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CITY OF NORTH CANTON, OHIO

IN RE: )  
 )  
NORTH CANTON ZONING )  
AND BUILDING STANDARDS )  
BOARD OF APPEALS )  
 )  
 ) **TRANSCRIPT OF PROCEEDINGS**  
 )

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Transcript of Proceedings held virtually via Zoom,  
before North Canton Zoning and Building Standards  
Board of Appeals, taken by the undersigned, Shannon  
Roberts, a Registered Professional Reporter and Notary  
Public in and for the State of Ohio, at North Canton  
City Hall, 145 North Main Street, North Canton, Ohio,  
on Tuesday, the 23rd day of June, 2020, at 6:00 p.m.

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APPEARANCES:

- Clint Zollinger, Chairman
- Christine Clevenger, Member
- Jude Streb, Member
- BJ Boyajian, Member
- Todd LePage, Member
- Stephan Wilder, Mayor
- Timothy Fox, Director of Law
- Martin Van Gundy, Chief Building Official
- Ben Young, Council Clerk
- Randa Miller, Zoning Clerk

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1 MR. ZOLLINGER: Okay. Are you ready?  
2 Okay. We are going to call this meeting to  
3 order. My name is Clint Zollinger. I'm the  
4 President of the Board of Zoning Appeals for  
5 the City of North Canton. Obvious -- this is  
6 the first time we have ever conducted a  
7 meeting in this way, so as you can tell,  
8 there are going to be some logistical issues.

9 One thing that you are going to notice is  
10 that the parties, the people that are going  
11 to testify, you are not muted; you are not  
12 going to be muted. It's going to be really  
13 important we try not to talk over one  
14 another.

15 As you are giving your presentations and  
16 testifying, some of the members of the board  
17 will probably have questions. I know I will.  
18 I will try to slowly interject, so that the  
19 court reporter can do her job. And I just  
20 ask that you try to do the same when  
21 responding. And let's try to avoid talking  
22 over one another.

23 With that then, the first thing we'll do  
24 is we'll call the roll of the board. So go  
25 ahead, please.

1 MS. MILLER: Mr. Zollinger.

2 MR. ZOLLINGER: I'm here.

3 MS. MILLER: Ms. Boyajian.

4 MS. BOYAJIAN: I'm here.

5 MS. MILLER: Mr. Streb.

6 MR. STREB: Here.

7 MS. MILLER: Mr. LePage.

8 MR. LEPAGE: Here.

9 MS. MILLER: Ms. Clevenger.

10 MS. CLEVINGER: Here.

11 MR. ZOLLINGER: Okay. All board members  
12 are present, so we have a quorum. Just be  
13 aware that it takes three of us to vote in a  
14 certain way for something to be granted or --  
15 or denied; the majority of the board.

16 The first -- or the next item is a  
17 submission of our November 26th, 2019 meeting  
18 minutes for approval. We were given these in  
19 advance for our review. I would entertain a  
20 motion and a second to approve the minutes  
21 as -- as submitted.

22 MR. LEPAGE: So moved.

23 MR. ZOLLINGER: Do I have a second?

24 MS. BOYAJIAN: Second.

25 MS. CLEVINGER: Second.

1 MR. ZOLLINGER: Okay. So why don't we  
2 call the roll for this motion?

3 MS. MILLER: Ms. Clevenger.

4 MS. CLEVINGER: Yes.

5 MS. MILLER: Ms. Boyajian.

6 MS. BOYAJIAN: Yes.

7 MS. MILLER: Mr. Zollinger.

8 MR. ZOLLINGER: Yes.

9 MS. MILLER: Mr. Streb.

10 MR. STREB: Yes.

11 MS. MILLER: Mr. LePage.

12 MR. LEPAGE: Abstain.

13 MR. ZOLLINGER: Okay. That -- that  
14 motion passes. We'll now go to the next item  
15 on our agenda. Would you please call out the  
16 application number and the name? Put in the  
17 address, please.

18 MS. CLEVINGER: Sorry.

19 MR. YOUNG: And he said read the number  
20 and the address.

21 MS. MILLER: Application Number  
22 20-NCZBOA-0001, Kathryn and Tonya Anthony,  
23 602 East Maple Street, North Canton, an  
24 appeal for a gazebo located in the corner  
25 side yard.

1 MR. ZOLLINGER: Okay. Before we go  
2 forward with this, we need to have anyone who  
3 is going to testify or get up and speak,  
4 other than attorneys, be sworn in by the  
5 court reporter. So I'm going to have her go  
6 ahead and do that now for the -- for anyone  
7 who is going to testify with regard to this  
8 application.

9 MR. DAHL: Would you like me to introduce  
10 the three people that I have here potentially  
11 that will, so you at least have them  
12 identified?

13 MR. ZOLLINGER: Yes.

14 MR. DAHL: Was that a "yes"?

15 MR. ZOLLINGER: Yes.

16 MR. DAHL: Okay.

17 MR. YOUNG: Mr. Osborne? Give us a  
18 moment to unmute Mr. Osborne, so he can also  
19 swear in.

20 MR. DAHL: Okay.

21 MR. OSBORNE: Yes, I'm here and I swear.

22 MR. DAHL: Your name, please?

23 KATIE ANTHONY: Katie Anthony.

24 MR. DAHL: Your name?

25 TONYA ANTHONY: Tonya Anthony.

1 THE REPORTER: I can't hear.

2 MR. DAHL: Okay. I have a Mary Hakaim,  
3 Katie Anthony, and Tonya Anthony.

4 THE REPORTER: Thank you.

5 (Whereupon, Chuck Osborne, Katie Anthony,  
6 Tonya Anthony, and Mary Hakaim were sworn by  
7 the Court Reporter.)

8 MR. DAHL: That was three affirmatives  
9 from my office.

10 MR. ZOLLINGER: Okay. All right. Thank  
11 you. Now what we'll do is -- what we are  
12 going to do is I'm going to have the  
13 people -- anyone who wants to speak on behalf  
14 of the applicant, go ahead and speak;  
15 identify yourself and your address when you  
16 do.

17 And I think, Mr. Dahl, that will be you  
18 first. And I'll let you, Mr. Dahl, let  
19 anyone testify that you want to have testify.  
20 And -- and then you'll entertain -- and  
21 entertain questions from the board.

22 And when you -- when we are done there,  
23 we'll have anyone who wants to speak against  
24 the application have an opportunity to speak,  
25 and then entertain questions for the board,

1 as well.

2 So I'll turn it over to the applicant to  
3 start with. Thanks.

4 MR. DAHL: Okay. I want to make sure  
5 that everybody has my notice of appeal to the  
6 notice of violation of the North County --  
7 Canton housing ordinances that I filed May 1,  
8 2020. That would be that document; that you  
9 have a copy of my brief that was requested of  
10 me that I submitted last Friday. That would  
11 be In Re: 602 East Maple, appellants,  
12 Kathryn and Tonya Anthony; appellee, City of  
13 North Canton.

14 And last, but not least, the first  
15 document that I saw up there was the variance  
16 application. I guess I would start by asking  
17 if the members of the board had an  
18 opportunity to read my notice of vi -- appeal  
19 to notice of violation, dated May 1, 2020.

20 MR. ZOLLINGER: Yeah, we -- we were given  
21 these items last week. I have reviewed  
22 everything. If anyone on the board has  
23 said -- has not seen these items or has not  
24 received them, let us -- speak up right now.  
25 But I think we all have this.



1           MR. DAHL: Yeah, please let me know if  
2 you have reviewed them. Because I don't -- I  
3 mean, I'm not a typical lawyer. I don't have  
4 to listen to myself talk. So if you -- if  
5 there is anybody that hasn't read most  
6 particularly the appeal or the brief, if  
7 you'd speak up now, I would appreciate it.

8           MR. ZOLLINGER: I think we all have it.

9           MR. DAHL: Okay. So I -- I mean, out  
10 of -- I'm going to ask that they be --  
11 obviously, they are already part of the  
12 record; import that I would -- I would submit  
13 both of these documents as -- to be included  
14 in the record that is prepared for any future  
15 appeal potentially.

16          MR. ZOLLINGER: Okay.

17          MR. DAHL: Is that -- is that acceptable?

18          MR. ZOLLINGER: If I'm hearing no  
19 objective from anyone from the City or anyone  
20 else on the board, I'm -- I'm okay with that.

21          MR. DAHL: Thank you very, very much.  
22 Included with that was -- included with my  
23 brief, there was a case cited that was  
24 2003-Ohio-2790, that that be submitted as  
25 part of my brief. I'm assuming it is and/or

1 was.

2 MR. ZOLLINGER: Yes. Yes, it was.

3 MR. DAHL: That's it. So I would ask  
4 that that would be submitted onto the record.  
5 And with that, I mean, my -- my -- basically,  
6 we are just saying that we have got a house.  
7 It's a narrow lot. Because of the situation  
8 that it does sit on a side lot, these people  
9 have been saddled with two front yards and  
10 have taken -- have had a significant portion  
11 of their property limited for outdoor  
12 recreational uses. And it's a hardship.

13 There is nothing about the gazebo that is  
14 going to cause this property to not yield a  
15 reasonable return. Nothing about this gazebo  
16 diminishes the value of this property. As a  
17 matter of fact, it's my understanding that if  
18 and when these ladies decide to move, the  
19 gazebo is going with them. So there is no  
20 permanency at all to this gazebo.

21 So we have a fence in place around the  
22 back third, I'm saying, of what would  
23 normally be considered a side yard, that  
24 being the yard on Pershing, that includes the  
25 back yard of the property. The gazebo is

1 included inside of that fenced-in area.

2 And, therefore, any variance that we  
3 would request, even though -- I mean -- would  
4 be obviously minimal. There are no sight --  
5 one of the biggest things that drives me nuts  
6 about driving through small communities is  
7 people that build shrubs at the corners of  
8 roads, where it makes it absolutely  
9 impossible to see around. Frankly, I have  
10 got a neighbor that puts up -- has sunflowers  
11 growing within 3 feet of the road. It makes  
12 it impossible for me to see on a fairly busy  
13 street. So we don't have that here.

14 The --

15 MR. ZOLLINGER: Mr. Dahl, I've got to --  
16 I'm sorry, let me -- I have a question for  
17 you, because I want to --

18 MR. DAHL: Please.

19 MR. ZOLLINGER: -- I want to figure out  
20 what you are seeking here. There are three  
21 violations that are alleged.

22 MR. DAHL: Exactly.

23 MR. ZOLLINGER: One is the requirement of  
24 a zoning certificate. My under -- my take on  
25 this is that you are just -- you are

1           appealing a ruling of the City -- that's not  
2           a variance request. That's a -- you are  
3           requesting us -- that's an appeal by -- by  
4           you of the City's decision that a -- are you  
5           saying a zoning certificate is not required  
6           here?

7           MR. DAHL: Okay. Yes, I am. However,  
8           you have put me in a position, based on how  
9           you have presented what I'm trying -- or what  
10          I was told I needed to accomplish today. I  
11          was told to file essentially a variance  
12          application, okay, before I could even do  
13          anything with my three appeals. Okay?

14          So I made the assumption, along with some  
15          brief instructions from your Law Director,  
16          that I should address those ten items that  
17          were -- that are included in your variance  
18          application. You know, I was specifically  
19          told to address those while sitting in front  
20          of you.

21          MR. ZOLLINGER: Okay.

22          MR. DAHL: That's why I'm proceeding the  
23          way I am.

24          MR. ZOLLINGER: Okay.

25          MR. DAHL: And, frankly, that's the one

1           thing that I didn't probably brief, as far as  
2           no, I don't feel that I need to file a  
3           zoning -- for a zoning permit. I don't  
4           believe that the -- the side yard setback  
5           requirements were met. And, you know, again,  
6           I don't need -- I don't believe -- I'm  
7           assuming everybody on this board is  
8           intelligent enough to get elected and  
9           intelligent enough to read my brief and  
10          understand what my -- what my points are.

11                       Therefore --

12                      MR. ZOLLINGER: Sir, we are not  
13                      elected -- hold on. Hold on. We are not  
14                      elected. We are appointed.

15                      MR. DAHL: Okay.

16                      MR. ZOLLINGER: And we aren't being paid  
17                      for this. We are taking an independent look  
18                      at this. And I want to get -- I'm trying to  
19                      get straight on what we are doing here.  
20                      There are three violations alleged. The  
21                      first one is a zoning certificate.

22                      MR. DAHL: Right.

23                      MR. ZOLLINGER: That appears to be an  
24                      appeal. I understand that you had to file a  
25                      variance application, but it looks like for

1 the first violation, it's an appeal by you,  
2 and you are saying a zoning certificate is  
3 not required. So -- and that's what you  
4 are -- you have said that that's the case.  
5 So that's the -- now, we'll address that in a  
6 second.

7 But the -- violations two and three do  
8 appear more in the form of a variance  
9 request, where you are asking us to, you  
10 know, look at that and say whether there --  
11 whether there is a violation or -- or if  
12 there is, and whether, you know, you want a  
13 variance granted for those two. It sounds to  
14 me like we have three things to act on for  
15 you tonight.

16 MR. DAHL: Okay. I'll -- I'll accept  
17 that.

18 MR. ZOLLINGER: Now, as far as the -- the  
19 first violation -- or alleged violation, the  
20 zoning certificate, you mentioned -- I see  
21 that you stated that this is not a fixture,  
22 this -- this gazebo. I have driven by it.  
23 It looks big, but I couldn't see how it was  
24 fastened to the ground. Is there any -- is  
25 it nailed into the ground? Is it anchored

1           into the ground?

2           MR. DAHL:   No --

3           MR. ZOLLINGER:  Is it sitting --

4           MR. DAHL:   -- anchor whatsoever.

5           MR. ZOLLINGER:  Okay.  It's just sitting  
6           on the ground?

7           MR. DAHL:   Just sits there, yep --

8           MR. ZOLLINGER:  Okay.

9           MR. DAHL:   -- like any of the thousands  
10          of play sets.

11          MR. ZOLLINGER:  Okay.  So maybe -- let  
12          me -- let me accept that -- your position  
13          then it's not a building as defined in the  
14          zoning code.  And I'm referencing 1125.02,  
15          paragraph 11.  How then is this not a  
16          structure as defined in 1125.02, subparagraph  
17          111?

18          Because that definition says a structure,  
19          as far as the City of North Canton is  
20          concerned, is anything that just requires  
21          location on the ground, or attachment to a  
22          building.  So that sounds like it could just  
23          be sitting on the ground and still be  
24          considered a structure.

25          MR. DAHL:   Would that include -- include

1           somebody sitting on the ground? Does that  
2           include a chair? Does that include a child's  
3           play set? Does that include a pergola, a  
4           pool, a tweeter-totter or any of those items?

5           MR. ZOLLINGER: It says anything  
6           constructed or erected, so I'd imagine  
7           anything like a play set that, you know,  
8           requires construction or erection, that  
9           that -- that possibly could.

10          MR. DAHL: All right. Well, I mean, I  
11          agree with you. And there are hundreds of  
12          these, probably thousands -- no, there --  
13          I -- I take that back. There are definitely  
14          thousands of those things. And, let's see,  
15          I'm -- I don't want to judge ages, but I  
16          think we have got some kids -- some folks  
17          here that have kids and/or toddlers and/or  
18          grandchildren who have these in their very  
19          back yard. Not that I -- I haven't been to  
20          any of your houses and checked it out, but I  
21          would suggest that probably three or four  
22          people on this board have structures on their  
23          back yard. And I would say none of them  
24          permitted them. I could be wrong. But --

25          MS. CLEVINGER: Yeah.



1 MR. DAHL: If not, they can each throw a  
2 stone from their property and hit a structure  
3 that meets that definition, that wasn't  
4 permitted.

5 MR. ZOLLINGER: Okay.

6 MR. DAHL: To answer your question, by  
7 that definition, it's a structure. It was  
8 constructed. By the second half of the  
9 definition, it's not fixed to the ground in  
10 any way, shape, or form.

11 And I think the Danbury Township Board of  
12 Zoning Appeals case specifically addresses --  
13 I mean, I couldn't have found a case that's  
14 more on point. I mean, these people -- not  
15 only was it a front side yard. It was a  
16 front yard, front yard.

17 MR. ZOLLINGER: Yeah. Yeah, I looked at  
18 that case, and, actually, I mean, accessory  
19 buildings, it talks about -- it has a  
20 definition for accessory buildings that's  
21 similar. But the difference is Danbury  
22 Township said that's -- in that township,  
23 structures didn't need a permit. In our --  
24 in North Canton, they do.

25 MR. DAHL: I didn't see the actual

1 Danbury. But like I said, I'm more than  
2 willing to take this -- I -- this case to me  
3 says congratulations, Mr. Dahl, you don't  
4 need a permit. But, again, I -- I'll be  
5 perfectly honest, I did not read every  
6 Danbury zoning ordinance. I just --

7 MR. ZOLLINGER: Well --

8 MR. DAHL: -- know what was in the case.  
9 It was, to me, very straightforward in what  
10 it says.

11 MR. ZOLLINGER: Yeah.

12 MR. DAHL: And if you try to include the  
13 broad structural definition of -- SAFEbuilt  
14 is going to be very, very busy, and we'll  
15 make sure that they are very, very busy.

16 If Mr. Osborne can come from two or three  
17 neighborhoods away and claim a zoning  
18 violation of my clients, then my clients have  
19 free reign to travel anywhere in North Canton  
20 and point out the -- as a matter of fact, I  
21 will let you know that your zoning -- Mr. Van  
22 Gundy already has a list of probably 100 or  
23 200 residences supplied by my clients. And I  
24 would be kind of interested if any of those  
25 were acted on.

1           Look, that is not the direction I want  
2           this meeting to go. I want us to work  
3           something out. My people can keep their  
4           gazebo. That's all I want. I don't want to  
5           cause problems or anything else.

6           MR. ZOLLINGER: All right. Well, I mean,  
7           just -- I mean, our job isn't -- we are  
8           not -- this isn't a mediation. I mean, you  
9           are in an adjudicatory proceeding right now.

10          MR. DAHL: Right. I understand that.

11          MR. ZOLLINGER: If you want to try to  
12          work something out, you can always dismiss  
13          your application and try to do that. If you  
14          have -- if you have already tried that and it  
15          hasn't worked, then that's why you are here.

16          MR. DAHL: Right, that's why I'm here.

17          MR. ZOLLINGER: Let me ask you this --

18          MR. DAHL: Go ahead.

19          MR. ZOLLINGER: -- you did submit -- you  
20          know, one thing I am interested in, you know,  
21          I don't want to see anybody treated  
22          differently for any reason. And one thing  
23          that always -- you know, that always inclined  
24          me toward granting a variance or -- or  
25          granting an appeal is if you can point to a

1 situation where a structure similar to this  
2 was granted or erected without a permit, and  
3 the City is aware of it, and -- and it was  
4 under this current ordinance, not something  
5 from a long time ago under a prior ordinance.

6 MR. DAHL: 602 --

7 MR. ZOLLINGER: If you can give me an  
8 apples to apples situation where this  
9 wasn't -- where somebody was treated  
10 differently, you know, I want to -- I want  
11 to -- I want to hear that, and I want it in  
12 the record.

13 MR. DAHL: You know what, I'm going to  
14 let -- I'm going to the let Katie Anthony  
15 read off -- and you tell her when you want  
16 her to stop reading off addresses. But I  
17 will, however, submit to you that in my brief  
18 of -- I didn't date it. I apologize. There  
19 is a picture --

20 MR. ZOLLINGER: Yes. On Fair Oaks?

21 MR. DAHL: -- of a house that no zoning  
22 permit was pulled, and that structure not  
23 only is a structure, but is a building, as  
24 defined by your definitions, with no zoning  
25 permit.

1           MR. ZOLLINGER: You are talking about 965  
2 Fair -- you're talking about 965 Fair Oaks?

3           MR. DAHL: Is that -- yeah.

4           MR. ZOLLINGER: Yeah, I did -- I -- I saw  
5 that, and that's -- that's a question I have  
6 for the City, you know, what's -- what's the  
7 deal with that. That looks like it was  
8 pretty new. When was that erected, if we  
9 have some idea?

10          MR. DAHL: Two weeks -- three weeks ago.  
11 I -- we aren't naming names yet. Now, I can  
12 have Ms. Ant -- Ms. Anthony begin reading off  
13 names and addresses, if you would -- if you  
14 would like.

15          MR. ZOLLINGER: Well, I -- I had a  
16 question for someone. I don't know if Mr.  
17 Van Gundy or somebody can answer the que --  
18 can let us -- provide some information on  
19 this structure at -- on Fair Oaks. What's  
20 the deal? Did they get a permit for this  
21 or --

22          MR. VAN GUNDY: I don't believe so. I am  
23 going to double-check that right now. Unless  
24 something -- no, that was not permitted. I  
25 wanted to double-check something didn't come

1 in since now and when this was filed. But as  
2 of now, there is no permit on this 965 Fair  
3 Oaks for this detached structure.

4 MR. DAHL: Okay. If -- if we were -- and  
5 I'll save Mr. Van Gundy time. The list of  
6 100-plus houses that we do have have all been  
7 checked online to see if permits or  
8 permitting had been taken -- had taken place  
9 on these properties or these structures. And  
10 of this -- how many do you have on the list,  
11 if you just -- just tell us a number. One  
12 hundred -- she -- she stopped at 100. And  
13 none of them -- none of them have been  
14 permitted; zero, zilch.

15 MR. ZOLLINGER: Do you know when they  
16 were built?

17 MR. DAHL: You know what, if I have to  
18 subpoena every one of them, I will. But I  
19 believe this came in -- your -- your zoning  
20 came into effect in '96 or -- when was your  
21 zoning -- when did it come into --

22 MR. ZOLLINGER: The current ordinance, if  
23 I'm -- if I'm not mistaken, was 2007. That  
24 is the ordinance we are working with.

25 MR. VAN GUNDY: That is correct.

1           MR. DAHL: Okay. Well, I mean, I'll  
2 subpoena everybody in North Canton, but I  
3 would say that 50 percent of them are  
4 included in that time frame. I mean, 15  
5 years, gazebos haven't even been that --  
6 these instant-up gazebos haven't even been  
7 popular for 15 years. And there are plenty  
8 of them out there.

9           And the picture that I sent you of the  
10 home that I sent you, I have only seen --  
11 that is the second one of that type of  
12 structure, which is essentially a greenhouse,  
13 but it's a -- it's a wood frame greenhouse.  
14 That's the first -- the second one of those I  
15 have seen. One of them -- the first one  
16 being the guy behind me, in Lake Township,  
17 that built one. So that structure definitely  
18 is -- is -- well, we know when that was  
19 built.

20           So you take 2007 and you figure out when  
21 gazebos became popular, and it's not going to  
22 take much to figure out how many of these  
23 people have structures that fall within the  
24 permitting requirement. And, again, the  
25 whole structure idea is -- I mean, that's

1           about as vague as you can get. I'll shut up  
2           now. I told you I didn't want to listen to  
3           myself talk.

4           MS. CLEVINGER: I just have a very simple  
5           question. Why -- even Danbury Township, the  
6           case you cited, is very clear in saying you  
7           should always call first to verify whether or  
8           not a permit was required. Why wasn't a  
9           phone call made before this structure was put  
10          up?

11          MR. DAHL: Well, essentially, we looked  
12          it up online, and we asked everybody,  
13          including the guy -- the people that put this  
14          thing together, if these were anything that  
15          had to be permitted to be built.

16          MS. CLEVINGER: But did you ask the  
17          permit department?

18          MR. DAHL: No.

19          MS. CLEVINGER: That's my question,  
20          why -- why a simple phone call -- wouldn't  
21          that have gotten us --

22          MR. DAHL: I mean, again, I have a  
23          problem when a simple phone call by a member  
24          of your own administration couldn't be made  
25          prior to constructing an item.



1 MS. CLEVINGER: That they should have  
2 called --

3 MR. DAHL: Turn it right around to you.  
4 But --

5 MS. CLEVINGER: No.

6 MR. DAHL: -- they did their research.  
7 They did their research. They asked the  
8 people that construct for the local, large  
9 box companies. And, again, we are talking  
10 Sam's, right? Sam's Club.

11 And I guarantee you, again, if you want  
12 us to spend the time, we can point to any  
13 number of Sam's gazebos in North Canton.  
14 Because every time I go to Sam's, I see  
15 people from North Canton there, buying  
16 whatever. So I know there are gazebos --  
17 Sam's gazebos in North Canton, and I can  
18 point to them. And they --

19 MS. CLEVINGER: Well --

20 MR. DAHL: -- have been selling those.  
21 We also checked with Home Depot, Lowe's, and  
22 Wal-Mart, and they all basically came up with  
23 the consensus, these aren't required to be  
24 permitted. Plus, they checked your Web site,  
25 your information, your source of information

1 for the community --

2 MS. CLEVINGER: And does our source of  
3 information say don't call and ask first?  
4 That's -- that's my question. That's --  
5 that's all I want to know, is why a simple  
6 phone call wasn't made first.

7 MR. DAHL: You know what, you are clever  
8 and you got me.

9 MS. CLEVINGER: I'm not trying to be  
10 clever. I had a question.

11 MR. ZOLLINGER: Listen --

12 MR. VAN GUNDY: Chairman, I have a  
13 question for counsel, if I may.

14 MR. ZOLLINGER: Yeah, go ahead.

15 MR. DAHL: Who's going now?

16 MR. VAN GUNDY: This is Martin Van Gundy.

17 MR. DAHL: Hi, Mr. Van Gundy.

18 MR. VAN GUNDY: Hello. One of the  
19 questions that came up, and we weren't able  
20 to -- I didn't identify a registered  
21 contractor who had installed the structure  
22 here. Now, the question is -- generally,  
23 that contractor registration is required to  
24 cover insurance, bonding requirements, so  
25 forth. Generally, they are a bit more

1 familiar with the local regulations as they  
2 come in. Was the installer a registered  
3 contractor in the City of North Canton?

4 MR. DAHL: That would be something  
5 between you and the -- the City of North  
6 Canton and that contractor.

7 MR. VAN GUNDY: So our records -- we were  
8 not able to identify a registered contractor  
9 for this property, so --

10 MR. DAHL: You never asked.

11 MR. VAN GUNDY: Contrary. I believe the  
12 inspectors did. And they had also requested  
13 access to the property to do an inspection of  
14 the structure, and were denied that  
15 information, as well.

16 TONYA ANTHONY: No, they did not. That  
17 is -- that is false. That is false.

18 MR. ZOLLINGER: All right. Hold on.  
19 Hold on.

20 MR. DAHL: Go ahead.

21 TONYA ANTHONY: I'd like to address  
22 Ms. Clevenger --

23 MR. ZOLLINGER: Just hold on a second.  
24 Hold on. Everyone is going to have a chance  
25 to talk. Let's just not interrupt one

1 another.

2 Mr. Van Gundy, are you done?

3 MR. VAN GUNDY: Yes. Thank you.

4 MR. ZOLLINGER: All right. Go ahead, Mr.  
5 Dahl, if your client wants to talk, that's  
6 fine.

7 MR. DAHL: Just briefly, so I can save a  
8 little bit of time. Although it doesn't  
9 sound like I'm trying to. My clients are  
10 saying unequivocally -- and they will state  
11 under oath right now -- that at no time did  
12 anybody ask to come in and inspect the  
13 structure. They couldn't because of COVID.  
14 All right? And at no time did anybody  
15 specifically request or even generally  
16 request the name of the contractor, the  
17 installer or whomever put together the  
18 gazebo.

19 MR. ZOLLINGER: Okay. Let me -- let  
20 me -- okay. That -- one question. I want to  
21 follow up, though. Like Ms. Clevenger's  
22 question, I -- that was a question I was  
23 going to have, too. You know, your clients  
24 have been before this board before. And I  
25 know it wasn't the most pleasant of

1 experiences for them. But, you know, they  
2 are aware of this process, and so I have  
3 that ques -- I wonder why, too, why -- why  
4 there wasn't just, hey, look, we are going to  
5 erect this gazebo. I understand they checked  
6 with the people they bought it from. But why  
7 wouldn't you call the City --

8 TONYA ANTHONY: Okay.

9 MR. ZOLLINGER: Hold on. Why wouldn't  
10 you call the City and just -- and say, hey,  
11 listen, just to be careful, we want to -- we  
12 want to do this. Are you okay with it?  
13 And -- and then that would have taken care of  
14 this problem, and we wouldn't even have to be  
15 here.

16 TONYA ANTHONY: Okay. So to address  
17 that, prior to purchasing the gazebo, I  
18 personally said, let's check and make sure we  
19 don't need to -- to permit this. So we went  
20 onto the North Canton Web site, the -- the  
21 City Web site, whatever, and it directed us  
22 to the -- it said that North Canton  
23 implemented the Ohio Residential Code as of  
24 July 1st, 2019. So it directed us straight  
25 there.

1           So we went there and we -- we read their  
2           building restrictions or whatever and the  
3           gazebo bit within that. So we were like, oh,  
4           we are good. Okay. So we bought it from  
5           Sam's Club. We asked Sam's Club even.

6           And then after the fact, we were in Home  
7           Depot, and I asked the gentleman -- because  
8           they had gazebos there. And I -- I would --  
9           because it was still playing with me, because  
10          I knew that, you know, a certain somebody was  
11          going to turn us in, because we can't even  
12          have a mailbox.

13          So the guy at Home Depot said, no, it's  
14          not a permit structure. And then when we got  
15          our letter of violation, we asked our realtor  
16          about it. And she said, well, even in real  
17          estate, when you go to move, you have to list  
18          that as a personal property item. It's not  
19          permanent. It's not a permanent structure.

20          So that, to answer your question,  
21          Mrs. Clevenger, we did look into that. We  
22          didn't make a phone call. We went to your  
23          Web site, which directed us to that, and it  
24          says nothing about a gazebo or a pergola.  
25          And then --

1 MS. CLEVINGER: But that doesn't answer  
2 my question. My question is: Why didn't you  
3 just call and ask?

4 TONYA ANTHONY: Well --

5 MS. CLEVINGER: That was my question.

6 TONYA ANTHONY: If -- if -- yeah, would  
7 you, if you were buying a big play set with  
8 the swings and the slides, like everybody in  
9 our neighborhood has --

10 MS. CLEVINGER: Yeah, I probably would.

11 MR. DAHL: A member of your board, the  
12 City board, didn't.

13 TONYA ANTHONY: There you go.

14 MR. DAHL: The official with the City  
15 didn't.

16 TONYA ANTHONY: And there are a hundred  
17 or a --

18 MR. ZOLLINGER: Wait. Hold on. Hold on.  
19 Hold on. Hold on.

20 MR. DAHL: Go ahead.

21 MR. ZOLLINGER: Mr. Dahl -- Mr. Dahl, if  
22 you have -- you submitted the property on  
23 Fair Oaks, the picture --

24 MR. DAHL: Right.

25 MR. ZOLLINGER: -- and I appreciate you

1           doing that, because that -- that raises  
2           questions in my mind. If you have other  
3           properties that you feel are applicable here,  
4           you need to put them in the record and you --  
5           you need -- you need to submit that evidence.  
6           You can't just --

7           MR. DAHL: Okay.

8           MR. ZOLLINGER: -- spout off and tell us,  
9           well, this property over here and this person  
10          over here. That -- that -- that means  
11          nothing to us. I will --

12          MR. DAHL: I will read them all off into  
13          the record.

14          TONYA ANTHONY: We have five Council  
15          members that have structures on their  
16          property with no permit. Thank you.

17          MR. DAHL: Why don't you read them into  
18          the record?

19          KATIE ANTHONY: 1200 Seventh Street has a  
20          gazebo.

21          MR. DAHL: One second. Would you say who  
22          you are?

23          KATIE ANTHONY: Katie Anthony.

24          MR. FOX: I'm going to object, if you are  
25          going to read these -- these addresses. What



1 we need to know is when was -- were these  
2 constructed, did they apply for a permit, did  
3 they have a variance.

4 KATIE ANTHONY: They did not apply for a  
5 permit.

6 MR. FOX: We don't have information for  
7 the board that you are -- you are not  
8 submitting --

9 KATIE ANTHONY: On the contrary, when was  
10 ours constructed?

11 MR. ZOLLINGER: All right. Listen --

12 KATIE ANTHONY: I'm sorry. When was our  
13 gazebo constructed? What date and time?

14 MR. ZOLLINGER: Now, listen, no --  
15 listen, the only people asking questions  
16 right now are going to be attorneys and board  
17 members. This is information we asked --  
18 this is why we asked for this information in  
19 advance. For us to go through this now is --  
20 I mean, you are asking -- we are not going to  
21 sit here all night and try to part -- and  
22 look through public records over --

23 KATIE ANTHONY: I supplied your City --

24 MR. ZOLLINGER: -- dozens of properties.

25 MR. DAHL: We went through the public

1 records.

2 KATIE ANTHONY: Absolutely.

3 MR. ZOLLINGER: But I -- you know, I --  
4 so the one I have is 965 Fair Oaks. And I  
5 haven't heard an answer from the -- you know,  
6 from the City as to why that one, it was  
7 erected without a permit and what's going to  
8 end up being done about it.

9 Do you have any -- you know, if you have  
10 some others -- I mean, I know you have  
11 others, but the problem is it's going to be  
12 impossible for us to evaluate those right  
13 now.

14 MR. DAHL: We have already submitted  
15 these to Mr. Van Gundy and SAFEbuilt. Okay?  
16 So you have them. The City has them. Now,  
17 if you want us to do your permitting work for  
18 you, we can go under contract.

19 MR. FOX: I'm going to object. We are  
20 not trying to be cute. We are trying to --  
21 you may not feel that way, but we are trying  
22 to help your -- your clients through this  
23 process. And what I think is important for  
24 the board, that they -- they had stated is  
25 that there -- there was no application

1 provided to the building department, or  
2 permit.

3 And when the building department stated  
4 that a permit was required, your clients  
5 declined, and then asked for a way around  
6 this. And, indeed, a variance is a way  
7 around this.

8 But to point out the necessity of having  
9 that inspection, it very well may have found  
10 that perhaps a building permit may not have  
11 been required, but perhaps a zoning permit,  
12 to make sure that the placement of that  
13 structure wasn't in a right of way, a line of  
14 sight, or too close to the -- the main  
15 structure.

16 And, you know, perhaps just reviewing the  
17 photograph, I think you can see, you know,  
18 nearly immediately there is -- there is a  
19 difference between the distance from that --  
20 the gazebo or pergola, whatever you wish to  
21 call it, between the one that you are saying  
22 also doesn't have a permit with your  
23 clients'.

24 MR. DAHL: All right. So are we now  
25 drop -- are we now leaving issue one and

1 moving on to issue -- I believe that's issue  
2 three?

3 MR. VAN GUNDY: Before we do, I would  
4 like to add a few things here. As -- you are  
5 referring to a list. And I am trolling  
6 through my memory, not recalling seeing  
7 anything being included with this variance.  
8 However, I am recalling a list that was sent  
9 via e-mail to the nuisance abatement officer,  
10 Terry Stan, a number of months ago. And we  
11 did indeed follow up on every one of those  
12 addresses that was provided to Mr. Stan.

13 And we did find a number of those did  
14 have, in fact, permits and were not an issue.  
15 There were a number of them, I will say, that  
16 we were not able to verify. And as you know,  
17 the burden of proof is on the City to show  
18 that there is evidence demonstrating a  
19 violation. And on a number of those, we were  
20 not able to come up with proof establishing  
21 the date of construction that relates to the  
22 ordinance currently in effect. That's that  
23 part.

24 The second part I'd like to add is to  
25 address the Chairman's question in regards to

1           965 Fair Oaks. You know, as you know, there  
2           are a lot of things that happen that we are  
3           not aware of, and this didn't come to our  
4           attention until this case here. Now, as part  
5           of that, we will follow up on that as  
6           unpermitted work, and, you know, make them  
7           aware they do need a zoning permit. Now, I  
8           will say, outside of that, I don't see the  
9           same type of concerns that exist with the  
10          structure before you today; so --

11                 MR. ZOLLINGER: What is the difference  
12                 between that structure and this one?

13                 MR. VAN GUNDY: Well, as Mr. Fox had  
14                 identified, it appears that this does have at  
15                 least 10 foot between that structure -- and  
16                 I'm just looking at the photograph here now,  
17                 and I can't tell where the property line is,  
18                 but this does not appear to be in the front  
19                 yard or a corner side yard, for that matter.  
20                 But at any rate, it still requires a -- a  
21                 permit on that, it -- a zoning permit, that  
22                 is, and we will follow up on that.

23                 TONYA ANTHONY: Well, you should have  
24                 Chuck drive around a lot more.

25                 MR. DAHL: All right. Okay. Oh, just

1           briefly, the -- where your Web site -- Web  
2           site sends people is to the Ohio Residential  
3           Code of Ohio. And under 102.10, if you take  
4           a look at my brief, it talks about work  
5           exempt from approval, and it's not required.  
6           And you can read down through all of the full  
7           definition, but it talks about a -- a  
8           whatever structure, if you will, of less than  
9           120 square feet. On -- as a matter of fact,  
10          I think it might even be less than that. But  
11          regardless --

12                 MR. ZOLLINGER: 200.

13                 MR. DAHL: -- this is -- 200. I'm sorry.  
14           You are right. And this is definitely only  
15           120 feet. So that's where -- I mean, there  
16           are two intelligent women who make quite a  
17           bit of money and contribute quite a bit to  
18           North Canton, that dotted their I's and  
19           crossed their T's, except for, you know,  
20           going to the City for every time they want to  
21           do anything. So, yeah, we didn't make a  
22           phone call, but it's not like we didn't  
23           attempt to get the homework done.

24                 MR. ZOLLINGER: Well, let me ask you  
25           this: And I don't know if you -- I don't

1 know if it's an answer -- a question you can  
2 answer or if maybe somebody from the City can  
3 answer this. The Residential Code of Ohio is  
4 a different body of law than our municipal  
5 ordinances and zoning ordinances, and they  
6 exist -- they co-exist together.

7 MR. DAHL: Right.

8 MR. ZOLLINGER: You know, if I look at --  
9 I look at one -- Section 102.2 of the  
10 residential building code, it -- it -- it  
11 specifically says it's not meant to nullify  
12 provisions of state or federal law, and it  
13 allows municipal corporations to make further  
14 and additional regulations that aren't in  
15 conflict with our chapters of the building  
16 code and the revised code.

17 So I don't know if there is a -- you  
18 know, if somebody can tell me what the -- how  
19 the interplay works here. To me, that's a  
20 separate permitting process. You have to go  
21 through a permitting process there, and then  
22 you also have to go through a local  
23 permitting process with whatever local  
24 government.

25 MR. DAHL: But your Web site is the one

1           that says on there.

2           MR. ZOLLINGER:  Quit -- quit saying it's  
3           my Web site.  We are an independent board,  
4           Mr. Dahl.  Mr. Dahl, we are an independent  
5           board.  Okay?  We are not employees of the  
6           City.

7           MR. DAHL:  It's the City's Web site.

8           MR. ZOLLINGER:  Okay.  Yeah.  What I'm  
9           trying to say is what is -- what is the  
10          interplay between the Residential Code of  
11          Ohio and the municipal ordinances?  Because  
12          there -- they have to exist together.

13          MR. VAN GUNDY:  Chairman, I can address  
14          that for you.  And for the record, I am  
15          certified by the Ohio Board of Building  
16          Standards, Certification Number 5875, to  
17          perform the duties of the residential  
18          building official, particularly here in the  
19          City of North Canton.

20          And, you know, I think first we need to  
21          look at the scope of the Residential Code of  
22          Ohio.  You know, looking at that, that  
23          identifies what structures are covered in the  
24          Residential Code of Ohio.  And you'll see it  
25          pretty much covers everything.



1           And as we go to the section that Mr. Dahl  
2           had identified in there, you know, it indeed  
3           covers structures similar to the one before  
4           you tonight. What I'd like to point out,  
5           too, as well, anyway, is that there is the  
6           statement in 102.10, where it talks about the  
7           approval shall not be required for the  
8           following work; however, this work shall  
9           comply with all applicable provisions of the  
10          rules of the board.

11          So with that said, you know, I'd like to  
12          point to the planning section of that code  
13          that is found in Section 301.1. It talks  
14          about the application. Essentially, it goes  
15          into the structural design, particularly the  
16          301.2.1, the wind design criteria. That's  
17          going to require some type of uplift,  
18          particularly, you know, in this case, as I  
19          mentioned, the wind, so this does not blow  
20          away and land in the middle of the street or  
21          in the neighbor's yard, harming someone.  
22          That exemption only says the City is not  
23          required to do the inspections and do an  
24          approval that's defined and outlined in the  
25          Residential Code of Ohio. That does not

1 address zoning.

2 And, Chairman, you had pointed out the  
3 other section that I wanted to point to in  
4 102.2 that does specifically say municipal  
5 corporations may make further and additional  
6 regulations not in conflict with Chapters  
7 3781 and 3791 of the revised code or with the  
8 rules of the board or the building standards.  
9 Zoning codes do not conflict. They are not  
10 addressed in the Residential Code of Ohio.  
11 They do not conflict. The board of building  
12 standards recognizes that municipalities are  
13 permitted to regulate the zoning and setback  
14 and the character of a neighborhood.

15 So they work together. They do not  
16 conflict. That's one of the areas where we  
17 do agree. This structure is exempt from an  
18 approval from the Residential Code of Ohio.  
19 It's not exempt from a zoning approval.

20 MR. ZOLLINGER: All right.

21 MR. FOX: And if -- if I may add on to  
22 Mr. Van Gundy, that in addition to pointing  
23 to the residential building code, our City's  
24 Web site also has links to the planning and  
25 zoning ordinance of the City of North Canton.

1           The -- the definition of a structure  
2           there, ironically, it is exactly the same as  
3           what you pointed out in Danbury Township.  
4           Indeed, as it stands today, the definition of  
5           the structure, it is exactly the same.

6           Danbury, if you point to their zoning  
7           department, in addition states, perhaps  
8           because of that case, that it recommends that  
9           anyone who does any building to please call  
10          to verify whether a permit is required before  
11          starting any construction. Zoning permits  
12          are required for, but not limited to, the  
13          following types of projects. And about the  
14          sixth -- seventh one down, it lists accessory  
15          structures, including sheds, garages,  
16          gazebos.

17          MR. VAN GUNDY: And to further that a  
18          bit, Chairman, if I may, is when we were  
19          doing the research on various manufacturers  
20          of similar types of structures, we had pulled  
21          up a number of manufacturer installation  
22          instructions, and each of them did include a  
23          similar statement such as what Mr. Fox had  
24          just read to you, advising the owner to  
25          consult with their local jurisdiction for any

1 required permits.

2 MR. ZOLLINGER: Okay.

3 MR. DAHL: We are going to object to it,  
4 and we'll just take it to the Court.

5 MR. ZOLLINGER: Does anyone have --  
6 anyone else on the board have any questions  
7 or comments regarding violation number one?

8 MR. STREB: No.

9 MS. BOYAJIAN: No.

10 MR. ZOLLINGER: Okay.

11 MR. DAHL: No. We'll bring that up to  
12 the Court.

13 MR. ZOLLINGER: Mr. Dahl, just so you  
14 know, we can hear your conversations. I  
15 don't want to listen in on anything. If  
16 you --

17 TONYA ANTHONY: There is nothing private.

18 MR. DAHL: Well, every time I hit --  
19 there it is. I'm sorry. I have two  
20 different mute sections.

21 MR. ZOLLINGER: I just want you to be  
22 aware of that. I don't want to --

23 MR. DAHL: Yep. Okay.

24 MR. ZOLLINGER: Violation number two is  
25 the setback requirement of 35 feet. We are

1           dealing with Section 1135.05(D)(1)(B).  
2           What's your position with regard to this? Is  
3           this -- do you -- is your position you need a  
4           variance or is it your position this is not a  
5           violation?

6           MR. DAHL: My -- simply, I don't feel  
7           it's a violation. Second of all, it's not a  
8           35 foot. If you read it -- again, my brief  
9           covers it rather well. If you look up and  
10          down Pershing Avenue, there are buildings  
11          that are very close, much, much closer to the  
12          sidewalk and the street than the gazebo is.

13          And I think if you read the law, it says  
14          in a built-up area, you have got to take an  
15          average of that area. And if you look up and  
16          down Pershing, that's not -- you are not  
17          going to get a 35-foot average.

18          MR. ZOLLINGER: Okay. That was my  
19          question for you. Yeah. So what is the  
20          average distance then? If -- let's --  
21          assuming you are right, what would the  
22          average distance be, and would the -- would  
23          the gazebo still be too close?

24          MR. DAHL: I have no idea what it is.  
25          But it's not 35 feet.

1 MR. ZOLLINGER: Okay.

2 MR. DAHL: I can look at -- I can look at  
3 Saba, and see they are like 12 inches off --  
4 off of Pershing. I can look -- the house  
5 across the street and up one from Pershing,  
6 that's like 3 feet off the road. I can look  
7 at the -- at the place across the street --  
8 as a matter of fact, you can even look at the  
9 pictogram that I supplied of the -- all of  
10 the residences and structures along Pershing,  
11 and you can see that they are not 35 feet.  
12 You can eyeball them, compared to what my  
13 clients' fence line is, and see that they are  
14 much closer. And I would say that you'd have  
15 to use Pershing on your average, because it's  
16 apples and apples at that point in time,  
17 because of the way that the houses on  
18 Pershing are situated.

19 MR. ZOLLINGER: Okay. Well, my -- yeah,  
20 my -- I'm going to -- I'm -- I'm trying --  
21 I'm going to assume you are right. And my  
22 question is: What would the average be, and  
23 would they still be in violation? Because if  
24 that's the case, then what's the point of  
25 making that argument?

1           MR. DAHL: Well, I -- if you are going to  
2 call -- claim that my clients violate a  
3 35-foot setback, they didn't. It's just as  
4 simple as -- it's as simple and as  
5 straightforward as that. It's not 35 feet.  
6 The average is less than that. You can look  
7 at the -- again, the pictograph. It's not an  
8 exact measurement, but you can see that there  
9 is no way that the average is 35 feet.

10           And it's just -- you know, one thing I  
11 was taught in law, if you don't get it right,  
12 you don't get a second swing at it. And if  
13 it's not 35 feet, and you are saying that my  
14 clients are violating a 35-foot setback, they  
15 are not. That's the law they violated.  
16 Okay? Whether they violated a 26-foot or a  
17 15-foot or whatever setback, they weren't --  
18 it was never claimed that they violated  
19 anything but a 35-foot setback. And they  
20 have not. So that claim is -- is gone. It's  
21 mute. And no, I don't feel like I have to go  
22 out and measure every property on Pershing.

23           Now, obviously, if we end up in the Court  
24 of Appeals, I'll do that. But I was hoping  
25 this was going to be a little bit less

1           confrontational, and maybe it's my fault,  
2           but, you know, I don't think number two  
3           applies, period.

4           MR. ZOLLINGER: Is there any other -- do  
5           you have any other basis for that? I mean,  
6           anything about the -- the -- the gazebo  
7           itself or --

8           MR. DAHL: I don't know that -- I'm not  
9           sure if that's one of the sections that's  
10          included under accessory structures or  
11          accessory buildings, that part. But if you  
12          read, structure is not part of that. It  
13          talks about accessories; accessory structures  
14          and accessory buildings. And under any of  
15          the accessory definitions, this is not an  
16          accessory building or accessory structure --

17          MR. ZOLLINGER: Well, that's -- yeah,  
18          that's --

19          MR. DAHL: -- in that definition.

20          MR. ZOLLINGER: That's what I'm getting  
21          at. I guess that's my question for the City.  
22          Let's assume the -- the gazebo is just a  
23          structure and not a building, does this  
24          ordinance apply to it?

25          MR. VAN GUNDY: Yes, it is -- let me --



1           MR. ZOLLINGER: And point me to the right  
2 provision, because I'm having trouble finding  
3 it.

4           MR. VAN GUNDY: Can the court reporter  
5 hear me at this volume? I --

6           THE REPORTER: Yes.

7           MR. VAN GUNDY: Okay. Because I feel  
8 like I was yelling, but I was wanting really  
9 to make sure that you can hear me okay.

10           Okay. So if we go to 1133.08, we are  
11 talking about accessory use regulations. And  
12 in paren A, it's talking about the minimum  
13 yard requirements for accessory uses. That  
14 sends us on to schedule 1133.08, paren A.  
15 It's on the next page. And under use,  
16 item -- I believe we are looking at item C,  
17 the unenclosed deck, porch, ramp, steps or  
18 similar structure exceeding 3.5 feet in  
19 height.

20           MR. ZOLLINGER: Yeah, I see that.

21           MR. VAN GUNDY: And there is -- if we  
22 look there in the front, it says "NA" for  
23 front setback line, which is "not allowed."  
24 And where we are -- the front now is  
25 clarified in 1133.05, where we talk about the

1 yards for corner lots. That's paren D.

2 And paren 1, and this would be B, the  
3 corner side yard abutting a front yard, which  
4 is the situation with the property before  
5 you, where the rear lot line of a corner lot  
6 coincides with a side lot line of an interior  
7 lot, the corner side yard shall comply with  
8 the requirements for a front yard, including  
9 subsection B above for front yard dimensions  
10 on built-up blocks.

11 MR. ZOLLINGER: And because there are --  
12 are they R2F or R50? They are 35 feet?

13 MR. VAN GUNDY: R2F. And under  
14 definitions of -- definition number 121, for  
15 yard, where we go to the yard corner side, we  
16 start also talking about the similar language  
17 that we were looking at in 1133.05, paren D,  
18 paren 1(B).

19 MR. ZOLLINGER: Okay. So I -- I need to  
20 make sure I understand this. This is -- you  
21 are considering this an unenclosed deck,  
22 porch, ramp, step or similar structures  
23 exceeding 3 and a half feet in height. This  
24 is considered a front yard. So where --  
25 so --

1 MR. VAN GUNDY: Yeah, so the -- the  
2 dimension required for a front yard is  
3 found --

4 MR. MILLER: 1132.

5 MR. STREB: Clint, Mr. Dahl is waving his  
6 hands. I think he wants to be unmuted.

7 MR. ZOLLINGER: Oh, okay.

8 MR. STREB: I don't know who has the mute  
9 button, but I think he needs to be unmuted.

10 MR. VAN GUNDY: Yeah, 11 -- well, it's  
11 1133.05. It's under the yard requirements,  
12 paren G.

13 MR. ZOLLINGER: Right.

14 MR. VAN GUNDY: That's where you were  
15 looking earlier with the 35 foot for the  
16 front yard on the single family R2F.

17 MR. ZOLLINGER: Okay.

18 MR. DAHL: I don't think we addressed my  
19 question about this falling under the  
20 definition of an accessory building or  
21 structure, under your definitions. I don't  
22 think that addressed it.

23 It told us how -- I mean, I have given up  
24 on trying to figure out and/or fight you on  
25 the idea that this side yard is actually a

1 front yard. If that's what they say, that's  
2 what they say. But how does anything make  
3 this is an accessory building, accessory  
4 structure under the accessory section of the  
5 law?

6 And I will unmute {sic} myself, and I  
7 will wave again when I would like to be  
8 unmuted again.

9 MR. ZOLLINGER: Well, I'm looking at  
10 1133.08, and it says an accessory building,  
11 structure, or use permitted in an R district,  
12 which is what we have here, where we are at  
13 here, an -- an accessory -- and accessory to  
14 a dwelling and shall be located as set forth  
15 in schedule 1133.08(A). And we looked down  
16 at the schedule, unenclosed deck structure,  
17 patio, it says front, it says "NA."

18 So then how do we go -- how does that --  
19 so we have structure and building there. And  
20 then that applies to -- how does that tie  
21 back to 1133.05 again? Because 1133.05 seems  
22 to apply to principal buildings.

23 MR. VAN GUNDY: Right. Right. No, and  
24 I --

25 MR. ZOLLINGER: Not structures or

1 accessories.

2 MR. VAN GUNDY: Refresh my memory here of  
3 the notice of violation.

4 MR. ZOLLINGER: Yeah, the notice of  
5 violation says 1133.05, and I'm -- that's  
6 what threw me for a loop the first time, is  
7 how is that saying there is a 35-foot setback  
8 for a -- for a gazebo that isn't part of the  
9 building?

10 MR. VAN GUNDY: Yeah. No. I beg your  
11 pardon. It's -- it's item A in that  
12 schedule, as opposed to the -- the C,  
13 detached accessory building and other  
14 accessory building. And then we have the  
15 paren 1 and the paren 2 in that line on  
16 there. That's -- that's how that was all  
17 tying together with that.

18 Paren 2, if we go down to the notes to  
19 the schedule 1133.08(A)(1), shall comply with  
20 corner side yard requirements set forth if  
21 Section 1133.05. So the -- the  
22 differentiation here was that this structure  
23 is a roofed type structure. It would be  
24 similar to a carport or, you know, anything  
25 else where the -- that structure or building

1           would have a roof on it.

2           MR. ZOLLINGER:   Okay.   So did we recite  
3           the right ordinance in the notice of  
4           violation?

5           MR. VAN GUNDY:   The section cited in the  
6           notice of violation is the -- where this  
7           schedule sends you, essentially; the end  
8           result, if you will, with -- with a specific  
9           reference to the parcel configuration, with  
10          the corner side yard abutting a front yard.

11          MR. ZOLLINGER:   Okay.

12          THE REPORTER:   Ben, Mr. Dahl wants to be  
13          unmuted again.

14          MR. DAHL:   And, again, Mr. Zollinger,  
15          no -- no -- no offense intended, but, I mean,  
16          you are using the general term "we" also,  
17          like I kind of use the "you."   So I'm -- it's  
18          not a problem.   Just understand that I'm  
19          trying to signify "you" as the City of  
20          Canton, like you are identifying "we" as the  
21          City of Canton; so --

22          MR. ZOLLINGER:   Well, this is the City of  
23          North Canton, and --

24          MR. DAHL:   North Canton.

25          MR. ZOLLINGER:   -- I'm sorry for doing

1           that. I'm -- what I'm trying to do, Mr.  
2           Dahl, is try to figure out how this provision  
3           applies to a gazebo, so --

4           MR. DAHL: And I'm still trying to figure  
5           out how -- because this is all in the  
6           accessory building. And if you -- again, if  
7           you go back to the simplicity of the  
8           definitions, the definitions that are under  
9           accessory don't apply to this gazebo.

10          And I'm going to mute myself again, and  
11          I'll wave to you if I feel the need.

12          MR. ZOLLINGER: Okay. If somebody else  
13          on the board sees this -- I'm having trouble  
14          finding where 1133.05 applies to structures  
15          or accessory buildings. I understand -- I  
16          know it has been explained, but I'm having  
17          trouble following this. Because I don't see  
18          where it -- it -- it does. Does anybody see  
19          that?

20          MR. STREB: I have it open and I'm  
21          looking, as well.

22          MR. ZOLLINGER: And, really, does it  
23          apply to structures? Because I think that's  
24          what we have here. Assuming it's not  
25          attached to the property -- let's assume it's

1 not a fixture -- does it apply to structures?

2 MR. VAN GUNDY: And I'm seeing in  
3 paragraph A, under 1133.08, where --

4 MS. BOYAJIAN: Right.

5 MR. VAN GUNDY: -- it says an accessory  
6 building, comma, structure or permitted use  
7 and -- and in our district, an accessory to a  
8 dwelling unit shall be located as set forth  
9 in schedule 1133.08(A).

10 MR. ZOLLINGER: Okay.

11 MR. VAN GUNDY: And --

12 MR. ZOLLINGER: If I look at A, and it  
13 says "NA."

14 MR. VAN GUNDY: For the front yard, yeah.  
15 And then if we go -- so if we go to the side  
16 yard -- so if -- I mean -- and I think we  
17 have got to look at it as though, for a  
18 second, that if this wasn't on a corner, that  
19 would be a side yard generally.

20 So normally we'd be looking at a side  
21 yard, but that paren 2 sends us down to the  
22 notes, and that's where we start getting into  
23 the differentiation of the corner side yard  
24 and the requirement set forth in 1133.05,  
25 paren D.



1           MR. ZOLLINGER: Okay. And yeah, just to  
2 back up a second, you are saying paren -- you  
3 are looking at item F in 1133.08(A)(1), the  
4 schedule. And -- oh, no, you are not. Never  
5 mind. Scratch that.

6           Yeah, okay. Item 2 under 1133.08(A), for  
7 purposes of setbacks, an attached garage  
8 shall be considered part of the principal  
9 building and shall require -- comply with the  
10 yard requirements.

11           Then item B -- where in item B is this --

12           MR. VAN GUNDY: Oh, you know, what I'm --  
13 when I was referring to the number 2, I'm --  
14 notes to Section 1133.08(A)(1). I was -- I'm  
15 actually referring to that note to number 2,  
16 under the footnote there on that schedule  
17 1133.08(A)(1).

18           MR. ZOLLINGER: Okay. I see now.  
19 1133.05.

20           MR. VAN GUNDY: Right. And my apologies,  
21 I was not looking down at that.

22           MR. ZOLLINGER: Okay. All right. I see  
23 how that's working together now. So it's  
24 notes to schedule 1133 .08(A)(1), note number  
25 2, shall comply with the corner yard side

1 requirements set forth in 1133.05(D).

2 And you go up to 1133.05(D), and we see  
3 what the setbacks are for a corner yard. And  
4 it shows us an R2F for single family, front  
5 yard, 35 feet. And for a -- and a corner  
6 yard, the -- the side yard is going to be  
7 treated like a front, so that's supposed to  
8 be 35 feet. Am I following that right?

9 MR. VAN GUNDY: I believe so.

10 MR. ZOLLINGER: Anybody -- but I -- you  
11 know, and, of course, there is the argument  
12 that other properties on the street have --  
13 are inside of that, which is another issue.  
14 But I just want to make sure there is  
15 actually an ordinance that says -- that  
16 requires -- I see it now.

17 Anything else, Mr. Dahl, on that?

18 THE REPORTER: He needs unmuted.

19 MR. DAHL: Okay. Hi. Again, if you look  
20 to the definition, it does not apply. And  
21 that's essentially my argument on Section 3.  
22 It's not an accessory building. It's not an  
23 accessory structure. The section that deals  
24 with accessory, 1133.0 -- I think it might be  
25 all of 1133, talks about accessory uses. And

1           it's not an accessory use as far as I'm  
2           concerned.

3           Again, I have my brief. I'm standing on  
4           my brief. I don't -- I don't see any reason  
5           to beat this any longer, unless, of course,  
6           you want to. And that's, I guess, fine with  
7           me.

8           MR. ZOLLINGER: All right. Do you have  
9           anything that you want to say then with  
10          regard to violation three?

11          MR. DAHL: It amounts to the same -- the  
12          same thing. It's -- it doesn't -- it's not  
13          an accessory structure under your definition.  
14          It's not an accessory building under your  
15          definition. And, I mean, if -- you people  
16          are very, very intelligent, and I think you  
17          had just about a 15- or -- plus minute  
18          conversation trying to figure out if this was  
19          done properly or not. And, I mean, that  
20          almost begs the argument.

21          So, yeah, I'm going to stand on my brief.  
22          Thank you.

23          MR. ZOLLINGER: All right. Thank you,  
24          sir.

25          Does anyone else want to speak on behalf

1 of the application before I let people who  
2 want to -- anyone who wants to speak against  
3 it?

4 (No response.)

5 MR. ZOLLINGER: If not, I will let --  
6 anyone who would like to speak against it can  
7 be unmuted.

8 MR. DAHL: I have Mary Hakaim, a  
9 professional real estate agent, in --  
10 approximately in this area and in North  
11 Canton, who basically -- Mary, tell us about  
12 the gazebo, the appearance, the value --  
13 well, tell us about the appearance.

14 MR. ZOLLINGER: We can't hear. I haven't  
15 heard a word she has said.

16 MS. HAKAIM: I just wanted to let you  
17 know that if the Anthonys were to decide if  
18 they were going to for some reason list their  
19 property, that gazebo would not be part of  
20 the real estate sold, because it is not a  
21 secured structure. It is not in any way  
22 permanent. It's a temporary structure that  
23 can be moved at any time. So it would be  
24 considered chattel as far as the real estate  
25 industry -- you know, industry is concerned.

1 MR. DAHL: Okay. Is the --

2 MS. HAKAIM: Absolutely. It is not an  
3 eyesore in any way.

4 THE REPORTER: Excuse me. Excuse me.

5 MR. ZOLLINGER: I'm sorry. Mr. Dahl --  
6 Mr. Dahl, we couldn't hear you.

7 MR. DAHL: Oh, I'm sorry. Let me --

8 MR. ZOLLINGER: We still can't hear you.

9 MR. DAHL: Wow. I'm sorry. My mike is a  
10 lot more directional than I thought it was.

11 In dealing with this property, does it  
12 decrease the overall appearance of the  
13 property as a marketing -- as part of  
14 marketing.

15 MR. ZOLLINGER: All right. Now you have  
16 to turn the mike back toward her more.

17 MS. HAKAIM: It does not in any way  
18 decrease the value of the property, and it is  
19 good curb appeal with this particular gazebo.

20 MR. DAHL: The property in general, is it  
21 well maintained?

22 MS. HAKAIM: Are you asking me, Dean?

23 MR. DAHL: Yes.

24 MS. HAKAIM: Yes, it is definitely well  
25 maintained. And it's actually in much better

1 condition than when it was purchased, and it  
2 was in great condition when she bought it.  
3 It's an above pristine property right now.

4 MR. DAHL: Thank you, Ms. Hakaim.

5 Anybody have any questions for  
6 Ms. Hakaim?

7 MR. ZOLLINGER: I do not. Does anybody  
8 else?

9 MS. BOYAJIAN: No.

10 MS. HAKAIM: Thank you.

11 MR. ZOLLINGER: Thank you.

12 MR. DAHL: All right. I'm going to take  
13 my life in my own hands here and open the  
14 floor up to my clients for constructive  
15 comments, if they will.

16 TONYA ANTHONY: Tonya Anthony. I just  
17 had a question. Has anyone in the -- that  
18 sent out the letters, has any of them  
19 complained or had any kind of issue with the  
20 gazebo? Have you had any feedback on that?

21 MR. ZOLLINGER: Sorry. Who are you  
22 asking the question of?

23 TONYA ANTHONY: Whoever -- whoever -- you  
24 guys sent out a letter to -- to the  
25 neighbors, I guess. Because the one lady

1           came up to us and asked us about it.

2           MR. ZOLLINGER: Ms. Anthony, who are you  
3 asking the question to? Because the board  
4 doesn't know anything about what you are  
5 talking about.

6           TONYA ANTHONY: Mr. Van Gundy, I believe.

7           MR. ZOLLINGER: Okay.

8           MR. VAN GUNDY: Yes. So I have talked  
9 with one of the property owners we sent the  
10 notice to, and to be quite frank, they were  
11 not addressing specifically the gazebo  
12 structure. They were more concerned about  
13 the music being played.

14          TONYA ANTHONY: We don't play -- yeah, we  
15 don't play music during hours that we are not  
16 -- we go to bed 9:30, 10:00 p.m., so that's  
17 ridiculous.

18          MR. VAN GUNDY: Well, that's not any part  
19 of this hearing, of course.

20          TONYA ANTHONY: Yeah, regardless. Yeah,  
21 they didn't complain about the gazebo.  
22 That -- that was my question.

23          MR. VAN GUNDY: Right.

24          TONYA ANTHONY: Also, we were also told  
25 in one of the letters -- and I apologize, I

1 don't have it in front of me -- that we were  
2 encroaching upon -- because of the gazebo, we  
3 were encroaching upon 60 percent of our back  
4 yard fillage, which is also kind of  
5 laughable, because if you walk around --  
6 again, we see all kinds of stuff.

7 Our back yard is what it was stated. And  
8 then we are also being told that this is our  
9 front yard. So we are kind of confused as to  
10 is this our back yard or front yard or our  
11 side yard.

12 And another thing, before I move away, I  
13 can count 20 -- at least 20 people stopping  
14 their vehicles to tell us how nice our  
15 property is.

16 Also, one other thing, we have 638  
17 Portage Street Northwest is a Council  
18 member's home. He bought the home in 2018.  
19 There is a pergola against the house. So you  
20 might want to look into that. I thank you  
21 guys for your time.

22 MR. ZOLLINGER: Thank you.

23 MR. DAHL: I'm sorry. I'm back.

24 MR. ZOLLINGER: Go ahead.

25 MR. DAHL: Did you want to say something?



1           Okay. Excuse me. Introduce yourself.

2           KATIE ANTHONY: Katie Anthony, 602 East  
3 Maple Street. I just wanted to let the board  
4 know that the Mayor has stopped over our  
5 house April 8th, I believe, and let us know  
6 that the house on Maple Street three doors up  
7 from us had been permitted to be taken down.  
8 And that, in fact, was a lie, because I  
9 looked up CRC on the City Council Web site,  
10 and it, on June 8th, was included in that  
11 proposal to be taken over and torn down to  
12 improve the City.

13           A few days ago, we had three cop cars  
14 show up at that residence doing an  
15 inspection. And my wife had called the City  
16 asking if we needed to be concerned. They  
17 said, no need to be concerned. But here we  
18 are with a vacant building that is subject to  
19 invite crime, drugs, meth labs three doors  
20 down, when we have a family there 100 feet  
21 away.

22           And that has been allowed for the last  
23 five years while we have owned this  
24 residence, but yet we have constantly been  
25 fighting to improve upon the City, bring

1 taxpayer dollars into the City, raise the  
2 property value of those homes around us, and  
3 we are constantly fighting. But yet here we  
4 are subjecting our families to meth labs,  
5 drugs, crime, police, all within a -- right  
6 by our residence. Why?

7 MR. DAHL: You were heard. You were  
8 heard. You were heard. Okay. Thank you  
9 very much. I am done speaking on behalf. I  
10 rest my case on my briefs --

11 MR. ZOLLINGER: Okay.

12 MR. DAHL: -- what I submitted. Thank  
13 you very much.

14 MR. ZOLLINGER: All right. Thank you,  
15 Mr. Dahl. Anyone else want to speak on  
16 behalf of the application before I turn it  
17 over to the other side?

18 MR. VAN GUNDY: Chairman, if I may  
19 address one of the -- might have been a  
20 question -- I'm not sure -- or comment. At  
21 any rate, it was in regards to the 60  
22 percent. There was an advisory noted in  
23 the -- in the letters that were sent out  
24 addressing the gazebo. And the hopes really  
25 was that there would be an application

1 submitted in response to the notice of  
2 violation or really the courtesy notice.

3 And that was really to -- in hopes of  
4 preparing the applicant to make a complete  
5 submittal, to best set them up for success on  
6 relocating the gazebo into a portion of the  
7 property that, you know, we could consider  
8 under the zoning code. And that is in the  
9 rear yard.

10 And there is a provision in the zoning  
11 code that does limit the rear yard coverage  
12 to no more than 60 percent. So we felt that  
13 was helpful in putting that in there. It was  
14 in no way meant to confuse the situation.

15 But there is a distinction between the  
16 defined rear yard and the corner side yard.  
17 And the current location, for the record,  
18 is -- as defined in the zoning code, is the  
19 corner side yard. It's not the rear yard.

20 MR. ZOLLINGER: Okay. Any questions from  
21 the board before we move to the other side?

22 MR. YOUNG: We have Lucinda VerPlanck to  
23 speak for.

24 MR. ZOLLINGER: Okay.

25 MR. YOUNG: She has admitted, in chatting

1 with the host, that she was not sworn in. So  
2 she will need to swear her in.

3 MR. ZOLLINGER: Go ahead and swear her  
4 in.

5 (Whereupon, Lucinda VerPlanck was sworn  
6 by the Court Reporter.)

7 MS. VERPLANCK: So I'm at 118 Pershing  
8 Avenue Southeast, which is directly next to  
9 Katie and Tonya's residence. Me and my  
10 husband have lived here for approximately  
11 three years now, since 2017. In that time, I  
12 have watched them build up their back yard  
13 and make it from a small grassy area into a  
14 really nice, well put together area, where it  
15 actually inspires us to improve our own  
16 house. And it brings up our own property  
17 value. It would be detrimental to us, I  
18 think, to see that gazebo come down, because  
19 it does bring up the whole value of the  
20 neighborhood.

21 I would also like to point out that I  
22 think that during the time that they put up  
23 the gazebo in the first place, the offices  
24 were closed due to the Coronavirus. So I  
25 don't know if you guys would have -- if the

1 zoning or permit offices would have been open  
2 to contact in the first place.

3 As far as I can tell with the proximity  
4 to the -- the street, there is no hindrance  
5 to be able to see out to affect in any way  
6 people turning onto the street or people  
7 turning off to the street. I have to drive  
8 to work every day, and I have not been  
9 affected by it, except that I enjoy looking  
10 at it. If there are any questions to -- from  
11 them or to me, I'd be happy to answer them.  
12 But that's my argument.

13 MR. ZOLLINGER: Okay. Thank you. Does  
14 anybody have any questions?

15 (No response.)

16 MR. ZOLLINGER: All right. If that's it,  
17 ma'am, I appreciate it. Thank you.

18 All right. Anybody else on behalf -- in  
19 favor of the application?

20 MR. YOUNG: We do not, sir.

21 MR. ZOLLINGER: Okay. Then let's  
22 go with -- hear from the other side, if there  
23 is anybody that wants to speak against.

24 MR. YOUNG: Yes. We have Mr. Chuck  
25 Osborne.

1 MR. OSBORNE: You can hear me okay?

2 MR. ZOLLINGER: Yes, we can.

3 MR. OSBORNE: Okay. I am speaking with  
4 regards to the application before you from  
5 the property owners at 602 East Maple Street  
6 for a variance. Grace Hopper, an early  
7 computer programmer, and later our US Navy  
8 rear admiral, is credited with saying, and I  
9 quote, it's easier to ask forgiveness than it  
10 is to ask permission, closed quotes. I am  
11 sure most of you have heard this saying in  
12 your lifetime. This is clearly what we have  
13 before us today.

14 I sincerely hope this is not how we want  
15 the citizens of North Canton to treat our  
16 zoning code. The appellants in this action  
17 should be very well-versed on the City's  
18 zoning code, as they have had multiple  
19 appearances before this board over the year.  
20 And I'm sure in each of those occasions, they  
21 have become wide -- well-versed with our  
22 zoning code. At each appearance, it has been  
23 made perfectly clear that a side lot to a  
24 corner property has the same restrictions as  
25 the front yard.

1           There is also an expression that comes to  
2           mind with regard to this property, and it is,  
3           and I quote, give someone an inch and they'll  
4           take a mile. The property the appellants now  
5           occupy was given two variances which allowed  
6           the construction of the house a decade or so  
7           ago. Since the appellants purchased this  
8           property, they have installed a massive hot  
9           tub on the back porch. North Canton zoning  
10          code does not even address subsequent  
11          installation directly, as I don't think most  
12          people would even dream of doing such a  
13          thing. But surely the code would have had  
14          regulated this action in some manner. The  
15          appellants slipped this in under the radar.

16          Last year, the appellants installed an  
17          above-ground pool which occupies a majority  
18          of the back yard. The pool itself may just  
19          barely meet the 10-foot setbacks, but the  
20          peripheral equipment, the circulation pump,  
21          sets within the 10-foot setback required  
22          under the code. This was overlooked and a  
23          permit given to construct the pool.

24          In addition to the fact that the gazebo  
25          does not meet setback requirements, the

1 gazebo also has been outfitted with lighting  
2 that brings up additional concerns.

3 I do not wish any misfortune or hardship  
4 for the appellants. Sadly, they cannot  
5 maintain any stability, as when they see  
6 either me or my wife, they extend their  
7 middle finger when they drive past our house,  
8 and are so distracted flipping us off, that I  
9 am afraid they are going to lose control of  
10 their vehicle. I actually admired them last  
11 year during their presentations before this  
12 board, as they were very civil and  
13 professional. Now they show their true  
14 selves and their actions are far from civil  
15 or professional.

16 This corner lot is on display for the  
17 world to view. I believe that the granting  
18 of multiple variances early on and other  
19 actions by the City has rendered North Canton  
20 zoning code as meaningless in the eyes of the  
21 property owners before you tonight.

22 Please reign in this highly overbuilt  
23 playground and stand by our zoning code and  
24 restore respect for the laws of North Canton.  
25 Locally enacted laws protect our community.



1           Also, I would like to add the following  
2           remarks for Mr. Zollinger. The zoning code  
3           was originally passed in 2003. I was  
4           chairman of ordinance and rules back then.  
5           It was an entire rewrite of our zoning code.

6           So con -- and also, I'd like to speak to  
7           Mrs. Clevenger's remarks. And I  
8           wholeheartedly agree with you,  
9           Mrs. Clevenger. Their workload could have  
10          been cut to a bare minimum if they had simply  
11          picked up the phone and called and talked to  
12          the horse's mouth. They would have been --  
13          the City would have been more than happy to  
14          have walked them through what they could and  
15          couldn't do per the code.

16          As far as citing all these other  
17          so-called infractions of our code, we do not  
18          know when these infractions took place.  
19          These are older neighborhoods, and I'm sure  
20          much of this went in prior to the code. And  
21          even if we do have some violations after the  
22          code, two wrongs do not make a right. Just  
23          because it has been done wrong elsewhere  
24          doesn't mean it will pave you the way to  
25          continue to ignore our code.

1           So I'm going to let the board do what  
2           they should do. I hope you uphold our zoning  
3           code. It is meaningful. It protects our  
4           neighborhoods, and it's there for a purpose.  
5           Thank you very much.

6           MR. ZOLLINGER: Thank you, sir. Is there  
7           anybody else to speak against the  
8           application?

9           MR. DAHL: I'd like to thank Mr. Osborne  
10          for pointing out that 2003 is when the -- the  
11          zoning went in -- was in -- went into  
12          enforcement. Thank you, Mr. Osborne.

13          MR. ZOLLINGER: Thank you. Does anybody  
14          else want to speak against the application?

15          MR. YOUNG: We have no one else signed  
16          up, sir.

17          MR. ZOLLINGER: Okay. Thanks.

18          Mr. Dahl, do you have anything briefly  
19          you want to say in rebuttal before we vote?

20          THE REPORTER: He needs unmuted.

21          MR. DAHL: I'm trying. I tried.

22          MR. ZOLLINGER: We can hear you now.

23          MR. DAHL: Thank you very much. I -- I  
24          do apologize. I didn't want to turn this  
25          into what seems like an antagonistic thing.

1           Although, it did.  May be my fault.  If it is  
2           totally my fault, I totally apologize.

3           But thank you for your time.  I know you  
4           all have lives outside of this.  So have a  
5           good evening.  We'll sit back and I will mute  
6           again.

7           MR. ZOLLINGER:  All right.

8           MR. VAN GUNDY:  Chairman, a couple  
9           things, if I may, before you go to vote.

10          MR. ZOLLINGER:  Yes.

11          MR. VAN GUNDY:  Which came up in the  
12          opposition, and -- and I think it is worth  
13          noting.  The pool was permitted, as was the  
14          fence.  We did find those to be in compliance  
15          with the zoning code.  The peripheral  
16          equipment is not specifically addressed in  
17          the code.  We did find that it's attached by  
18          a flexible means and can be moved readily,  
19          even if it was addressed.

20          The other thing we are noting is we did  
21          find that they were only approximately 37  
22          percent coverage, although it -- I will say,  
23          if you were to look at it, you might think it  
24          was much closer to the 60 percent of the  
25          permitted coverage.  But based on the

1           calculations that we did at that time, we  
2           came up with approximately 37 percent  
3           coverage. And I'll -- I'll leave it at that.  
4           Thank you.

5           MR. FOX: Mr. Chairman, if I may ask just  
6           one question that came up in the comments for  
7           Mr. Van Gundy. There was kind of an open  
8           statement that perhaps the building  
9           department, because of COVID-19 restrictions,  
10          may have been closed or may have not been  
11          accepting any applications for building or  
12          zoning var -- permits or variances. So I  
13          wanted to check if indeed there was any  
14          closure during that time or if they remained  
15          open, business as usual.

16          MR. VAN GUNDY: So staff was working. We  
17          did have access to staff via e-mail and  
18          telephone. The doors were locked and we were  
19          closed to the general public. However, we  
20          did make -- yeah, well, we revised our  
21          procedures to continue business during the  
22          COVID closure, while maintaining the  
23          governor's orders.

24          MR. FOX: Thank you.

25          MR. VAN GUNDY: And the Mayor's orders,

1           of course.

2           MR. FOX: Thank you.

3           MR. ZOLLINGER: Okay. Anything else?

4           (No response.)

5           MR. ZOLLINGER: If not, I'd like to get  
6 on with the voting. I'll give you my  
7 thoughts, and if any other board member wants  
8 to chime in, that's fine. I believe this is  
9 a structure, as defined by the code. Our --  
10 our job is limited. I say this at every one  
11 of our meetings, and, Mr. Dahl, this is  
12 why -- and I apologize if I lashed out at you  
13 a little bit by saying "you guys." I  
14 consider us an independent body. We are not  
15 employed by the City. We are private  
16 citizens. We are not paid for this. We take  
17 our job seriously, but we -- we are an  
18 independent body. We are more like a  
19 judicial body.

20           And when you ask us for variances or to  
21 hear appeals, my -- my feeling is, especially  
22 with variances, you are asking us to change  
23 what elected people have put into place  
24 because of a very special circumstance. So  
25 it's a very limited role we play.

1           And our job is to look at what the  
2           ordinances say. When it comes to appeals,  
3           like whether a zoning certificate is  
4           required, you know, I look at the ordinances  
5           and try to figure out, is this -- does this  
6           really apply here.

7           And I believe with regard to violation  
8           one, a zoning certificate is required because  
9           this is a structure, as defined by the  
10          ordinance. Now, if the ordinance -- and the  
11          ordinance is sufficiently clear that a  
12          structure is just anything constructed or  
13          erected. It could mean, you know, things  
14          other than a gazebo, but I think that this  
15          gazebo, being the size it is and the  
16          dimensions it is, that -- that would be  
17          considered a structure.

18          So that's just my feeling. That's just  
19          my opinion. I don't know what the other  
20          board members think about it. I did do -- I  
21          did look at the law and the ordinances pretty  
22          sufficiently, and that's how I feel about  
23          that. And so I do think a zoning certificate  
24          is required.

25          As for violation two and the setback, it

1 does look like the interplay between 1133.05  
2 and 1133.08 requires a 35-foot setback here  
3 in this situation. I don't see any -- I  
4 don't see that the -- the burden of proof for  
5 a -- a variance, which requires special  
6 circumstances, a lot of different factors,  
7 have been met here for a variance.

8 And the same with regard to violation  
9 number three. There hasn't been evidence  
10 submitted to support the special  
11 circumstances. And I also believe that  
12 because this is a structure, that -- that  
13 those ordinances apply to those items.

14 I would say, you know, like I said  
15 before, any evidence that the City has  
16 granted permits for an -- like a basic apples  
17 to apples comparison, I'd want to hear that.  
18 I don't want to see anybody treated  
19 differently. And if the City granted a -- a  
20 certificate in this situation to somebody  
21 else and -- and is treating your clients  
22 differently, Mr. Dahl, than I would want  
23 to -- I would take that into consideration,  
24 and I would say, well, then we are not going  
25 to apply this to somebody else.

1           I haven't heard evidence of that. There  
2           is 965 Fair Oaks. The City has said they  
3           weren't aware of that structure; that they  
4           are going to follow up on it. They are  
5           probably going to end up in front of this  
6           board, and we'll have to look at that  
7           situation and see if it's -- if it's similar  
8           or not. And if it is, then they'll be  
9           probably -- they are going to be -- if it's a  
10          similar situation to this one, then the  
11          result is going to be similar, I would -- I  
12          would hope.

13                 So that's -- that's my position. I want  
14          to hear what other board members have to say  
15          or think about this. But that's what I'm  
16          looking at right now.

17                 Anybody -- anybody else?

18                 MR. STREB: Mr. Dahl is waving again.

19                 MR. ZOLLINGER: Well, we are done -- Mr.  
20          Dahl, I'd like to hear from the other board  
21          members first. We have listened to every --  
22          both sides, and I want to hear what other  
23          board members have to say right now. And  
24          then I'll give you a chance to speak again  
25          briefly. Thank you.



1 MS. CLEVINGER: Well, I -- Chris  
2 Clevenger. I just feel like this all could  
3 have been avoided had a simple phone call  
4 been made. It's very clear that you should  
5 always call first and ask, and -- and the  
6 office was available for a phone call or an  
7 e-mail. And I don't believe they have met  
8 the requirements that they need to meet. I  
9 mean, it's unfortunate. It's a nice looking  
10 structure. And perhaps something could have  
11 been worked out or adjusted, you know, had  
12 they checked first.

13 MS. BOYAJIAN: I think if a simple permit  
14 was pulled, we could have maybe avoided the  
15 second and third things on the list by  
16 following the ordinances in place.

17 MR. ZOLLINGER: Anyone else?

18 (No response.)

19 MR. ZOLLINGER: Okay. Mr. Dahl, did you  
20 have something you wanted to add before we  
21 vote?

22 THE REPORTER: Can't hear you.

23 MR. DAHL: There we go. Thank you for  
24 unmuting me. I realize my time is up.  
25 However, I do feel the need to say, I began

1 the presentation by saying that I was  
2 perfectly willing to allow my brief to speak  
3 on its own. And I proceeded to begin with  
4 going through the specific ten items that are  
5 required to request a variance. And I was  
6 turned off or shut down after beginning to  
7 speak on item number C.

8 So to say that I haven't met my burden on  
9 the variance, I simply would say my time is  
10 up. You have turned me down for additional  
11 evidence. It's understandable. But it  
12 wasn't due to my trying as much as it was to  
13 being told that we were there to deal with  
14 those three items. And with that, please  
15 continue with your vote.

16 MR. ZOLLINGER: Well, I disagree with  
17 that, Mr. Dahl, because I did ask you your  
18 position with regard to the violation two and  
19 three, and you had an opportunity to speak  
20 then as to those ten items.

21 THE REPORTER: He is muted.

22 MR. DAHL: I have -- I have nothing  
23 further to say. I -- I'm muted. I'm glad  
24 I'm muted, and I'm glad I'll be able to  
25 present this and everything else that we will

1           have in front of the Court of Common Pleas if  
2           you vote the way you do. I mean, it's -- I  
3           thank you for your time again. But I  
4           don't -- I do feel like I was -- I was making  
5           a presentation, and I was shut off,  
6           Mr. Zollinger. And I thank you for your  
7           comments.

8           MR. ZOLLINGER: Okay. Thank you. At  
9           this point, we will do a roll call for the  
10          vote.

11          MS. MILLER: Ms. Boyajian.

12          MS. BOYAJIAN: No.

13          MS. MILLER: Mr. Zollinger.

14          MR. ZOLLINGER: No.

15          MS. MILLER: Ms. Clevenger.

16          MS. CLEVENGER: No.

17          MS. MILLER: Mr. Streb.

18          MR. STREB: Abstain.

19          MS. MILLER: Mr. LePage.

20          MR. LEPAGE: No.

21          MR. ZOLLINGER: I -- I actually would  
22          like to -- for purposes of the record, I  
23          think we need to do the vote again. We are  
24          going to -- we are doing a vote as to all  
25          three violations in the notice. I want to

1 make that clear. So let's call the roll  
2 again with -- and this is with respect to all  
3 three violations in the notice of violation  
4 dated May 1st, 2020. Go ahead and do that  
5 again. I'm sorry.

6 MS. MILLER: Ms. Boyajian.

7 MS. BOYAJIAN: No.

8 MS. MILLER: Mr. Clev -- Ms. Clevenger.  
9 I'm sorry.

10 MS. CLEVINGER: No.

11 MS. MILLER: Mr. Zollinger.

12 MR. ZOLLINGER: No.

13 MS. MILLER: Mr. Streb.

14 MR. STREB: Abstain.

15 MS. MILLER: Mr. Le --

16 MR. ZOLLINGER: Okay. The -- the  
17 application is denied based on that vote.

18 MS. MILLER: I don't think I called  
19 Mr. LePage.

20 MR. ZOLLINGER: Oh, I'm sorry. Mr.  
21 LePage. Sorry.

22 MR. LEPAGE: No.

23 MR. ZOLLINGER: Okay. The application is  
24 denied. Thank you.

25 We'll move on to the next item of

1 business.

2 MS. MILLER: Application Number  
3 20-NCZBOA-0002, Adam and Christina Romans,  
4 819 Honeysuckle Drive, North Canton, a  
5 variance request for a reduced corner side  
6 yard.

7 MR. ZOLLINGER: Okay. I think we need to  
8 swear in anybody who is going to testify with  
9 regard to this application.

10 MR. MOORE: Okay. We have two -- two  
11 individuals, Adam and Christina Romans, who  
12 will be sworn in at this time.

13 (Whereupon, Adam Romans and Christina  
14 Romans were sworn by the Court Reporter.)

15 MR. ZOLLINGER: All right. Thank you for  
16 your patience. That was a -- a rather long  
17 one before you. Is there anybody else that's  
18 going to testify either on behalf of or  
19 against the application that's present?

20 MR. YOUNG: At this time, no members of  
21 the public have expressed an interest in  
22 testifying in this case.

23 MR. ZOLLINGER: Okay. Thank you. Okay.

24 Mr. Moore, you can proceed if you'd like.

25 MR. MOORE: Thank you, Mr. Chairman.

1           Before we get into our case, that was very  
2           illuminating, and we do appreciate the time  
3           and the effort on behalf of the citizens of  
4           North Canton that all of you make, including  
5           the zoning officials and the Law Director.  
6           We appreciate that. It's volunteers like you  
7           that make North Canton a very special place  
8           to live.

9           So I'll go ahead and proceed. I -- I  
10          submitted a statement or a brief in -- on  
11          behalf of the Romans, and I believe that was  
12          submitted last Thursday. So I hope you all  
13          have had an opportunity to review it. I  
14          apologize it wasn't submitted a little  
15          earlier. The -- the statement -- I'll try to  
16          summarize that position and then allow you to  
17          ask questions of the applicant.

18          The -- the Romans have three children.  
19          They live in North Canton. They have lived  
20          there for approximately 15 years. And  
21          recently, Adam's father passed away, and they  
22          decided that they would buy a lot and build a  
23          new residence in the Sanctuary Number 4.

24          So they acquired a -- a lot, Lot Number  
25          166. It's one of the larger lots in

1 Sanctuary Number 4. And it allows them to  
2 have Adam's mother move in with them, along  
3 with their three kids.

4 And what is important in this case, prior  
5 to purchasing that lot, they wanted to make  
6 sure that they could actually proceed to  
7 build the residence that they desired. So  
8 they made sure that they had conditions in  
9 the purchase agreement with the developer.  
10 The developer in that case is one of DeHoff's  
11 companies. I believe it's called McKinley  
12 Applegrove that did it. And they had  
13 conditions in there allowing for the  
14 architect, for the developer to approve that.  
15 He in fact did approve it. They submitted a  
16 site plan to them, and it was approved.

17 After obtaining that approval, they --  
18 they made contact with the City of North  
19 Canton building department, including the  
20 zoning department, and requested that they  
21 look at the site plan. Christina Romans is,  
22 let's say, relatively new in new  
23 construction, and so she wanted to make sure  
24 she was reviewing zoning regulations  
25 appropriately, and she made contact with the

1 building department to review that.

2 They proceeded to close on the lot, only  
3 after they obtained both the developer's and  
4 the North Canton -- North Canton's approval  
5 to -- to build this home on that lot. And  
6 the documentation identifying that is  
7 attached as exhibits to my statement. So  
8 they -- they proceeded to move forward with  
9 the construction and the digging of the --  
10 excavating of the basement, and proceeded  
11 with the installation of the footers.

12 They in fact obtained a -- an approval on  
13 the footers, I believe it was on June 3rd.  
14 And they were moving along with the  
15 expenditure of approximately \$138,000 for the  
16 lot, plus the closing and then an additional  
17 \$100,000 by releasing certain orders for  
18 nonrefundable items, such as the lumber  
19 package, the steel beams, a number of window  
20 package, much of which was custom for this  
21 home.

22 Then they were surprised that it was a  
23 difficult time for them, because on June 8th,  
24 they were advised by the zoning inspector  
25 that there in fact was a setback violation.



1           They were completely unaware of this setback  
2           violation before they proceeded, and, in  
3           fact, had felt that it was being built in  
4           compliance with the regulations.

5           They had the -- the property staked  
6           before they started construction. And after  
7           we received the information from Mr. Van  
8           Gundy and the building department, they had  
9           it resurveyed, and, in fact, it was  
10          determined that there would be a setback --  
11          setback violation. And that setback  
12          violation is not consistent, because the --  
13          the lot -- or the roadway, Dunway, has a  
14          substantial curvature to it. So it's at 4.4  
15          feet at one location and 7.2 feet at another  
16          location. The average is approximately 5.8  
17          feet. We had that measured from the -- the  
18          property line and not from the roadway in  
19          accordance with Martin's determination.

20          We would submit at this time that there  
21          are special conditions and circumstances that  
22          now exist that relate to this lot and that  
23          would justify this variance request.  
24          Certainly, the applicant in this case  
25          proceeded in good faith with every effort

1           trying to make sure that she was in  
2           compliance with the building and zoning  
3           requirements, along with the covenants and  
4           conditions. She has learned a lot from this  
5           experience, and now recognizes there is  
6           private use and public use restrictions on  
7           the construction of the residence.

8           What is interesting with this lot is it  
9           is one of the larger lots in the allot -- in  
10          this phase 4. And it is a corner lot, much  
11          like the earlier application. And the corner  
12          lot, we now understand, has a setback that is  
13          equivalent to the fronting -- to the front  
14          yard setback requirements on the side lot.  
15          We now understand that.

16          And -- but even though we understand  
17          that, if you look at this lot on Honeysuckle,  
18          that is where their front yard is going to  
19          be. It's going to fit consistently with  
20          other homes in this allotment. The front  
21          door will be on Honeysuckle. The side  
22          setback will be -- is in compliance on the  
23          one side, and the rear setback is in  
24          compliance. The only non-compliance is  
25          because of the unique requirements on corner

1 setbacks.

2 If you looked at the front yard, you will  
3 see that it not only complies, it complies by  
4 approximately 9 feet. If you look to the  
5 rear yard, it com -- it has almost 70 feet of  
6 rear yard. So it's in substantial  
7 compliance. The reason why I want to go over  
8 that, because it demonstrates that the square  
9 footage of the home on this lot is going to  
10 be consistent or better than most homes in  
11 the allotment. So I think that's relevant to  
12 your determination.

13 We also look at the potential adverse  
14 effect of this -- what we would consider to  
15 be the least amount of variance that we could  
16 request at this time. There is not going to  
17 be a line of sight issue. There is not going  
18 to be parking issues. And there is plenty of  
19 parking area available in the driveway, so  
20 that it would not block any sidewalk usage.  
21 So we don't think there is an adverse effect.

22 We did have an opportunity to talk with  
23 the developer, the owner of the development.  
24 And they are totally supportive of this  
25 variance request. And he was of the opinion

1           that this home would be of substantial value  
2           to other people who would build within phase  
3           4 of -- of the Sanctuary. So they are  
4           supportive and would like to see this move  
5           forward.

6           I'd be happy to provide, after this, an  
7           affidavit from this individual if you  
8           would -- if you would like that. It so  
9           happens that he still owns the two lots  
10          across the street, the two lots that are  
11          adjacent. So he owns, I think, all of the  
12          lots that you sent the letters to. And I  
13          think that's important, because if the  
14          neighbors are supportive of this variance,  
15          generally, that's a good thing when a board  
16          looks at determining whether or not you are  
17          going to grant the variance.

18          MR. ZOLLINGER: So, Mr. Van Gundy, it  
19          sounds like -- was there an inadvertent error  
20          in approving this, or what's -- what happened  
21          here?

22          MR. VAN GUNDY: Unfortunately, there was.  
23          And as I mentioned in the previous case, in  
24          light of the COVID-19, we did make a number  
25          of changes to accommodate the revised work

1 structures in that. And why that's relevant  
2 is we did switch to more of an electronic  
3 review. This was -- the site plan  
4 particularly was one of the documents that  
5 was submitted electronically for review.

6 And as I understand, when the reviewer  
7 was performing this review, was under the  
8 understanding, and to -- just based on memory  
9 of the development, that this parcel was  
10 abutting another corner parcel, which would  
11 have made this a 20-foot required side yard  
12 for that corner side yard setback, as opposed  
13 to the 40 that is required for the corner  
14 side yard abutting a front yard in the R70  
15 zoned district.

16 I would like to add that, you know, as  
17 part of that, how this came to my attention  
18 was in the revised process, I was under the  
19 understanding that this had not been issued  
20 and was going to place an electronic stamp on  
21 the document. And when I did, I had observed  
22 that this side yard did not meet the  
23 requirements for the 40-foot corner side yard  
24 or at -- the front yard requirements on that.

25 And I -- I believe it's important to add

1           that when I contacted Ms. Romans, as shocking  
2           as this information was, she immediately, if  
3           not nearly immediately, stopped construction  
4           and did pursue the variances we talked about.  
5           You know, I did explain that I do not have  
6           the authority to vary the code; only the  
7           zoning board of appeals has that authority.  
8           And, hence, the application before you.

9           And I think -- you know, and in those  
10          conversations, you know, looking at a site  
11          plan that -- that electronic document I  
12          mentioned was an electronic review, was  
13          prepared by a surveyor. And Ms. Romans had  
14          mentioned this site plan was also submitted  
15          to the HOA.

16          So why that's relevant is I -- that did  
17          cause me to do some more research and looking  
18          at what I wanted to look at was to see if the  
19          Planning Commission had approved a different  
20          setback based on other requirements or  
21          provisions in the code. That was not the  
22          case. That did not take place. However,  
23          it -- it does appear that this was prepared  
24          and approved in conflict with the building  
25          code, and construction happened.

1           MR. ZOLLINGER: Okay. Anyone else have  
2 any questions?

3           MR. FOX: Yes, sir. If I may, you know,  
4 certainly the -- what -- when a setback comes  
5 into play, one of the important aspects is if  
6 in indeed in granting this variance, how this  
7 one impacts public safety. So I -- I believe  
8 the -- the building department has looked at  
9 the issue of the -- the line of sight. And  
10 if -- Roger, if you would introduce yourself  
11 and kind of explain that to the board, your  
12 review.

13           MR. MILLER: Swear me in.

14           (Whereupon, Roger E. Miller was sworn in  
15 by the Court Reporter.)

16           THE REPORTER: Roger, what is your last  
17 name?

18           MR. MILLER: Roger E. Miller.

19           THE REPORTER: Thank you.

20           MR. FOX: What is your title?

21           MR. MILLER: I am the building,  
22 electrical, RBO inspector for the City of  
23 North Canton, and I also do some zoning  
24 reviews.

25           MR. FOX: And you are qualified to do a

1 line of sight review?

2 MR. MILLER: I have been in construction  
3 for 45 years, working with a surveyor's  
4 transit and pulling lines to evaluate  
5 location of property without unnecessary --  
6 so, yes, we do have a line of sight  
7 clearance.

8 MR. FOX: And have you done that line of  
9 sight inspection with the -- the view of  
10 having this -- this variance in place, and  
11 indeed, we have what -- what's your  
12 determination?

13 MR. MILLER: We actually used -- we used  
14 the new adopted ordinance with a 25 feet  
15 triangle. There is no question there is  
16 sufficient line of sight. There is  
17 sufficient parking to the south side of the  
18 driveway that would not impede any progress  
19 or increase or decrease line of sight. It  
20 also leaves the sidewalk free and clear if  
21 she has a large vehicle parked there. So we  
22 see no line of sight issue and no question  
23 whatsoever once that road -- once Honeysuckle  
24 is continued further to the next development  
25 phase.



1 MR. FOX: Thank you.

2 MR. ZOLLINGER: Anybody else have any  
3 questions?

4 MR. MOORE: No. Mr. Chairman, I'd like  
5 to say one more thing, and that would be that  
6 the -- the applicant in this case worked very  
7 closely and the North Canton building  
8 officials worked very good with -- with the  
9 applicant. And when this issue came up, you  
10 know, they could have looked the other way.  
11 They did not do that. They said that there  
12 was one body that could -- that could approve  
13 this, and that's what resulted in us coming  
14 here for the variance. So it -- I think you  
15 should be -- take comfort with the fact that  
16 Martin Van Gundy and Roger Miller are very  
17 reputable people within the building  
18 department.

19 MR. FOX: And, Mr. Chairman, if I may,  
20 one -- one last thing that -- before we  
21 proceed, for those that -- any others that --  
22 in the public that would wish to speak. I  
23 think this board is -- is certainly well  
24 aware in the issue of -- of variances, where  
25 perhaps someone is asking for something

1 better than what the conditions of their --  
2 their situation apply.

3 And often in those circumstances, they  
4 are getting a benefit from this variance that  
5 they are requesting. And oftentimes, someone  
6 else, and perhaps the -- the public at large  
7 or a neighbor or another, you know, property  
8 within sight that is impacted by this, is  
9 harmed in some way. It -- they receive less  
10 because the person asking for the variance is  
11 getting more than they are entitled.

12 Here, however, when I first had notice of  
13 this and immediately was working with the  
14 building officials, because it is a  
15 significant issue, and poured over all these  
16 documents, the timelines and those involved  
17 with this. And my conclusion of this is no  
18 one other than the applicant is getting  
19 something less than -- than perhaps what they  
20 bargained for.

21 The applicant themselves believed in good  
22 faith, through their -- their architect --  
23 architect, through the surveyor, and through  
24 the building department, and was very  
25 cautious in -- in making certain steps,

1           because they knew that many of these things  
2           were going to be nonrefundable, because  
3           they -- this is a special build, special  
4           trusses, special excavating and footers. And  
5           they were very cautious.

6           And in the end, what they are asking for  
7           is the ability to take it as it stands, when  
8           they are the one that -- that's going to get  
9           a little bit less than what they bargained  
10          for. And it doesn't appear that anyone else  
11          is going to be impacted by this. It's only  
12          the applicant themselves that are asking for  
13          the board to approve that they receive a  
14          little bit less, and clearly that no one else  
15          is -- is impacted by this situation.

16          MR. ZOLLINGER: Okay. Thanks. Yeah, I  
17          think I'm pretty -- I think I understand  
18          that. Does anybody else have anything with  
19          regard to this application?

20                 (No response.)

21          MR. ZOLLINGER: If not, I'd like to --  
22          anybody on the board have any thoughts,  
23          questions?

24                 (No response.)

25          MR. ZOLLINGER: With that being said, if

1 not, then I would suggest we move forward  
2 with a vote. I'm in --

3 MR. FOX: I don't know if -- is there  
4 anyone from the public?

5 MR. ZOLLINGER: Is there anyone from the  
6 public that has joined us?

7 MR. FOX: No, sir.

8 MR. ZOLLINGER: I'm inclined to grant the  
9 variance. The applicants have -- their  
10 conduct in this is exactly what you'd want to  
11 see, and frankly, you know, an inadvertent  
12 mistake by another -- you know, a very  
13 competent City official, they shouldn't be  
14 penalized for that. This isn't hurting  
15 anybody else. This is why var -- this is why  
16 we have -- why we exist. This is why we have  
17 the ability to -- the power to grant  
18 variances.

19 So that's my thoughts and feelings on it.  
20 Anybody else have anything before we vote?

21 (No response.)

22 MR. ZOLLINGER: Okay. With that then,  
23 I'll entertain a motion either to approve or  
24 deny the variance. Somebody can make that  
25 motion and second it.

1 MR. STREB: Motion to approve.

2 MS. BOYAJIAN: I second.

3 MS. CLEVINGER: I second.

4 MS. BOYAJIAN: Always.

5 MR. ZOLLINGER: All right. We'll call  
6 the roll for the vote, please.

7 MS. MILLER: Mr. Zollinger.

8 MR. ZOLLINGER: I vote to approve the  
9 variance.

10 MS. MILLER: Ms. Clevenger.

11 MS. CLEVINGER: I vote to approve the  
12 variance.

13 MS. MILLER: Ms. Boyajian.

14 MS. BOYAJIAN: I vote to approve the  
15 variance.

16 MS. MILLER: Mr. Streb.

17 MR. STREB: I vote to approve the  
18 variance.

19 MS. MILLER: Mr. LePage.

20 MR. LEPAGE: I vote to approve the  
21 variance.

22 MR. ZOLLINGER: Okay. The variance is  
23 granted.

24 MS. ROMANS: Thank you.

25 MR. ZOLLINGER: You can start building

1           again.  Congratulations.

2           MS. ROMANS:  Thank you.

3           MR. ZOLLINGER:  Sorry you had to wait so  
4           long.

5           MR. MOORE:  Adam did tell me that your  
6           son threw a fastball last night and may have  
7           hit his son.

8           MR. ZOLLINGER:  He probably did.  He hit  
9           a couple people.  He was -- it's all or  
10          nothing with him.  There is nobody --

11          MR. MOORE:  Thank you.

12          MS. ROMANS:  Thank you so much.

13          MR. FOX:  Thank you for your time.  It  
14          was two hours for the prior one, and we  
15          apologize.  But it -- it was deeply  
16          contested, and I think everyone that had the  
17          ability to speak did, and spoke volumes.  
18          And, unfortunately, you were the second one  
19          of the applications.  So sorry for your wait.

20          MR. MOORE:  That's okay.  We appreciate  
21          your time and service.

22          MR. FOX:  Thank you, sir.

23          MR. ZOLLINGER:  We are -- we are going to  
24          do a voice motion to adjourn our meeting.

25          All those in favor?

1 MS. CLEVINGER: Aye.

2 MS. BOYAJIAN: Aye.

3 MR. ZOLLINGER: Aye.

4 MR. STREB: Aye.

5 MR. LEPAGE: Aye.

6 MR. ZOLLINGER: All right. We are  
7 adjourned. Goodnight everybody.

8 - - - - -

9 (This proceeding concluded at 8:22 p.m.)

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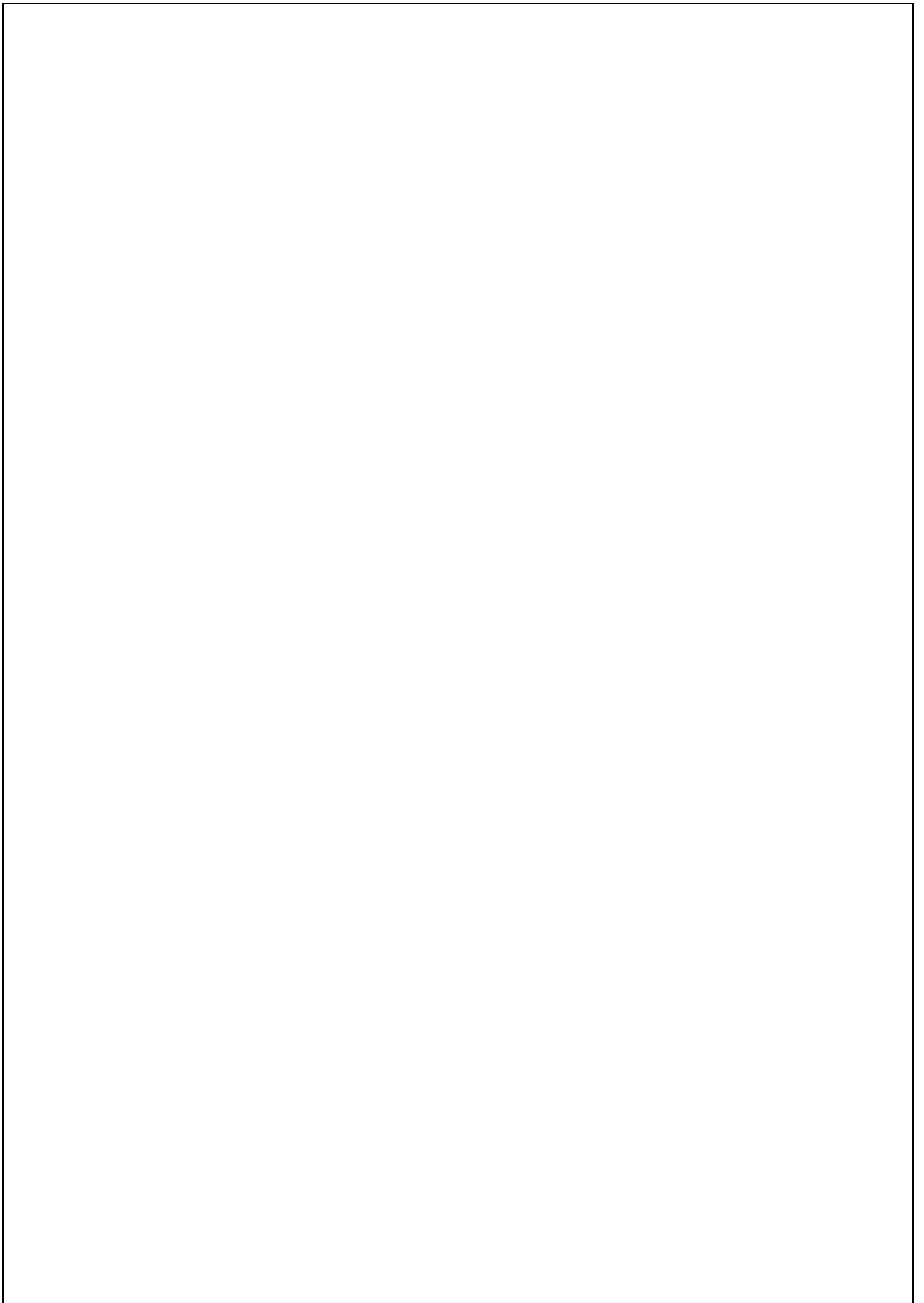
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