Paula Recker: Mr. Hartman. I would assume that the contractor, Mr. Ragone, would have to submit the plans specifically to the Building Department, is that correct?

Mr. Hartman: That is correct.

Paula Recker: They would check for any and all drainage issues on that plan and then during actual construction and for final approval, is that correct?

Mr. Hartman: That is also correct.

Paula Recker: And you are familiar with Mr. Ragone's work and you are comfortable with him as a contractor?

Donna Vozar: Mr. Chairman. I would prefer that Mr. Hartman not respond to that.

Paula Recker: Sorry.

Donna Vozar: Mr. Chairman, if I could add something?

Chairman Price: Donna, go ahead.

Donna Vozar: Since the issue has been raised regarding the swale and because Mr. Hartman has indicated that it is outside his expertise and rather falls to the Engineer, is that correct Mr. Hartman?

Mr. Hartman: That's correct.

Donna Vozar: And since you do have something from the City Engineer and unfortunately he doesn't address that specific issue. But since it has been raised by the councilperson perhaps if the Board wants to go forward with this tonight, a condition could be put in place where by the swale would need to meet its previous approved topo. If there has been a grade change, the property owner would need to get their property in line according to the topo. Just a suggestion.

Paula Recker: Mr. Chairman, that is an excellent suggestion as always Mrs. Vozar, and you went in the same direction that I was going. I would like to make a motion to add this condition to the original motion that the present swale remains as is and as approved in the previous topography.

Moved by Paula Recker, seconded by John Ranucci to **add the condition that the previous approved topography would be met with the swale establish on the property according to the original topo.**

Chairman Price: Question for the property owner. Do you agree with this condition.

Donna Vozar: You need to come up to the microphone and state it for the record.

Mr. Matthias Dost approached the microphone.

Mr. Dost: Yes I agree to that.

Donna Vozar: So, you understand the grade on your property and the swale on your property will need to be approved by the City Engineer and will have to be according to its previous topo approval, do you understand?

Mr. Dost: Yes.

Donna Vozar: Great, thank you.

Chairman Price: Based on the condition and other residents in the neighborhood, under similar situations as with a detached garage, the septic tank being a impediment to potential movement of the garage and allowing access to the septic field if it needs to be repaired or upgraded and the agreement that the swale will be maintained, so you will have drainage between the garage and the property line, I see no problem with the approval of the variance and I will be voting for it. It's not going to change the aesthetics in the neighborhood. There are other residents that have the same situation. It's not going to impact on government services.

Paula Recker: Mr. Chairman. I concur with what you are saying. I think the applicant given this variance based on the condition that has been added to it. He does now have beneficial use of his property gives him access to the septic tank at some point when it needs to be upgraded without interfering with the construction of this garage. It does, as you stated, it doesn't change the character of the neighborhood and I feel he has met the conditions of practical difficulty.

Dan Kasaris: Mr. Chairman.

Chairman Price: Dan.

Dan Kasaris: Thank you. With the condition that has been added to this I will support the petition for the variance. Thank you.

Chairman Price: Anybody else? Call the roll.

Donna Vozar: Mr. Chairman?

Chairman Price: I'm sorry, Donna.

Donna Vozar: The findings of fact and conclusions of law are as follows; the beneficial use of the property without the variance does exist, however, the Board in their consensus has indicated that the variance is the minimal necessary to make reasonable use of the land based on the character of the neighborhood it will not be substantially altered. There are other properties that are similar that are situated with accessory structures. However the Board was clear that with the condition of insuring that there will not be drainage issues for the residential properties as long as the conditions are met it will not be substantial detriment to the character of the neighborhood. There will be no governmental services that will be affected as long as the drainage issues as approved by the City Engineer. Additionally there are conditions that are peculiar to the land specifically the Board found that the proximity to the house and also to the septic tank establishes practical difficulties and in addition to that the Board found that the spirit of the Code would be met. Take in consideration security of having the garage located closer to the house. The Board feels that practical difficulty had been met pursuant to North Royalton Ordinance governing the Board's decision in this matter. If there is anything else to add please do so or call the roll.

Chairman Price: Anything? Call the roll.

John Ranucci: Yes.  
Paula Recker: Yes.  
Dan Kasaris: Yes.  
Chairman Price: Yes.

**Ayes – all. Nays – none.  
Variance granted. (4-0)**

**(BZ09-05) Paul Blair** requests a variance to Chapter 1286 “Nonconforming Uses”, Section 1286.06 “Extension Prohibited”, paragraph (a), Section 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard and Height Regulations”, for relief from the **nonconformance** and **side yard setback requirement** for a **deck** that he wishes to construct on his property which is located at **8410 Ridgedale Road, PPN: 489-01-025**.

Moved by Paula Recker, seconded by Dan Kasaris to **approve a variance of 5-feet less than the required side yard setback as prescribed in Section 1270.05 and relief from Section 1286.06(a) of the Zoning Code with regards to this proposed deck to be constructed on this nonconforming structure.**

Chairman Price: We have a motion and a second, discussion?

Paula Recker: Mr. Chairman. I remember this applicant from last year. He has a very pleasant piece of property and I’m glad that you are enjoying it and I am also glad that you are improving it. I’m very much in favor of this variance. You did a wonderful job on the addition. In my opinion there is no other relief to this property except to give him a variance thus proving practical difficulty.

Dan Kasaris: Mr. Chairman. I fully support the granting of this variance. Given that the variance we granted was more substantial for the addition than it is for the deck it would be, in my mind, illogical not to grant the variance for the deck. Thank you.

John Ranucci: Mr. Chairman. I also agree. Obvious practical difficulty is the 65-foot lot and they have been doing a lot within those 65-feet. Like Dan just mentioned, this variance is less than the one previously granted, so, I will be approving this also.

Chairman Price: I will also. This deck is not going to extent beyond the resident’s envelope. There is no other method for relief that I can see for them that wouldn’t require a variance. Government services aren’t going to be effected. The aesthetics will not be affected. You can’t see in the backyard from the neighborhood. The backyard is a half a mile long. No neighbors complained. Nobody has any issues. And it is a reasonable use for the backyard. I will approve it. Donna?

Donna Vozar: Yes, Mr. Chairman. Based on the evidence presented here the proposed findings of facts and conclusions of law are as follows; the applicant was here and testified. The Board obviously has the previous variance granted. The variance requested has been determined that it is the minimum necessary. The character of the neighborhood will not be substantially altered or a detriment. Government services will not be affected and there are special conditions peculiar to this land and that is the lot width. There is no other method that the applicant could seek besides the granting of the variance. The spirit of the Code has been met and the Board found that practical difficulty has been established. That is it.

Chairman Price: Any comments or additions? Call the roll?

Dan Kasaris: Yes.  
Paula Recker: Yes.  
Chairman Price: Yes.  
John Ranucci: Yes.

**Ayes – all. Nays – none.  
Variance granted. (4-0)**

**Old Business:**

**(BZ09-03) GPD Associates / Todd Huntington and Taco Bell** request a variance to **Chapter 1281 “Traditional Town Center/Main Street District (TCD), Section 1281.06 “Building Widths”, paragraph (a), Section 1281.07 “Schedule of Yards and Setbacks”, paragraph (a), Section 1281.14 “Design Guidelines”, paragraph (c)(1) and (2), and Chapter 1284 “Signs”, Section 1284.17 “Prohibited Signs”, paragraph (s), Section 1284.09 “Signs in Business Districts Generally”, paragraph (b)(1), and Section 1284.10 “Location and Supplementary Area Regulations for Signs in Business Districts”, paragraph (d),** for relief from the **building width, side yard setback, display-type windows, length of wall space, and allowable signage,** for this proposed **Taco Bell** that they wish to locate at **6447 Royalton Road, PPN: 487-05-009.**

Chairman Price: This item has been tabled so we need a motion to remove it from the table.

Moved by Paula Recker, seconded by Dan Kasaris, to move BZ09-03 from the table.

Chairman Price: Call the roll.

Chairman Price: Yes.  
John Ranucci: Yes.  
Paula Recker: Yes.  
Dan Kasaris: Yes.

**Ayes – all. Nays – none.  
Motion carried. (4-0)**

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: First of all I would like to thank the representative and please extend my thank you to your organization for going back to the drawing board. You made a tremendous effort to do something with this piece of property. I do appreciate that as I'm sure the rest of the Board does. However, I'm sorry despite you've got this down to 17.5 % now, which reminds me this motion needs to be amended from 47% to what they are requesting now Mrs. Vozar?

Mrs. Vozar: Yes. And actually, Mr. Chairman, if you would like the applicant that is here tonight to make his presentation to the Board and at that time the Board can make the amendment based on the submittal.

Chairman Price: Yes.

Paula Recker: I apologize. I forgot that you have to amend your application.

Ryan Oyster approached the microphone.

Chairman Price: State your name and address.

Mr. Oyster: Ryan Oyster, I with GPD Group. We are Pacific Bells architects and engineers. Our address is 520 South Main Street, Akron, Ohio.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Oyster: I do.

Chairman Price: Go ahead.

Mr. Oyster: Thank you Mr. Chairman. Based on the last meeting, this Board had made some recommendations that we go back to the drawing board, I think, and to better to come in conformance with the spirit of this specific district. We went back to the drawing board and we came up with a wider dinning area. The dinning area before was only 30-feet wide. We made the dinning area 10-feet wider in the front. We also added the arch over the drive-thru to give the perception of an extended building across the frontage of the property. This, therefore, increased the ratio of building width to parcel to 52.5%. The previous application had the building width at

30-feet. Now we are at 69-feet. So we made significant improvements of building width to frontage, along the front of the property.

Paula Recker: The building width is 69-feet now?

Mr. Oyster: 69-feet.

Paula Recker: Does that include the arch?

Mr. Oyster: That does include the arch. That was the first variance that was requested. There were several others. If you would like I can address those right now at this time as well.

Paula Recker: We just do them one at a time. So, if you would choose to amend the motion that is on the table that was the original variance, your request for 47-feet, and now based on the application of the second submission, that you would like to amend that to 17.5%?

Mr. Oyster: That is correct.

Paula Recker: Mrs. Vozar would like to legally do this in the correct language.

Mrs. Vozar: Mrs. Recker, you did fine. But, for the applicant, a new submittal has been sent to the Board in which you submitted a revised plan which would alter the previous submittal you had sent, and in this case the variance, as you have indicated, is now less at 17.5% is that correct?

Mr. Oyster: That is correct.

Mrs. Vozar: Obviously, that is what the Board will need to amend the motion for because obviously, the application has been amended at this point.

Paula Recker: No, no. We have to put it in a motion, correct?

Mrs. Vozar: Yes.

Moved by Paula Recker, seconded by Dan Kasaris to move to **amend the applicant's application based off his recent submittal from 47% width variance to 17.5% width variance.**

Chairman Price: I have a motion and a second. Discussion?

Paula Recker: Don't we need a roll call on that amendment?

Chairman Price: Call the roll.

Chairman Price: Yes  
Dan Kasaris: Yes  
Paula Recker: Yes  
John Ranucci: Yes.

**Ayes – all. Nays – none.  
Motion carried. (4-0)**

Chairman Price: Discussion?

Paula Recker: I guess you can go on now unless you have to add to variance number one?

Mr. Oyster: If you would like I can show you the site plan and how that was impacted but basically we made the building wider as I discussed before, and added the arch across the drive-thru lane.

Paula Recker: As I said originally, I do appreciate the attempt. And as lovely as this would be and as much as I would like to see Taco Bell in town, but per 1260.07(f)(3), I don't feel that it meets the definition of building and building structures. 1267.03(f)(3) reads as follows; a building means a structure which is permanently affixed to the land having one or more floors and a roof, being bounded by either open space or lot lines and is used as a shelter or enclosures for persons, animals, or property. Where I don't find that your new submission meets the requirement. Is not the building. I've tried to stretched this to fit is the arch. The arch encloses nothing. It houses nothing. It doesn't have a roof. It is purely an architectural detail in my opinion. I even stretched it

so far that I got out my Webster's dictionary to see if perhaps I wasn't reading something more correctly. So, unfortunately, even though you have made a wonderful effort to please the Board, I find that at this point I am going to have to deny this variance in my own opinion.

Dan Kasaris: Mr. Chairman.

Chairman Price: Dan.

Dan Kasaris: There are several factors to consider when I read Section 1264.08, there are ten or so listed there. In my opinion does not affect governmental services. Is not out of character with the neighborhood. Namely, Arbys, McDonalds a little further down, and also a Burger King. I find that this variance is not substantial. I will be voting in favor of the variance. Thank you.

Chairman Price: A lot of time and effort has gone into the plans establishing the Town Center District Main Street area. Efforts to present a unique character and a vision for the City. The Code calls for a minimum building width which is 70% of the parcel width. The applicant originally submitted a plan for a variance of 47% less than the minimum required. Now, the request is a variance for 17.5% less than the minimum. Based on this arch, column, façade to present an artificial or deceptive front, which is solely to give superficial appearance. To use your words, "perception", to give perception of building length. A building is a structure with walls and a roof. In essence it is what separates and protects the indoors from whatever is out. The height restriction barrier is not part of the building envelope. It has no bearing on the main building use, which is intended for the premises. As was previously stated, this is the first new construction under the TCD guidelines. The applicant knew full well what the Codes and restrictions were and this is not a request before the fact. No special conditions exist as a result of the property owner. Then is beneficial or economically viable use of the property without a variance. And a variance under either condition, whether it 47% or 17.5% goes against the spirit and intent of the zoning requirements. Substantial injustice would be done by granting the variance and I will not be voting for it.

John Ranucci: Mr. Chairman. When I first got the paperwork and saw the arch my first impression was what was ARB, if they should have reviewed it, and made a comment on it or Planning Commission before it came to us, because we are here to vote on a variance and not try to interpret the Code. I totally agree with you and Paula in reference to what a definition of a building is. My impression was that they are trying to play with words and circumvent the intent. Based on the deflection and what has been presented to us, I guess I will have to vote against the variance also, because it is a method of circumventing what the intent of the Code.

Chairman Price: Donna, consensus?

Mr. Oyster: With that in mind, may we table this petition.

Donna Vozar: The applicant is requesting that this be tabled. I'm assuming so that you can go back to the drawing board and see if there is something else to be done taking into consideration what the Board has indicated as far as the arch. Obviously, it is up to the Board on how they want to proceed on that?

Mr. Oyster: Does the Board have any other comments regarding the arch or the façade of the building?

Paula Recker: Personally, I think that this is the second time that we have done this. Usually, we only table once and then we vote. What we then allow according to our Ordinances that you can come back again for reconsideration. In this particular case I would think is what should be done and I think that the fee should be waived because you are making a wonderful effort. That is what I suggest and that is my own opinion. If Mrs. Vozar has some legal thought pattern on that, is that acceptable Mrs. Vozar?

Mrs. Vozar: Obviously, the Board can decide to go forward on this. The reason we tabled this was that we sent them back to the drawing board and asked them to come back with a new submittal, and they did. They have presented to this Board what they perceived to be a decrease of a variance. Obviously, the Board appears not to be receptive to all of those changes and the applicant is here requesting for another opportunity to present something else to this Board. Asking them to resubmit, in order to do so on a reconsideration they actually have to have a significant change. And again with all these variances and what that would mean, I guess, would be a question for the Law Department to have to decide whether or not they met those criteria. If the applicant is

requesting that it be tabled, obviously, this Board is free to that or you can move forward with it, however you so choose.

Dan Kasaris: Mr. Chairman, if I may?

Chairman Price: Dan, go ahead.

Dan Kasaris: Donna, is there anything in the Code that would prevent this Board from tabling this matter once again?

Donna Vozar: Normally the limitations of the Code puts on that we have to hear it and decide within a certain period of time. However, by agreement of the party, and I'm assuming that you have the authority to extend that time period, as long as the applicant is willing to waive that time period and put it on the record, and if you have the authority to do so, I would have no problem with doing that either.

Paula Recker: I personally would rather see them come back as reconsideration, and then the GPD group is not under real pressure and time line because if we table it again they would have to be back here again in thirty days. Where maybe they find back in their office that they are rushing at this and not being able to put much thought pattern into it. I personally think that we should vote on it and if they so choose to come back for a reconsideration I would love to have them back here again. I think they are trying hard but I don't think they need more pressure on them. This is something on this Board that has always frustrated me versus like Planning Commission where they can table for however long they need to. We unfortunately can't. We are now coming also into our busy season and usually in the spring and summer, it just makes life more complicated, I just think that we should go forward.

Dan Kasaris: Mr. Chairman.

Chairman Price: Dan.

Dan Kasaris: I believe that we should table it. This is the second time that they have been here. The Board has indicated it's displeasure with the arch. I believe it would be in the best interest of enforcing the spirit of our Code, as well as development in this town., development in North Royalton, that we table this matter. I'm sure he can have this back to us when we meet again, which is five weeks from this meeting. I would like to see it table so that we can keep the ball rolling, so to speak.

John Ranucci: Mr. Chairman.

Chairman Price: John.

John Ranucci: Got a quick question back to my earlier statement, Donna or Joe, could let me know the correct procedure here, this is something that needs to go to ARB to be reviewed.

Donna Vozar: The ARB reviewed the initial one. I don't believe that they have reviewed these. Probably because until they got some indication from the BZA they probably didn't want to put the cart before the horse, so to speak. At some point it will but there is really no point in them doing so until the Board gives their input.

Paula Recker: That is one of the reasons why, because this is such an important piece, because you are the first in the TCD, that is why I wouldn't like to see GPD or Taco Bell under any pressure what so ever. Like in five weeks you have to be here. If they had to put their heads together and their auto cads together and discuss more so with our Building Department, then they are not under pressure. Then come back to us with a plan which will hopefully satisfactory to everyone. Whether it's us, Planning, ARB, or whoever. I'm for voting on this this evening. This is a good company, Young Brands, that are on Rt. 83 already here in this area. They are an asset to North Royalton. Because it is the first in TCD, which is very important to this community, the residents voted for this and what the Codes are, so I would rather like to see you come back for reconsideration with no pressure.

Donna Vozar; When Mrs. Recker says no pressure when they come back on reconsideration, I would like to remind the Board that under or Code it states that if an appeal has been denied by the Board, it need not reconsider the same appeal if it is resubmitted within 6-months after the day of the decision, unless the underling conditions have substantially changed. Again, we need to be cautious that we don't tell them that they have the right to come back for a reconsideration in a

shorter period of time unless they have met that substantially change. Again, when we are talking about percentages it gets a little fuzzier and we will need a legal opinion that we will need to make, but if in fact Mrs. Recker does want to re-review this issue that is what tabling is about. It allows it to remain fresh on peoples mind. It allows the applicant to have the opportunity to come forward and hear what this Board has to say and get the input from this Board and then go back and try to make those changes. If they choose not to make those changes and try to meet the Code and reduce the variance requested and to meet the issues that have been raised by the Board. In this case the Code does allow us to extend it as long as it is mutually agree upon by the parties. Before we go any further I want to make sure that the applicant, for the record, under oath, says that he I authorized to do that and that he agrees to an extension and then the Board will then make their decision if they agree to that also. So, could we at least get that on the record before we go any further?

Mr. Oyster: Yes, I am authorized to make that decision and yes, we would like to ask to be tabled and an extension of time be granted from the decision.

Chairman Price: I'm in agreement with Dan as far as tabling. The applicant will have a chance to digest and consider the comments that were made tonight and I think it gives him a fair opportunity to make some adjustments if they deem necessary.

Moved by Paula Recker, seconded by Dan Kasaris to **table BZ09-03 until the next Board of Zoning Appeals meeting of June 22, 2009.**

Chairman Price: I have a motion and a second to table. Call the roll.

Chairman Price: Yes.  
Paula Recker: Yes.  
John Ranucci: Yes.  
Dan Kasaris: Yes.

**Ayes - all. Nays – none.  
Variance tabled. (4-0)**

Mr. Oyster: May I ask the Board when the minutes will be posted for this meeting.

Julie Broestl: After they are approved.

Chairman Price: When she types them.

Julie Broestl: They have to be approved before they are allowed to be given to the public.

Donna Vozar: As soon as they are ready we will give them to you.

Mr. Oyster: Thank you.

Chairman Price: Anything else?

Moved by Paula Recker, seconded by Dan Kasaris to **adjourn the Board of Zoning Appeals meeting of May 18, 2009.**

Chairman Price: Call the roll.

Chairman Price: Yes.  
Dan Kasaris: Yes.  
Paula Recker: Yes.  
John Ranucci: Yes.

**Ayes – all. Nays – none.  
Meeting adjourned. (4-0)**

Approved: \_\_\_\_\_  
Chairman Price

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary Julie Broestl