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Mr. Buescher swore in George Davis from Pro Built Homes. Mr. Davis will be the contractor for Michael and Frank Kaim. Mr. Davis spoke about the front setback, doing the rounding average from the others on the streets. The map was put on the site plans. The side setbacks they are struggling with, because they are 40 foot wide lots. They want to have a two car garage, so that would give 20 feet for that, and by the time you add a door it would be difficult to do that with the 5 foot setback. They are asking for an additional one foot for the side set back, so they can have an attractive structure. This is the hardship they have.

Mr. Buescher asked Mr. Davis if he owned all three lots. Mr. Davis replied that Michael Kaim owns the three lots. Mr. Buescher asked Mr. Kaim if it was reported to him that the lots were buildable lots at the time of purchase. Mr. Kaim was sworn in by Mr. Buescher. Mr. Buescher asked Mr. Kaim if he owned the four parcels to the north. He stated the four lots were sold to a buyer who had the original ranch home on that property. Mr. Kaim kept the three lots. He understood that they were 40 foot lots but buildable. He knew from the building department what the setbacks were because he built his home on Salida Road. He didn't realize that it would be difficult to build a decent size colonial on them without a variance. It really makes a difference to him with this particular colonial. It does not make financial sense for him to build a smaller house, because he won't get the rent pull that he wants out of it. His intention was to re sell them or rent if he had to. Mr. Buescher stated that this board doesn't consider the financial aspects.

Mr. Buescher asked for comments from the board. Mr. Moore stated that he denied due to the side setbacks. They wanted 7 foot and 7 foot for the side instead of the required 5 foot and 10 foot. Mr. Buescher asked the distance between the existing structures to the side. Mr. Davis began to show the commission from the original large site plans. Discussion among them took place. Mr. Davis stated that they did the 7 and 7 so that they could all be centered. The commission, along with Mr. Kaim and Mr. Davis were reviewing the plans. Mr. Buescher stated that all the lots were under single ownership. Mr. Buescher also stated that it may have been an improper sale under section 1252.06(b), maintenance of required area. There were two parcels under single ownership, prior to the sale. Mr. Kaim should have subdivided and given this parcel in which he owned enough of a side yard. It should be a minimum of five, in accordance with the ordinances of the City. He did not do that and yet the property was sold. This goes against section 1252.06(b). Mr. Kaim stated he did not realize that and Mr. Buescher stated again that he should have realized that being a professional in real estate. Mr. Buescher stated that is an ordinance of the City. It complied but now it does not. Mr. Buescher stated that we need to get a response out of the City's legal counsel. In order for the owner to sell those four parcels enough side yards should have been given, in order for the sale to occur. He basically created a non-conforming situation in the City without approval.

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Mr. Buescher stated he doesn't see how they can approve the request under 1252.07(a). This states that three or more contiguous lots from 40-44 feet, which the situation here that is being discussed is. Under single ownership the lots shall be joined, enlarged to the standards of the district. Mr. Kaim should re subdivide that center lot and make it two 60 foot wide lots, and then the board would be in a position to consider any variances. He could still enjoy the economic benefit under the current ordinances. Mr. Kaim should have been aware of when he purchased the property. Mr. Buescher stated that 40 foot wide lots are not desirable to really develop. They are not that desirable to rent out either. Not much room. This board is to maintain a certain amount of light error, the service ability to the backs of these lots. It can't be done on a 40 foot lot adequately. You can drive up and down Twilight and see evidence of that. It would be a different scenario under single ownership. If the neighboring lots aren't willing to sell in order to enlarge that lot. This would make it a whole different situation. It's identified in the City ordinances. In this case, it is completely in your ability to create two 60 foot wide lots here in conformance with the City. If you came in then they would consider.

Mr. Buescher and Mr. Davis discussed the front setbacks, which is 1252.08(e). It reads when 20 percent or more of built up streets, this is between two streets. The properties that Mr. Davis sighted go beyond Mohawk. Further discussion between Mr. Davis and Mr. Buescher took place, as they were indicating the setbacks on the site plan. Mr. Buescher explained the computation stops at Mohawk, per the ordinance. When 20 percent or more are built up then you take the average between the streets not beyond. If you did that within 100 feet from either side, those setbacks would give you an average 32.15 of a front setback. You are requesting 27.48. Mr. Davis said they would still conform because they have 49 feet as a rear yard setback and only need 40. Mr. Buescher was just pointing out what the ordinance stated, so they need to push the houses back to the corrected front set back.

Mr. Moore asked Mr. Buescher to read 1252.08(f). He stated that it could go both ways. Mr. Davis asked Mr. Buescher what 1252.08(f) stated. His reply was basically exemptions. Any parcel of land which is included as a sub lot in any subdivision recorded in the office of the recorder as of September 14, 1955. In which these parcels are. In which is improved by a dwelling including accessory building may be exempt from the yard regulations specified in this chapter and in section 1244.05(c3). Under those circumstances where the Board of Zoning Appeals determines that an unlimited variance will not be contrary to the public interest, and that the refusal to grant such variance will deprive the owner of reasonable use of his or her property. Mr. Buescher stated again that he doesn't think depriving the three builds. Mr. Moore first suggestion was to join the three lots.

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Mr. Kaim stated that he thinks it would value the City, in terms of the tax values if he was to build three homes. It would make sense to give enough on the side lot too. Mr. Kaim said it would impact him greatly not to have a chance to build three homes and just build two.

Mr. Buescher stated had Mr. Kaim come to the commission before he listed the property, it may have been different. He realizes that there are conditions in the City. There have been a lot overlooked over the years. An unconditional variance should have been applied for during that time. Mr. Buescher stated that there was opportunity to keep all four of the properties in compliance prior to the sale. It's been generally overlooked.

A 40 foot wide lot is so narrow, and a fifty is just a little bit better. A 60 foot wide lot which is what code is today is much larger. Mr. Kaim stated they drove up and down the streets, and seen many 40 foot wide lots. Mr. Buescher stated that those lots have been an oversight on the City's part. In defense of the City, many of those lots are single lots where there is no opportunity to expand. Mr. Buescher sees that there are three 40 foot lots that can be split into two 60 foot wide lots, making two conforming lots. He can hear the argument of deprivation of economic benefit of his property. Mr. Buescher stated that Mr. Kaim should have known the ordinance about a 60 foot wide lot going into this process. He sees Mr. Kaim building two homes that would comply. Mr. Buescher seems to think that it would benefit the City with having two builds over the requested three. Mr. Baranski agreed as well. The narrow homes have occurred for other reasons, he can't get into. The only thing he can do is look at today's request and under 1252.07(a), there being three 40 foot wide lots. He doesn't know how they can consider it. Mr. Davis pointed out that it will definitely not make economic sense to combine them and make two 60 foot lots. Mr. Kaim could potentially put the three lots up for sale and each new owner could come for a variance. Mr. Buescher replied because of right now in the eyes of the City there are two 60 foot wide lots. Mr. Davis asked if the Law Director was present. Mr. Moore replied with he is not. Mr. Buescher reiterated that's why we need to bring some of these matters to him. If Mr. Kaim wants to push for the three lots, there is an appeal process. Under ordinance 1252.08, because the current land owner has the option of meeting the current ordinance of the City. He doesn't know how the commission can even consider the request. In the eyes of the City, according to the ordinance, there are two lots present. Where there are multiple parcels that do not conform under single ownership, those lots are considered joined. Mr. Davis said these lots are previously platted. Mr. Buescher stated that this was not a court of law. If he was to consider the request, he would be ignoring the current ordinance. The City does not have the authority to create non-conforming lots.

Mr. Davis mentioned to Mr. Kaim that it would be wise to table this matter and let the City seek out the law director for his comments on the matter at hand. They feel that there are some contradictions between the two situations. Mr. Davis voiced his opinion as a builder, they would want to use the three properties and build on three. It would not be a benefit to them to build two. Mr. Davis asked for some clarification. If they took one foot out of the house, would they need to ask for the variances? This would make the homes 25 feet wide, then would this part of the code become mute. They would make the homes narrower, could they then get three zoning permits. Mr. Buescher responded by saying that would be a question for the Law Director. The current minimum width is still 60 feet. They are still non-conforming. Mr. Davis stated that he and Mr. Kaim would seek the council of their attorney and that we should also consult with the City law director.

They are seeking a 1 foot variance. It should be a sum of 15 for the side setback they are requesting 14 feet for the side, because of the size of the house and the garage. Mr. Buescher stated they also asked for a front setback. Mr. Davis response to that was that his rounding may have been off, but that they would still be in compliance with the current code. They had enough space in the rear to set the homes back to what it should be. Mr. Buescher stated that the side yards would conform to the 5 and 10 feet, but the lot width itself is still non-conforming at 40 feet. There are still three non-conforming lots, and there is still opportunity to make two conforming lots out of them. Mr. Davis asked does it require a zoning appeal to build a house that does not have side yard variance. They are not asking for additional side yard variance. Mr. Buescher replied yes you would because you don't have the required width. It's still a non-conforming lot. There are three contiguous lots, each of which is non-conforming. You have the opportunity to make two conforming lots. Mr. Buescher again stated the lots are not wide enough. The City is looking at two 60 foot wide lots. Mr. Buescher stated they cannot look at anything else, because of the 60 foot wide requirement. There are lots; these are an example of lots that don't meet the requirement. Mr. Moore stated that under the previous administration, Mr. Molenaar would use the exemption and grant them a buildable lot at 40 feet. Mr. Buescher questioned whether it was three contiguous lots. Mr. Moore stated that he would allow it to be buildable. The question again, is the three contiguous. They have the opportunity to make two conforming lots.

Mr. Buescher asked Mr. Kaim, did you not know that there was a minimum requirement of 60 foot wide lot in Mentor on the Lake. Mr. Kaim's response was that when he called the building department he was told that a 40 foot wide lot is buildable. Mr. Buescher stated that it can be. Mr. Kaim stated that he assumed that they were all buildable, after the response he had received. Mr. Buescher stated assuming that this was an oversight; it still makes the lots non-conforming. Mr. Kaim's opinion is that Mr. Buescher looks at it differently. Mr. Kaim sells homes, he is not a builder. He only built his own home.

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Mr. Davis stated we need to look at the street, already the three houses he would build would be an upgrade to the current homes on the street. Mr. Buescher did not agree. There was conversation among the two of them as to the homes nearby, and how the three homes would look small. One issue is how tight the lots are and getting fire equipment in.

Mr. Davis said when they submitted the plans, he asked us if he could do the side setback at 7 and 7 and was told it may have to be changed. They are ok with having the 10 and 4 side setbacks. The thought process there was it would be a little farther apart. They are ok with going 10 and 5 as well. They are trying to get some direction. Mr. Buescher mentioned that he was trying to give them just that. He would love for them to come to the board asking for a variance for two 60 foot wide lots. There are two ordinances that preclude him from considering the three 40 foot wide lots buildable.

Mr. Davis pointed out the ordinance, asking if it applied. Mr. Buescher stated that it doesn't say any lot as of Sept 14, 1955 is exempt for any reason. There is an opportunity for this to conform to the current ordinances. This is exactly the whole emphasis, trying to bring all non-conforming situations into conformance. There is an opportunity for the owner to partake in whatever economic benefit there is, and to have enjoyment of his land in accordance with the ordinances of the City. The ordinance stating it must be a 60 foot wide lot requirement.

Mr. Kaim proposes that he builds on two of the properties, and then sell one lot. Mr. Buescher again mentions that they would still be non-conforming. Mr. Davis then mentioned that it is back to the taking argument, which is our law director talking to Mr. Kaim's attorney seeing what it would really work out to be. Mr. Buescher said for him to consider this then he would be ignoring two other ordinances. He stated that attention should have been given to the side yard prior to the sale, which was not done. Then secondly, there is an opportunity to bring the three non-conforming lots into compliance. The aim of the City is to bring everything up to conformance, not to acknowledge the non-conformance situations, when they can be brought into conformance.

Mr. Sweeney asked if he sold the lot closest to the side yard, kept the two and if the property was given enough of a side yard, could he then bring the two into conformance? Mr. Buescher stated it would be closer, more like 50 some feet. This would be better than the 40 foot wide lots; given that scenario he could see the attempt to make the entire situations closer to conformance. He would then go to bat and see what this board could do then.

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The Mayor mentioned that we will consult with the City Law Director. The Mayor told Mr. Kaim if he goes home and decides what he would rather do, then to let us know otherwise we will have the Law Director take a look at this matter. The Mayor mentioned that some of what Mr. Buescher pointed out really makes sense. We, the City, would rather have conforming lots rather than having three houses that are non-conforming.

Mr. Davis asked if Mr. Kaim sold each lot individually, would each owner then be able to come in and get a permit to build a house. Mr. Buescher stated not exactly. Each single lot owner would have to demonstrate that he or she tried to purchase the necessary property adjacent to them. Mr. Kaim said that he had done his homework and that he had done an evaluation as to what the homes would be worth on the specific lots. His evaluation based on the resale values, these three properties would be the highest properties available on the street. These new homes would be 30-40 thousand more in value. That would improve the street and the tax valuation in the neighborhood. It would bring three new home owners to Mentor on the Lake as opposed to two owners.

Mr. Buescher mentioned that the neighborhood is wider builds on two parcels. The board is not supposed to consider the economics. Mr. Kaim felt that it would be better for the City to have three new residents versus the two to the community, and another tax payer. Mr. Kaim said it would not be worth having the two versus the three. Each house would have about the same value. Mr. Buescher mentioned that there are other things to consider such as light, ventilation, and emergency egress. Take a look at Twilight for example; emergency vehicles can't get to them quickly. Those are 40 foot wide lots. There are more than just economic considerations here.

Mr. Buescher again mentioned that there are two ordinances that prevent him from considering the request. Those ordinances are 1252.07(a) and 1252.08(e) in which they will meet that because there is plenty of space in the rear yard setback.

Mr. Sweeney asked if the proposed houses to be built would be on slabs or basements. Mr. Davis replied they would be on slabs. No storm sewer at the street. Mr. Buescher again mentioned to Mr. Kaim would you consider having two conforming lots. Mr. Davis asked the board if they re-submitted plans with a side setback of 10 and 5 and made the corrections to the front set back, would they not need an appeal. Mr. Moore and Mr. Buescher both responded with they would still be looking at ordinance 1252.07(a). You still would have three 40 foot wide non-conforming lots. Mr. Moore also stated that if you can come into compliance that you need to. The opinion of the City is that there are two 60 foot wide lots because they are contiguous ownership. Mr. Buescher stated that there have been those that have entertained playing title games. Mr. Kaim stated he does not have the time to do that. His desire is two build three homes if he can. If he cannot then he will have to reconsider what to do with the properties.

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The City will be in contact with the Law Director. The Board agreed that if he came back with a yes he can build them then we move forward. Mr. Buescher felt it would be good for the board to have discussion with the Law Director. The Mayor suggested that this matter be tabled and we have the Law Director present at the next meeting which would be in June. He could then explain how he came up with his findings. The Mayor again suggested that this matter be tabled and wait to hear from the Law Director.

MOTION made by Mr. Baranski and a second by Mr. May to table the request and to further this based on counsel from the Law Director.

ROLL CALL: Mr. Bittner
Mr. Buescher
Mr. Sweeney
Mr. May
Mr. Baranski

MOTION CARRIED 5/0

Mr. Moore asked if they came back and proposed two 60 foot lots with the correct setbacks, could he just sign off on the permit. Mr. Buescher stated that the board has up to a 20 percent variance authority. A yes given by Mr. Buescher to certainly work with those that want to work with the City.

Mr. Davis asked when the next meeting was and Mr. Moore stated it would be on June 19, 2017. The Mayor mentioned that once we get the opinion from the law director that we would contact them. A suggestion was made to get a letter from the law director with his opinion prior to a meeting. It would help save some time in the future. Mr. Davis mentioned that it was his opinion that they were just asking for the 1 foot side yard and that there may be some discussion on the side setbacks of 10 and 4 or 7 and 7. Had he known that there was the side issue they would have been differently prepared.

There was further discussion among the board. Mr. Moore stated that in the beginning it was recommended to Mr. Kaim that he join his lots. That was 5-6 months ago. Mr. Buescher shared that on the street next to him, a nice neighbor he had a 50 foot wide lot between him and the lot on liberty. The City told him that he did not have a large enough lot to build on and that he needed to combine it with his current lot. He had no problem doing that. Mr. Moore stated that he originally asked for 5 houses. He originally had five parcels. One was in Mentor, Willoughby and Mentor on the Lake. Mr. Buescher shared the Al Nozzik story. He had three 40 foot wide lots on Lakeshore and Mentor turned him down. There was much discussion among the Board about the current matter at hand.

Mr. Buescher stated that there just needs to be consistency. Mr. Kaim could make two really nice builds. It's his right to come and ask for it. All the ordinances work together. It can be confusing, but this is where the law director can help.

CLOSED PUBLIC HEARING

COUNCIL REPRESENTATIVE REPORT: Mr. Bittner introduced himself. He was appointed to council after the vacancy of Mr. Hawkins. Council passed the budget for this year. There were raises given out in the amount of 2 percent. There is current legislation for feral cats, which is with the ordinance committee. The colonies of cats will have to be registered with an organization approved by the City. The organization will spay and neuter as well as give those cats shots. They will also keep count of them. This will be no cost to the City, except for maintaining the records of the colonies. There will be a safety meeting on the 20th of May at Lake Elementary for the Pinehurst Road situation. The other ordinance to be considered will be to allow Giant Eagle to do a propane exchange.

Mr. Buescher was speaking on when a landlord has three police calls to a residential rental property, they consider it a nuisance. The landlord can be criminally liable. He spoke of his Uncle, and that's why they no longer have rental properties. The mayor mentioned that there were a lot of different things going on at that time. It was definitely more than three calls. Mr. Buescher mentioned that he may approach council about a nuisance ordinance. He spoke of a situation with South Euclid, the predominate amount of calls were from single females. The police may have been called out and that matter considered a nuisance. The City had a very strict policy. A letter would go to the landlord and he or she would then become liable. An eviction usually took place. A study was done and it looked at the tenants and why the police were called. The majority of the calls were because of another party involved, such as a boyfriend of the tenant. In many cases it was abuse, and the tenant was afraid to say anything. Even then she was kicked out on the street. She would repeat the same scenario at another place. The conclusion was that the municipalities were making life harder for the tenants. Based on a study, South Euclid would investigate the situation. They would ask the female tenant questions about abuse and so forth. If they found it to be a matter of abuse, they would remove the person creating the nuisance. They have programs in place for the different situations. Mr. Buescher was going to research this matter and bring it before Council. The mayor said we had several instances of that around the area as well. There are many women who are afraid to say anything, because they are afraid of eviction, so they usually just stay in the situation, which is sad.

OLD BUSINESS: NONE


NEW BUSINESS: NONE

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The commission talked about the golf cart ordinance as well as the paving project. The asphalt is all done. Mr. Buescher asked if there was a schedule. Mr. Moore said it was all done. Mr. Moore mentioned that the top five were done this year. Mr. Baranski mentioned what a nice job they did on Redwood Court. Mr. Buescher asked Mr. Moore to make note about Coronado when you do it, make sure you lower the street.

The storm sewer project has started on Lake. The safety committee is meeting, because they eliminated the one way on Pinehurst. There have been some complaints from the crossing guards and parents, in reference to the kids walking to school.

MOTION by Mr. Buescher and a second by Mr. May to adjourn at 8:10 pm

APPROVED 6/19/17 
Date Chairman

ATTEST 
Board of Zoning Appeals Clerk