

Monday, November 9, 2015 6:30 PM
CITY OF MINNETONKA BEACH
BOARD OF ADJUSTMENTS MEETING MINUTES

Roll Call: Mayor Rick Skalla, Council Members: Jill Bartel, Paul Kozloski, Jaci Lindstrom, Mike Taylor, Treasurer Randy Gilster.

Staff Present: City Administrator Susanne Griffin, City Attorney Wally Hilke
Absent: City Clerk Heidi Honey, Public Works Director Ben Young

1. Mayor Skalla called the meeting to order at 6:30 p.m.

2. Public Hearing

Mayor Skalla stated the purpose of the Board of Adjustment and public hearing which is to consider an appeal of the decision of the zoning administrator regarding a proposed patio at 2637 Arcola Lane. The appellant's are Nell Mathews and Max Hacker, 2643 Arcola Lane. Mayor Skalla explained the public hearing process which was established in January, and stated that anyone wishing to speak would be allowed to do so. The role of the Board of Adjustment is to listen to the public and ask clarifying questions. Persons from the public wishing to speak will be given one, 3-5 minute presentation to make comments about the case that haven't already been made. The Mayor asked persons interested in speaking to fill out a comment card and give to the City Administrator. Those in support will be asked to speak first, then those opposed. Those wanting to ask questions should address the Mayor and not have conversation between parties. Once the public hearing is closed, board members will deliberate and discuss the matter.

2.1. Appeal the Decision of the Zoning administrator regarding a Proposed Patio at 2637 Arcola Lane – Appellant: Nell Mathews and Max Hacker – 2643 Arcola Lane

Zoning administrator Ben Gozola provided board members with the background of the situation which is an appeal from Nell Mathews and Max Hacker, that is centered on a request for a grading permit for 2637 Arcola Lane to install a terrace. Gozola used slides to show locations and provide context to board members. He said the appellant is challenging staff's interpretation of code relating to terraces, setbacks and hardcover. He stated he has no issues with the appellant; they just have a very different interpretation of code.

He showed aerial photos of the property, a survey of 2637 Arcola which showed the proposed work in relation to the surrounding homes and a close up of the work to clarify the proposal. The applicants are proposing to construct a small terrace off the back of the home to replace old deck that was removed in April 2015. Because of existing grades, the terrace will require a small retaining wall facing the shared property line between their property and the appellant's property. Gozola showed another slide showing the proposed retaining wall, terrace and landscaping, and explained that at no point will it exceed one foot in height.

The two findings being appealed are first that the proposed terrace is not subject to setbacks according to existing zoning regulations, second that the property's status of legal nonconforming relating to hardcover allows this patio. The nonconformity as a whole is not going to be expanded.

Gozola stated that he understands where there might be confusion because terms like "terrace" and "patio" are used in different contexts throughout the ordinance. It's his job and the job of the Board is to determine if there are any conflicts in the code and determine the appropriate interpretation of code and in this case, he believes there are no conflicts in code. He pointed out that terraces and patios are classified as landscaping and lawn furniture in Section 205, Definitions, of the zoning code. Landscaping and lawn furniture include such things as plant materials, ground cover, trees, bushes and things like that, and it also includes retaining walls, terraces and patios.

Gozola reminded Board members that they are acting as a board of appeals and not council members. They are not debating whether the code language is good or bad, but looking at the language and interpreting the definitions and applicable sections of the code. Based on the definition of Landscaping and Lawn Furniture, in this case, it is clear that landscaping does include retaining walls, terraces and patios.

Regarding patios and terraces neither are defined in the code, so Gozola used common definitions from Merriam-Webster which states that patios are a flat area of ground that is covered with a hard material and is used for sitting and relaxing. Terraces are defined as a flat area next to a hill or a flat area where people can sit and relax. Patios are usually treated as something flush with the ground, and terraces are typically slightly elevated. In this case, because the proposed feature will be slightly elevated with the small retaining wall, staff is treating it as a terrace.

How code regulates terraces is the next question for the Board, and that answer is found in Section 207(2) table II, rows 6 & 8. Row 6 comes into play because the term "terrace" is specifically cited in this row along with features such as outdoor sheds and permanent fire pits. The last column in this row specifically states that terraces may extend into the AMBS by 10 feet and are limited to the lesser of the home's main floor elevation or three feet in height. Row 8 comes into play because it specifically deals with landscaping and lawn furniture which also includes terraces. The last column in Row 8 tells us this row applies to things that are less than one foot above ground level.

Gozola then stated that importantly, there is a distinction between the features being regulated in each of these rows. Row 6 generally regulates things that are above ground and permanent features that have potential to negatively impact views such as sheds, permanent barbeques and fire pits built out of brick and this could include a terrace if it's built too high, but this is addressed in Row 8 by saying they can only be no more than three feet tall. In this case code does allow terraces in the AMBS within 10 feet and with a height maximum. Row 8 regulates things that are largely flush with the ground or are temporary in nature, so visual obstructions are not an on-going concern. Terraces in this context must be less than one foot in height.

When read together, Gozola feels there is no conflict between these two rows. Terraces that don't exceed the one foot height requirement are subject to Row 8 and terraces that are between one and three feet in height are subject to row 6. Gozola said this is the language he would expect to see in the

ordinance; one set of regulations for addressing things that can block views and a separate set of regulations for things that are flush with the ground and aren't going to have a visual impact.

The proposed terrace will not exceed one foot in height based on survey data, so no setbacks are required for this feature.

Gozola then ran through the appellant's claims separately starting with the assertion that a terrace is a structure. He provided the definition of structure which focuses on something that provides occupancy and anything that is erected in a fixed location to contain an accessory use. Based on this definition an uncovered terrace is not a structure. It is a hard surface and the code does regulate where it can be and how much hard surface there can be.

The second claim is that code does not allow a structure within 8 feet of a property line, and he believes this claim is inaccurate. Code does allow structures within 8 feet of the property line. The table in question specifically establishes special setbacks for various types of structures. He pointed out that Row 6 talks about outbuildings and sheds which are clearly structures, and that both are permitted to within 5 feet of a property line. He also pointed out that Row 8 specifically uses the word "structure" to define what is being regulated, and features in that row can be within zero feet of a lot line. Clearly certain structures can be less than eight feet from a lot line.

The appellant's third (3rd) claim is that the AMBS must be enforced and construction beyond AMBS is not allowed. Gozola pointed out again in 207(2) table II, specific examples of where the AMBS line is either relaxed or not enforced at all. Terraces between one and three feet in height can extend into the AMBS by ten feet; landscaping, lawn furniture and temporary uses have no setbacks at all including no Lakeshore setback, so AMBS does not apply. He felt the best example was swimming pools which are specifically not subject to AMBS limitations at all. Row 12 deals specifically with pools and the pad around the pool is a patio or terrace. He pointed out that if the appellant's interpretation is correct on this point, a landowner could build a pool beyond the AMBS, but would need a variance to build the patio/decking around the pool which would not make any sense.

The fourth (4th) claim by the appellant is that the zoning administrator did not take into consideration the comprehensive plan. Gozola explained that the comprehensive plan is a vision for the City and is a foundational document which sets up the findings of fact and supports the zoning ordinance, but the plan itself is not a set of zoning regulations. He contends that the vision statements of the plan have been addressed by the current code and is in compliance with the Comprehensive Plan.

Gozola then shifted away from the appellant's claims on the location of the terrace to focus on the issue of legal non-conforming hardcover. The appellant argues that the location of the proposed hardscape is important, and that the old deck may be replaced, but only in the same location and not expanded. Gozola disagrees with the appellant because the issue in question is not about a nonconforming deck or non-conforming structure, but rather overall hardcover, and hardcover is a concept that is not tied to location. Gozola showed various ways hardcover could be distributed on the lot, and highlighted that in each example, the hardcover nonconformity would never be expanded. As proposed, the nonconforming hardcover would actually be decreasing.

Gozola stated his interpretation is both in line with State statute and in line with best practices for dealing with this type of legal nonconformity. He noted that allowing movement of hardcover in legal nonconforming situations is even called out by the DNR as an acceptable practice, and explained that taking a strict approach and saying no changes can occur without a variance will have two major consequences: first, all minor improvements to properties with legal nonconforming hardcover will come to an end; and second, that people will no longer be asking for permits for this type of work if a \$200 improvement after a variance and two month process would cost 4-5 times as much.

In conclusion, Gozola stated that the responsibilities of the Board are to listen to the testimony of staff and appellant, and determine proper interpretation of existing code language and not debate whether the language is good or bad. After the Board of Adjustment adjourns and the City Council reconvenes, then they can discuss whether the language in question is appropriate. He stated that the appellant is asking for nine areas of relief and he has provided recommended action on each request in his report. He stated that he feels the ordinance is very clear on the issues which he has spelled out step by step, and his reading of the code and interpretations. He ended by stating that whatever interpretation is deemed correct by the board tonight is how code would be interpreted from this date forward.

Board Member Kozloski asked for clarification on the nonconforming hardcover issue and the trading off of hardcover. Gozola stated that best practice is to allow the movement of hardcover. The permit process allows for review of hardcover and allows for discussion about reducing hardcover and addressing existing drainage issues. City Attorney Hilke stated any proposals would still be subject to other applicable areas of the zoning code.

Board Member Lindstrom asked a clarifying question about the previous deck. Gozola stated the deck had been removed within the past year prior to current owner. If it had been gone for more than one year, they would have lost the right to the legally nonconforming hardcover. Lindstrom also asked why the retaining wall was needed. Gozola stated the applicant wanted the two levels of the patio to be flat which requires a retaining wall due to the grade of the land.

Mayor Skalla opened the hearing up to the appellant's Nell Mathews and Max Hacker.

Ms. Mathews handed out some materials (photos, state statute and presentation). She stated that the zoning administrator has not looked at the entire code and that is what he is obligated to do. Mathews showed a photo of 2643 Arcola Lane taken in 1888 when Lafayette Avenue was on top of the bluff, which at that time, there was nothing in front of the AMBS other than a walkway. When they moved in 25 years ago the home next door at 2637 Arcola had a deck tucked into the southwest corner of the house and it didn't expand into side setback or the AMBS. She showed a variety of photos showing the existing area and various stages of the proposed patio.

She stated that they object to what she described as a dramatic change in land use, which would allow a new patio that will extend into the AMBS and in the side setback which will negatively impact their property. They never expected to find a patio being built next to their property line without a variance and on property that is already over hardcover requirements. She stated that the City's code requires a variance for any improvement that would put hardcover over 30% or within setbacks. Mr. Gozola hasn't considered the entire code and state statutes. The proposed stone patio is 425 square feet and the previous deck was 192 square feet and is a dramatic change in land use and hardscape that extends into

the side setback and into the AMBS. It is very different than the character of the community and for this area. It's not a replacement of the deck. She stated that they can install outdoor social space, but not beyond the old deck area without going through the variance process.

Mathews reviewed sections of the City Code and state statute that prohibit expansion of hardcover on non-conforming lots and regulates setbacks. The property is nonconforming in hardcover at 38% and 7.8 feet from side setbacks which should be 9 feet for a lot this size. She understands the grandfathering of nonconforming legal uses, but she contends that state statutes says you cannot increase a nonconforming use.

Max Hacker read from M.S. statute 462.357, subdivision 1,e,a, stating in summary that any nonconforming use may continue but may not be expanded, There are two types of nonconformity at play here; hardcover and structure in the side setback and this patio would put more structure into the side setback.

Mathews reviewed the applicable statute and that the zoning authority shall require property owners to address reducing impervious surface and increasing setbacks. In addition to state law about non-conformity, City Code section 220, subpart 3 states in part that the nonconforming use of a structure or building may be changed to another nonconforming use of the same or more restricted classification. And whenever the nonconforming use of a structure or building has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed into a less restricted use, so again there is a city code prohibition against expanding nonconforming use. She pointed out that the city code states that when remodeling a nonconforming structure the 30% hardcover requirements still apply. Mathews pointed out that the use of the term units and uses are used interchangeably, and section 220, (9) states that existing nonconforming accessory units cannot be enlarged, extended or otherwise intensified unless they meet the requirements of the ordinance. She contends that there is a conflict in the code, and when that happens the City is required to apply the most restrictive regulation. Thus allowing this hardscape to be built into the AMBS or side setback does not comply with state statute or city code. Mr. Hacker reiterated that if there is a conflict the City is required to go with the most restrictive.

Ms. Mathews went on to discuss principle uses (the home) and accessory uses from section 206 of the city code. She stated that Minnetonka Beach is a fully developed residential community with no requirement to show a change in land use to commercial use, but required to show a change in land use to something that is significantly different and not in keeping with the character of the Beach which is what this project proposes to do. Lots of things fall in the accessory use category such as air conditioners, patios, terraces, outdoor living spaces, sidewalk and retaining walls. She contends that there are sections of the code that conflict with the table Mr. Gozola referred to earlier. However, according to section 208, the regulations regarding nonconformities that she is talking about do not allow permits to be issued in this circumstance.

Ms. Mathews stated that the Board of Adjustments is the appellate body and not the City Council in this case. Their job is to determine whether the zoning administrator's decision is appropriate and whether a permit should be issued. She feels that at the state statute level expansion of a nonconforming use is not permitted. She pointed out that nowhere in the code does the zoning administrator have authority to change or swap the amount of hardcover that should be allowed. She feels this is a Planning

Commission and City Council decision. State statute is even more restrictive regarding hardcover which is a 25%, but Minnetonka Beach has gotten an exception to go to 30%, and the zoning administrator does not have the authority or discretion to swap out hardcover.

She also talked about the easement for the sidewalk from the vacated Lafayette Avenue. The proposal is to remove the City sidewalk in City easement and the applicant has no authority to take out the sidewalk to reduce their hardcover. This is another reason to come to the Planning Commission and City Council for approval. She doesn't think the City would likely give up City sidewalks or property.

In review, she has talked about hardcover, and that there is nothing in City Code that gives the zoning administrator the authority to decide where hardcover should be. She stated that you cannot expand nonconformities and this request is to expand outdoor living space from 192 foot to 425 foot living space which she doesn't feel this is allowed by code. She discussed definitions of structure, and contends that the patio is a permanent structure affixed to the ground, and should be treated as such. Max Hacker also discussed the fact that this area will be occupied and as such, it is a structure. She provided definitions from Merriam Webster and Black's law dictionary regarding occupancy, patio and terrace. The proposed patio is intended to be outdoor social living space. It significantly impacts the land use and does not consider the impact on adjoining property owners. She said that if they wanted to buy a townhome they would have bought one and they expect there to be a buffer (setbacks) between their home and other social living space.

Mathews brought attention to the conflicts in City Code, specifically land uses: principle uses (R-1 and P-1), and accessory uses, performance standards of accessory units, and Subpart 3 of Section 207- All Uses, which states that no structure shall be granted a variance closer than eight (8) feet to a property line, which is in conflict with the Table in Section 207. If there is a conflict she contends that the City must use the most restrictive which would be the 8 foot setback requirement and nothing allowed within the AMBS.

She stated that also in conflict in City Code is whether a patio or terrace is allowed within the AMBS as stated in Section 207, "in no such case shall a building or any part thereof be in front of the AMBS". In addition, the definition of Landscaping and lawn furniture contains a number of unrelated things which create an inherent conflict as well as conflicts within Section 207, Table II.

Their position is that state statute controls and zoning administrator is required to reduce/minimize setbacks, and by allowing that he is in error and violation of state statute and City Code.

Max Hacker touched on the letter he submitted that late afternoon. The question in front of them is given they have a non-conforming situation (over hardcover and within setbacks), can they build or add into setbacks and AMBS. The common sense answer is no. If a plain language assessment of statute (MS 462.357 Subdivision 1,e,a) is done, it says that any non-conformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. He contends that a new stone floor within the setback is an expansion. They have lived here many years, and love the fully developed, bedroom community. The home was built in 1885 and named Alle Riva, meaning walkway and shore. The neighborhood has large yards and lots of uninterrupted green space.

He explained that over 20 years ago they wanted to add a family room, they went to the City to see what they had to do by ordinance and applied for a variance. At the time Jo Ellen Hurr was the Zoning administrator and later Dick Krier, both were perceived as too tough, but they understood the rules and the uniqueness of the community.

Hacker stated that they lost their beloved neighbor next door at 2637 and later the home was sold to Frank and Kelley Santiago. They have never objected to neighbors improvements until now. He explained how the process unfolded with the contractor, Outdoor Escapes who started digging before any permits were received from the City because they were erroneously told by the new zoning administrator they didn't need a permit. This was later corrected but the digging had been done, and with no consideration of hardcover and setbacks, and ultimately they (Hacker and Mathews), have been forced to be the bad guys trying to protect and uphold the City's ordinances. They were concerned that after speaking to the contractors, they had no understanding of hardcover or setbacks. They were confident that the property was already over hardcover and the new owners had purchased bluestone covering ready to be constructed on the lake side, yet the issue of hardcover had not been considered or brought up to them.

He stated that he feels a serious question exists as to whether the new planning and zoning administrators have fully grasped the uniqueness of the community, and they believe they are wrong in this case.

This situation has caused problems between them and their new neighbors as shown in a string of emails between the two. He stated that due to an initial oversight and now nontraditional interpretation of the City Code, the City has put the burden on them to make sure things are done fairly.

Mayor Skalla asked if anyone wanted to speak in favor of appeal:

Steve Howarth – 2520 Arcola Lane:

Mr. Howarth stated it was hard to expand on the arguments made by the Mathews/Hacker. He serves on the Planning Commission and appreciates Max Hacker's input and mentoring as a planning commissioner.

He has concerns that the history and interpretation of code might be rewritten by the new zoning administrator. He was astounded and slightly offended with the comment from the zoning administrator that if they voted in favor of the appellant, that the Board would change the code and the process in the community. He disagrees and feels proposals should be judged on their own merits, and the actions tonight would not be precedent setting. He also pointed out that during the presentation there was a lot of semantics as it relates to patios and terraces, and challenged the Board to define and interpret these terms. He staunchly supports the appellants and believes hardcover and encroachment into side setbacks are encroachments on properties. Landscaping, flowers, trees, and grass are not the same as living space.

Mayor Skalla asked if anyone wanted to speak in opposition of the appeal:

Hans Frees – Outdoor Excapes, contractor for the Santiago’s – Mr. Frees said they have worked with the zoning administrator and have tried to comply with City Code, particularly on the issue of the retaining wall and its purpose which is to try to retain water on the subject property. They are also trying to reduce hardcover by removing the walkway which he believes was vacated by the City years ago, and they also want to provide more useable outdoor space. An example nearby is the swimming pool being built on Northview, and wondered whether that property would be affected and would also require a variance.

Board Member Bartel asked Mr. Frees if they started the project without a permit, and he replied that as was already stated they were initially told a permit was not required, but once they determined a permit was required they complied.

Kelley Santiago introduced herself and husband Frank. They bought the house somewhat in disarray and were excited to get into new house and wanted to make improvements so they talked to Outdoor Excapes about installing a patio. They did have friendly conversations with their neighbors, and she feels it really didn’t have to get this contentious, and has tried to have conversations with the neighbors. She did notice in the neighborhood there is a fence on the lake side and also trees which were probably installed before the rules were put in place, but they definitely impact the views of the lake and her site lines to the road as well. They had no idea this was becoming a contentious issue as they weren’t living in the home at the time. They are building a simple blue stone patio on the ground. She understands the rules are there for a reason and they are willing to abide and do what’s right. They also want to make improvements to the driveway. They feel bad this has turned contentious and they wish they could have talked about it before it got contentious, but they trusted staff and their contractor. She hopes for resolution that makes sense to everyone.

Jody Sperduto – 2515 Woodbridge Road. Ms. Sperduto asked to speak in favor of the appellant. She stated that she doesn’t think this is something neighbors have to decide. Hardcover is an important issue and once you increase hardcover you won’t get it back. They applied for a variance once which included hardcover where they were asked to correct certain things to comply with code and she feels this is important. She believes that regarding things such as hardcover, if things are added or changed, they should be an improvement, not make things worse.

A motion was made by Council Member Lindstrom and seconded by Council Member Taylor to close the public hearing at 7:45 p.m. With all members voting in favor, the motion carried.

Council Member Lindstrom asked for City Attorney Hilke’s interpretation and whether state statute superseding City ordinances, which Hilke confirmed that he agrees with Zoning Administrator Gozola’s analysis including as it relates to the state statute. Board Member Kozloski also asked if the state statute supersedes City Code and Hilke confirmed that is the case. Kozloski asked if that’s true is there a state statute in support of the appellant’s argument and Hilke said no. He reviewed the analysis of the state statute which states that the nonconformity may be continued, the difference as he sees it is the notion that the nonconforming hardcover is flexible as long as it is otherwise conforming to the ordinance which is what the statute and code allows. He agrees with the approach that the zoning administrator had taken which is to read all provisions of the code. His reading of the ordinance is that the patio is not a structure and he agrees with the zoning administrator’s interpretation.

Council Member Taylor asked Hilke to comment on triggers for having to conform and swapping out hardcover. Hilke discussed the triggers, and the sidewalk abandonment issue. He gave an example of a serpentine sidewalk that now you want to make it straight, that this wouldn't be an expansion of the hardcover just different hardcover. He hasn't reviewed the sidewalk easement, but he believes that the City still has the right to use the sidewalk even if it was abandoned. Council Member Kozloski was also surprised about trading hardcover, and Taylor clarified that his confusion was that he didn't think the City sidewalk could be traded out for private hardcover elsewhere.

Taylor asked about the comment made earlier regarding whether the decision made tonight would change how the code would be interpreted in the future, and shared Mr. Howarth sentiment.

He also questioned staff's example of a \$200 walkway used earlier given that in this case, the proposed patio is a \$70,000 improvement which alone would trigger a permit. Mr. Gozola responded by stating that a permit was required in this case despite the initial incorrect message to the landowner. Once it was determined a grading permit was necessary, the correct process has been followed. He also expanded on the earlier hypothetical example by citing an actual recent request to construct a \$500 deck in this same circumstance of legal nonconforming hardcover. In that case, requiring a variance would have made a small deck a very expensive improvement. His point was that if someone wants to do a small project, they would likely just do it without a permit or not make improvement at all due to the cost of applying for a variance.

Taylor then expressed concern that the applicants went down a path and spent money before it was determined whether it would be allowed, but now that the permit is needed, that alleviates that concern. Gozola clarified that when grading is occurring, a permit will be required, and expenditures by the landowner to date have no bearing on staff's interpretation of the ordinance. Administrator Griffin clarified that the grading permit requirement has been in the code and did not change during recent amendments to that section of the code.

Council Member Bartel feels there is a discrepancy between what the appellant is saying and what the City attorney is saying. City attorney Hilke clarified that it hinges on the issue of swapping non-conforming hardcover which he doesn't think the statute prohibits. The other argument is whether the patio is a structure or not. If you accept that a patio is a structure then the appellant is correct, if you don't accept the premise, then they are wrong. Administrator Gozola then referred back to the table in the code. He contends that even if a patio is called a structure, the table specifically lists special setbacks for patios and terraces. Accordingly, whether it is called a structure or not does not matter as code says certain structures have special setbacks attached to them. Council Member Kozloski stated that in this case the patio is being defined as Landscaping and Lawn Furniture. Gozola stated that the code has several related provisions and they can be read together and still apply and he believes they can. Hilke said the term structure is used to describe some items in the Landscaping and Lawn Furniture category, but that doesn't mean everything else is a structure.

Mayor Skalla asked about the height measurement. Gozola stated that the wall was measured from building plan showing what is the grade at the base of the wall to the top of the wall at the various points especially where the wall would be at its' greatest height. Ms. Mathews stated that she measured from the top most elevation point to the lowest most elevation point. City code says the entire patio must be

less than one foot, and they state that the highest point is at an elevation of 961.6, and 960 at the lowest point, she calculated that at 1.5 feet.

Gozola stated that the appellant's method is not a reasonable way to measure height as someone could just build two patios and provide a small separation to have two walls which independently meet code. Because of the elevations of the land and the way the patio is laid out, he finds the landowners are keeping a low profile and meeting intent of code.

Mr. Hacker asked a legal question about the planner's authority to swap hardcover, and whether there is some authority in code that allows planner to do this. Also he asked about the expansion language in the state statute and how it can be overlooked. Zoning administrator Gozola responded that he agrees that the statute superseded the ordinance, and that the existing non-conformity in this case which is hardcover, is not being expanded and in fact it is being reduced from 38.9% to 38.8%.

Council Member Taylor still believes that the definitions are what are important and what kind of structure the proposed patio is. However, Gozola countered that in the table the word "structure" is used in both circumstances (both rows of the table) and the specific information in the table is what applies, and the definition is not what is important here. He does not see a conflict in the code.

Hilke said that within the ordinance, particular rules are going to override general rules and in this case the code is clear on setbacks.

Council Member Bartel stated she was having issues with hardcover and whether the City has the right to ask for less hardcover. It was clarified that this has occurred in the case of variances where the City set conditions on the variance to reduce hardcover.

Council Member Kozloski stated that he understood they were here to determine whether the ordinance was interpreted correctly as written not how they should be, and acknowledged the City may need to do some work on the code. He also said he understands the unfortunate circumstances and is hopeful the two parties can find a compromise. He agreed that it hit home when he realized that if he was in this circumstance, he wouldn't like it either and feels the code may need to be changed to avoid these kinds of issues, but in the meantime asked if they couldn't find a happy medium.

Mayor Skalla called for a motion to either affirm the zoning administrator decision, move to deny it and agree with the appellant, or table it to see if they could work something out.

Kelley Santiago stated they were willing to try to work something out, but when this was discussed in the past, she wasn't agreeable to what was being proposed. Frank Santiago stated that he wants to be agreeable and start in the neighborhood in the best way. They thought they were making a big improvement to the community and while he appreciates Council Member Kozloski's suggestion to work it out, he is concerned as there is a lot of expense and time invested. He doesn't think it will be an easy negotiation, but they want to be agreeable.

Mayor Skalla asked about the timeline and whether they could table it which would give the City 60 days to decide on the appeal. Mr. Santiago stated he would prefer the City make a decision now and not wait. Hilke said it was Council discretion as to whether to table or make a decision.

A motion was made by Council Member Lindstrom and seconded by Council Member Kozloski to approve resolution 2015 – 45 upholding the interpretation of the Zoning administrator and denying the appeal of Mathews/Hacker in the case of the patio at 2637 Arcola Lane. Voting in favor of the motion: Lindstrom and Kozloski, voting against the motion: Taylor, abstaining: Bartel, the motion carried.

City Attorney Hilke explained that Council wants to be certain in the motion that what they are approving is Resolution 2015 – 45 which contains the necessary analysis and findings of fact to uphold the zoning administrator’s recommendations and deny the appeal. Council Member Lindstrom clarified her motion as stated above.

3. Adjournment

The Mayor adjourned the Board of Appeals meeting at approximately 8:15 pm.

PUBLIC IN ATTENDANCE – The following individuals signed the sign-in sheet:

Frank Santiago, Kelley Santiago, Drew Torrence, Nell Mathews, Hans Frees, Steve Howarth, Jody Sperduto, Jan Callison, Marnie Johnson.

Respectfully submitted,

Susanne Griffin, City Administrator