

**CAUCUS PRIOR TO STRONGSVILLE BOARD OF ZONING &  
BUILDING CODE APPEALS**

**Meeting of  
November 4, 2009  
7:30 p.m.**

Present - Board of Appeals Members: Glenn Goist; Richard Baldin; Kenneth Evans; William Harr; Frank Bohac

Administration: Assistant Law Director, Daniel Kolick

Building Department Representative: Joe Allen

Recording Secretary: Kathryn Zamrzla

The Board members discussed the following:

**NEW APPLICATIONS**

**1) WEBSTER ROAD LLC/Timothy Dean, Representative**

- a) Requesting a 5' Front Yard Setback variance from Zoning Code Section 1252.32 (k) (3) C, which requires a 35' Front Yard Setback and where a 30' Front Yard Setback is proposed in order to construct Single Family Dwellings; property located at sublots 44, 45 and 49 Castlereagh Lane PPN's 398-17-039, 398-17-040, and 398-17-044 zoned R1-100;
- b) Requesting a 5' Front Yard Setback variance from Zoning Code Section 1252.32 (k) (3) C, which requires a 40' Front Yard Setback and where a 35' Front Yard Setback is proposed in order to construct Single Family Dwellings; property located at sublots 46, 47 and 48 Castlereagh Lane PPN's 398-17-041, 398-17-042, 398-17-043 zoned R1-100.

**The Board stated that they had another variance request similar to this last year. Mr. Allen explained that the sublots are required to have an average setback. Mr. Allen explained that the decks and patios throw the sublots off. The houses were moved up to save trees from being cut and move the house forward on the subplot in the rear.**

**PUBLIC HEARING**

**2) ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor**

Hearing of the objection by the Echo Lake Homeowner's Association to the application for a building permit by property owner Western Reserve Property Management for a 6' Fence; pursuant to Codified Ordinance Section 1418.03, property located behind 19408, 19404, 19400 and 19396 Bradford Court PPN's 393-34-021, 393-34-022, 393-34-023 and 393-34-024 zoned PDA-2.

**Mr. Evans stated that the Board is not aware if any changes have occurred with the two associations meeting. Mr. Allen stated that the fence that is already erected meets the**

**Building Code and was built without a permit. Mr. Evans stated that they could require the fence to come down but then they could keep reapplying for the same permit.**

**3) DAVE ZALESKI, OWNER/Affordable Fence, Contractor**

Requesting a 23' Setback variance from Zoning Code Section 1252.17 (c) which requires that the fence be located within the setback of the residence and where the applicant has extended a fence 23' beyond the setback of the residence in order to Replace an Existing 6' Fence; property located at 10115 Prospect Road PPN 391-23-018 zoned R1-75.

**The Board stated that the fence was replaced by Affordable Fence, without a permit and the original fence never had a permit or variance. Mr. Goist stated he feels the fence needs to come in 12' from the sidewalk. Mr. Evans suggested 15' from the sidewalk.**

**4) JIM PTACEK, OWNER/Brian Giovinazzi, Contractor**

Requesting a 1,132 SF Floor Area variance from Zoning Code Section 1252.22 (c) which permits a 1,000 SF Floor Area and where a 2,132 SF Floor Area is proposed in order to construct an Attached Garage; property located at 18052 Benbow Drive PPN 399-22-009 zoned R-100.

**The applicant asked to be moved to item two. Dr. Goist stated that they needed to ask whether the applicant will be running a business out of the garage. Mr. Harr stated that he would rather see a bigger garage than an out building.**

**STRONGSVILLE BOARD OF ZONING & BUILDING CODE APPEALS**

**MINUTES OF MEETING**

**November 4, 2009**

The meeting was called to order at 8:00 PM by the Chairman, Dr. Goist.

Present: Dr. Goist  
Mr. Baldin  
Mr. Evans  
Mr. Harr  
Mr. Bohac

Also Present: Mr. Kolick, Assistant Law Director  
Mr. Allen, Building Department Representative  
Ms. Zamrzla, Recording Secretary

Dr. Goist – Good evening, ladies and gentlemen. I'd like to call this November 4, 2009 meeting of the Strongsville Board of Zoning and Building Code Appeals to order. Kathy, would you call the roll please?

ROLL CALL: ALL PRESENT

Dr. Goist – I hereby certify that this meeting has been posted in accordance with Chapter 208 of the Codified Ordinances of the City of Strongsville. I will entertain a motion to amend the agenda to bring the fourth item on the agenda to the second item on the agenda.

Mr. Baldin – I make a motion to amend the agenda to bring number four to number two.

Mr. Bohac – Second.

Dr. Goist – We have a motion and a second. Kathy, would you call the roll.

ROLL CALL: ALL AYES:

Dr. Goist – We have minutes from October 14, 2009 that were submitted. So, unless there are any corrections or additions, I'll ask for a motion.

Mr. Baldin – Motion to accept.

Mr. Bohac – Second.

Dr. Goist – We have a motion and second. Kathy, would you call the roll.



1) **WEBSTER ROAD LLC/Timothy Dean, Representative, Cont'd**

**Mr. Dean continues** - the entire subdivision and I'm currently at an average of 38.33' in setbacks with the two variances that were approved last year and these five, I would still average 37.22'.

Dr. Goist – We talked a little bit about this in caucus but a variance is good for one year so we will remind you now and hopefully you will remember. If you sell every house, you don't have to come back but you would have to come back after a year to renew the variance.

Mr. Dean – Do you go through the same process or do you ask for an extension?

Mr. Kolick - Mr. Chairman? We have authority to grant an extension for one year thereafter but you have to get your application in before the variance expires and if you're in the process and have pulled permits already and have done some substantial construction on the home, then you wouldn't need to renew it. If it remains a vacant lot and you're not doing anything with it you would need to come back again. Mr. Chairman, the only other comment I have is we will break these out next time to two different applications so it's clear between (a) and (b).

Dr. Goist – Anyone else have any questions for Mr. Dean?

Mr. Evans – Mr. Chairman?

Dr. Goist – Yes?

Mr. Evans – Mr. Kolick, at this point we have a letter that has been submitted from Mr. Dean as the President of the Walden Association. He is also the representative from Walden LLC. Do we need something different from the Association? I would gather that there might be a conflict there.

Mr. Kolick – We will notify the association as we always do as well as those within 500' so they may need to determine who is the right person to come. That will be up to them.

Mr. Baldin – That hasn't been turned over to them yet? They don't have enough homes there to be turned over to their own association? I wouldn't think so.

Mr. Dean – No.

Mr. Baldin – Is this an honest mistake here because of the size of the homes and you wanted to leave some trees up and etcetera and so forth?

1) **WEBSTER ROAD LLC/Timothy Dean, Representative, Cont'd**

Mr. Dean – Yes, it's hard to anticipate. That was the reason pointed out in caucus. If we had put the drainage easements back there with the 30' setback, we would have cut all the trees all the way back and possibly cut down some trees that may have not needed to be removed for a particular lot. It's a hit or miss.

Mr. Baldin – Thank you. Any other questions board members? If not, your Public Hearing will be November 18, 2009.

Mr. Dean – Thank you very much.

**RULING: PUBLIC HEARING SET FOR NOVEMBER 18, 2009**

**PUBLIC HEARING**

4) **JIM PTACEK, OWNER/Brian Giovinazzi, Contractor**

Requesting a 1,132 SF Floor Area variance from Zoning Code Section 1252.22 (c) which permits a 1,000 SF Floor Area and where a 2,132 SF Floor Area is proposed in order to construct an Attached Garage; property located at 18052 Benbow Drive PPN 399-22-009 zoned R-100.

Dr. Goist – We had moved Mr. Ptacek and if you would like to come forward and give us your name and address and tell us what you're asking for.

Mr. Ptacek – James Ptacek and my address is 18052 Benbow. I'm asking for a variance for the garage.

Dr. Goist – You want to make it twice as big. You're allowed 1,000 square feet and you want to go to 2,000 and that is because of the size of the home?

Mr. Ptacek – That is correct.

Dr. Goist – I think we have all looked at the plans and we do have to ask you for the public record that you're not planning to run a business out of that garage?

Mr. Ptacek – No, the architect said it would look better that way. It's aesthetic.

Dr. Goist – We do realize from the previous meeting that there has been a change in architects. Nothing has been done except for grading the property. Is that correct? Board members, do you have other questions?

Mr. Baldin - Mr. Chairman?

4) **JIM PTACEK, OWNER/Brian Giovinazzi, Contractor, Cont'd**

Dr. Goist – Yes?

Mr. Baldin – Mr. Ptacek, with the size of the rec area, you aren't planning any clubs or any type of associations playing ball there or whatever?

Mr. Ptacek – No.

Mr. Baldin – It's just for your own personal use, family and kids or friends?

Mr. Ptacek – Family and friends, yes.

Mr. Baldin – Thank you.

Dr. Goist – Board members, any other questions?

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Mr. Harr – I don't necessarily have a question, I just would like to make a comment in line with some of our discussion in caucus just that in viewing the print as submitted, the increased space is consistent with some of what we have allowed for other garages and out buildings and so forth on very large lot situations and in this case for me personally, I find it a lot more aesthetically appealing in that we are really just dealing with a four bay garage visually with the extra space buried in the structure itself and not having to deal with a large out building on the site.

Dr. Goist – Thank you.

Mr. Evans - Mr. Chairman?

Dr. Goist – Yes?

Mr. Evans – Actually, that does bring up a question. Mr. Ptacek, you're not planning on putting any out buildings for garage purposes or anything else on the property, is that correct?

Mr. Ptacek – What do you mean by that?

Mr. Evans – Well, you're not going to put any sheds or extra garages or anything like that other than the four bay garage and the gym that you're building? You're not planning on any other out buildings on the parcel, is that right?

4) **JIM PTACEK, OWNER/Brian Giovinazzi, Contractor, Cont'd**

Mr. Ptacek – No.

Mr. Evans – Okay, thank you.

Mr. Baldin – Good question, Ken.

Dr. Goist – Very good, thank you. If not, this is a Public Hearing. Is there anyone who would like to speak for this variance? Is there anyone here who would like to speak against this variance? Seeing none and hearing none, I will entertain a motion.

Mr. Harr - Mr. Chairman, I would make a motion that a request for a 1,132 SF Floor Area variance from Zoning Code Section 1252.22 (c) which permits a 1,000 SF Floor Area and where a 2,132 SF Floor Area is proposed in order to construct an Attached Garage; property located at 18052 Benbow Drive PPN 399-22-009 zoned R-100 be approved.

Mr. Evans – Second.

Dr. Goist – We have a motion and a second. Kathy, would you call the roll.

ROLL CALL:                      ALL AYES:                      MOTION CARRIED

Dr. Goist – Mr. Ptacek, your request for the variance has been approved. There is a twenty day waiting period and at the end of the twenty days you can go to the Building Department and they will take care of you from there.

Mr. Ptacek – Okay.

Dr. Goist – Thank you.

**RULING:     VARIANCE GRANTED**

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor**

Hearing of the objection by the Echo Lake Homeowner's Association to the application for a building permit by property owner Western Reserve Property Management for a 6' Fence; pursuant to Codified Ordinance Section 1418.03, property located behind 19408, 19404, 19400 and 19396 Bradford Court PPN's 393-34-021, 393-34-022, 393-34-023 and 393-34-024 zoned PDA-2.

Dr. Goist – Okay, our second Public Hearing is Echo Lake Homeowner's Association, objecting party. If you would like to come forward please and give us your name and address.

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. Rakowsky – Tom Rakowsky, 19929 Echo Drive, President of the Echo Lake Homeowner's Association.

Dr. Goist – Again, we would like to hear your reason for objecting to this.

Mr. Rakowsky – Our reason for objecting to this permit is twofold. First, our bylaws dictate that any resident or entity within the homeowner's association requires any additional structures such as a fence, shed, out buildings and etcetera be approved by the Board of Trustees and secondly, the type of structure and material which is proposed, or actually in this case installed, does not conform with the requirements of our bylaws. In other words, the applicant did not seek the approval that they are supposed to seek and secondly, the height of the structure does not conform with the bylaws, the material of the structure does not conform with the bylaws and the type of fencing does not conform. In other words, our bylaws dictate a 4' fence and this is a 6' fence. Our bylaws dictate a wood fence material and this is vinyl and our bylaws dictate either board on board, picket or split rail fencing and this is a stockade type fence. So, basically for the two reasons a) the type of structure that was erected does not conform and b) they did not seek approval. Additionally, it was constructed before a permit was issued.

Dr. Goist – Okay, Board members do you have other questions?

Mr. Kolick - Mr. Chairman, for the applicant here, has anything changed since the last meeting? Have they made application to the Board? Has there been any other action?

Mr. Rakowsky – No.

Mr. Kolick – Have they been informed that they need to make application to the Board?

Mr. Rakowsky – Yes, in written form.

Dr. Goist – Did you get any response?

Mr. Rakowsky – No.

Mr. Harr - Mr. Chairman, we had also inquired as to any conversation that took place between Echo Lake and Western Reserve. Has there been any other dialogue?

Mr. Rakowsky – No, they did not respond to our inquires.

Dr. Goist - Mr. Kolick, would it be proper now to ask if either Western Reserve property owner's association is here and we would like to have some input from them?

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. Kolick – I think Western Reserve, the association or the contractor or all three.

Dr. Goist – Okay.

Mr. Kolick – Is there someone here from Western Reserve Management? Is there anyone here from Affordable Fence?

Mr. McMillen – Yes, sir.

Dr. Goist – Would you like to come forward please?

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Mr. Harr – Could I just ask, did we not send letters to those parties?

Ms. Zamrzla - Yes.

Mr. Harr – We did. Okay.

Dr. Goist – You can come forward and give us your name and address and were you sworn in?

Mr. McMillen – Yes. Matthew McMillen, 720 West Bagley Road, Berea, Ohio. I was the contractor who installed the fence. I never received – I have paperwork from Echo Lake that they okayed – I have actual paperwork from Echo Lake Association okaying a fence to be installed that we did install. It is a 6' vinyl fence that's on that property, if any of the Board members have been to the property, there is the exact same vinyl fence with the lattice top in between every unit. So, the Echo Lake Association – I don't know how it does not conform. I was never aware of the association saying that once I had that paperwork, there was a pin inspection, there was pins exposed, the fence is three or four feet off the property line so as far as Western Reserve has paid me, I have been contacted by a couple of gentlemen because they could not be here. So, I never got nothing to say what this gentleman here said that it did not conform to all those different rules.

Dr. Goist – Matthew, let me just ask you and please make it clear to me because I didn't understand. You are saying that you have in your possession a letter from Echo Lake Association, not the sub association but from Echo Lake Association?

Mr. McMillen – It says Echo Lake Association on the top of the paper, Dr. Goist.

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Dr. Goist – Do you have that with you right now?

Mr. McMillen – No, I don't but I do have it. I know it doesn't help me right now but I do have it.

Mr. Kolick – Maybe there is some confusion, maybe not. There are two associations there. There is an overall association that has covenant and deed restrictions binding those lots and then there is the smaller association itself, which is probably managed by Western Reserve.

Mr. McMillen – That is correct, Mr. Kolick.

Mr. Kolick – The applicant from a private deed restriction standpoint needs to meet the requirements of both associations, both the overall association and the smaller association. I don't know what the smaller association may say. At least the representation here is from the overall association that you don't meet the requirements of the overall association. That is something that you and Western Reserve and the homeowner's associations need to look at and work out. This Board is aware that it doesn't have the authority to enforce private covenants and deed restrictions but that may have some bearing on where you go or Western Reserve if in fact you don't meet the associations covenants and deed restrictions. That isn't something that we can do. Do you have any paperwork from the overall homeowner's association or do you even know who authorized the approval?

Mr. McMillen – No, what I received in the mail was when we got the job we got it over a fax, we received an Echo Lake Association approval and a P.O. number from Western Reserve Management okaying the fence be put up, exact type, exact everything. I met with Debbie at 19400 Bradford Court on one morning and went over the job with her. It was strung out and staked out, the pins were exposed and everything so it wasn't like people did not know that the fence was being installed. I don't know if this gentlemen lives next door or whatever but it was up for over a week, strung out pins exposed. We did have a pin inspection. It wasn't like it was a surprise to anybody. Now, I do understand, Mr. Kolick, there are two – now that I have been told, I do understand that there is two associations like you said, a bigger one over a smaller one, which Bradford Court is the smaller one from 19400 to whatever those addresses are, which I was not aware of when we did the fence.

Mr. Kolick – One other element to move on here, Mr. Chairman, was it that your company started the fence and actually erected it before they got a permit from the City to do so? That is a concern of the City. You have been doing work here for years. You know you filed the application and you know there is a waiting period and you know that you have to pick up the permit to do the fence. Can you explain to the commission –

Mr. McMillen – I have no answer for that.

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. Kolick - Did something happen in this case?

Mr. McMillen – I have no answer for that. I have no idea why that slipped through.

Dr. Goist – Matthew, how long have you worked for Affordable Fence?

Mr. McMillen – I am the owner of Affordable Fence.

Dr. Goist – You are the owner and you're telling us that you didn't know you needed –

Mr. McMillen – I have someone else – I'm sorry, go ahead.

Dr. Goist – Are you saying that you did not know that you needed to pull a permit?

Mr. McMillen – Yes, sir, I did. I'm well aware of Strongsville's rules. That's why I met with Debbie at 19400 Bradford Court and went over everything with her.

Dr. Goist – Did you think the permit was pulled?

Mr. McMillen – I knew the permit was pulled. I gave the posting card to Debbie herself. I gave it to her that morning.

Mr. Allen - Mr. Chairman?

Dr. Goist – Yes?

Mr. Allen – They gave him a posting card. That posting card is posted for ten days. After the ten days, then you get the permit. The posting card is not the permit.

Mr. McMillen – I understand that. I'm not making excuses for anything but I don't handle the permits anymore. I have someone else handling all that stuff now. So, if it slipped through the cracks it just slipped through the cracks but we do get permits in Strongsville. We do get permits in thirty other cities that we work in. It's not that we don't do things correctly.

Mr. Kolick - Mr. Chairman, for the applicant, we have this one on the agenda, we have the next one on the agenda with the same thing happening. It's a legitimate concern of the City, not just your company but any company, if they aren't following the correct procedures of the City, we can't allow that type of thing to continue. Please, if you are the owner of the company you should know the procedure that needs to be followed. I don't know why it wasn't in these particular cases but it's a concern of the City Administration. It's a concern of the Board that you follow the rules like everybody else has to follow the rules.

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. McMillen – I understand, Mr. Kolick.

Dr. Goist – The one thing that I find hard to believe is I know that you delegated this responsibility of someone else pulling the permit or at least that is what you're saying to us and I don't want to get into a he said/she said back and forth because the Echo Lake Homeowner's Association has been here, has testified and I'm sure he will come back here as soon as I ask him to come back and testify again that they never gave permission for that fence. Now, the one thing that I also don't understand and I want to ask him is that you are right, there are dividers between those homes that are 6' high vinyl dividers. I don't know if a divider is the same as a fence and I'll have to –

Mr. Allen – It's a privacy fence.

Dr. Goist – Is that under a different classification, Mr. Allen?

Mr. Allen – No, that is still a fence.

Dr. Goist – So, we have to go back to that and I'm going to ask him again, how that just slipped through the cracks or were they just installed. Did you just install those?

Mr. McMillen – No. Those were installed when the property was built.

Dr. Goist – By the builder.

Mr. Baldin – That was probably all part of the plan.

Dr. Goist – Then I understand. I'm just going to ask you to take a second and then if you'll come back again, Mr. Rakowsky, and tell us your situation.

Mr. Rakowsky – Point of clarification, we are the master association, Echo Lake Homeowner's Association. What this gentleman is speaking to is the sub association, which is Echo Lake Townhomes Association. They are the sub association for that condominium development which resides within the over all Echo Lake Association. Now, I certainly don't dispute he probably had some permission or approval by them because they were the ones who on behalf – Western Reserve Management Company contracted with his company on behalf of Echo Lake Townhomes to erect the fence but we did not grant, nor were we even asked to review, nor did we grant any permission for that project. In addition to that, relating to the point of them staking out in string or whatever, that is why as Mr. Allen stated, we have the ten day period and as you folks are aware of, we did file a letter of objection because during that ten day period, we found out through this application process that they were intending on erecting a fence and your office received our letter of objection and they were already erecting the fence prior to that.

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. Kolick - Mr. Chairman, if I could, for Mr. Rakowsky, what about this issue of these privacy fences? Did those come before the overall association and get approved? Did the association not care that they went up or what was the story with those.

Mr. Rakowsky – Those privacy fences were erected upon the initial construction of the condominium association, which was before we were there. Now, it was also brought to my attention recently that those were replaced less than twenty-four months ago and again, I'm not sure given the fact that they were replaced whether that would have required approval because the initial structure went up upon construction of the whole condo development which all of that approval was done by the City before we had the association or it was turned over to us. We did not do any approval of the replacement of those two years ago. We were not asked to review it or anything and I don't know since it was replacing them if that would have been appropriate. We weren't asked.

Mr. Allen - Mr. Chairman?

Dr. Goist – Yes?

Mr. Allen – I vaguely remember that there was an application made and if they meet the Codified Ordinance of the City of Strongsville, we will issue the permit. The only reason that they are before this Board now is because they did not get a permit. So, it's quite possible that they came in, got the permit for replacing those and we issued the permit.

Dr. Goist – Mr. Rakowsky, in fairness now to everyone in this room, I would like to ask if there is a representative here from the Echo Lake Townhomes Association. If you would like to come forward and I would like to hear your side of the story.

Mr. Schilling – My name is David Schilling and I'm the Board President. I live at 21700 Meadows Edge Lane, Strongsville. From my understanding and not my knowledge of being Board President, and I've been Board President about three and one-half years, I had no notification that there was a master association nor was I ever given documents that would give any jurisdiction or compliance of anything to do with that. In regards to the fences and the partitions that he was referring to that are in between the units, those were replaced about four years ago because those were replaced before I was Board President. He quoted 24 months and it was at least four years ago and that was handled through Barnett Management.

Dr. Goist – Mr. Kolick, I think that we're into some legalities that I would ask you to help us out with.

Mr. Kolick – I guess for the gentlemen here, is Western Reserve acting on your behalf? Is that your management company for your smaller association?

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. Schilling – Yes, that is our management company.

Mr. Kolick – Did Western Reserve not relate to you that they had heard from the overall association that they needed to comply with their regulations?

Mr. Schilling – We got a letter once the complaint was made through them. That is what I understood. We did make a contact to that association in regards to the buffer fence because that is why it was put up, as a noise buffer. This is the response that we got, this letter here, which really didn't indicate either way which it went. It lead us to believe that it was up to our Board members. That was from Carlyle Management which is the master association that you're referring to management company. We did make inquiry with Carlyle Management before we proceeded with anything and that is the letter that we received.

Dr. Goist – Is Carlyle over Echo Lakes Association?

Mr. Evans – If Carlyle gave them the okay then they are good to go. That takes it out of our hands completely which is a good thing.

Mr. Schilling – The way that letter read to us was that they didn't have the authority to do it but it was up to our Board members. Nowhere in that letter did it say that they had any ordinance over us, which being the Board President for three and one-half years, I was never notified. I was never given anything from Echo Lakes Board and I've been on the Board for three and one-half years on the Board nor did I get anything from the prior president nor were there any documents and materials that came from Barnett Management when we switched to Western Reserve Management because I inspected those boxes as they came over to Barnett. There was no indication to us that anyone had governance over us and from that letter they didn't state that we had to check with them about what we're doing because they had issue over us.

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Mr. Harr – If you weren't aware of the fact that they had governance, why would you have contacted Carlyle for permission?

Mr. Schilling – Just to make sure there wasn't an issue. We tried to cover every base and it was something that we talked about in one of our meetings. We wanted to call to see if there was any issue here being that we were dealing directly with properties that were there. My biggest concern is because there is a swale back there, there might have been a variance from the City, there might have been a variance originally listed. I have lived in other developments where there is property that is owned jointly in between private property.

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. Harr – It was done more as a courtesy item. It wasn't looking for approval per say. It was more notification.

Mr. Schilling – Absolutely. Right, just to say, Hey is there something here, because I've never had anything that –

Dr. Goist – That does kind of imply and again it's that he said/she said – it kind of implies that you knew that there was an association that was over your association. The implication is that you asked them you said as a courtesy. It sounds to me like you found out that you need to ask them and you did but the communication lines have not been the same.

Mr. Schilling – No, I did ask them as a courtesy and from what that letter read, it lead me to believe nothing other than I made the courtesy call to say, Hey, look it, this is what we're thinking about doing. We're having an issue because we had files complaints with Carlyle Management about the noise, about the situation with the kids back there, which I have that letter as well here. That is where it started at.

Mr. Evans - Mr. Chairman?

Dr. Goist – Yes?

Mr. Evans – Being relatively familiar with the homeowner situation here in our municipality, Mr. Kolick, I think that you would agree that at this point the covenants and restrictions for the Echo Lake Townhomes would have been filed as deed restrictions against those properties and those would indicate in there that there is a master association that they are subservient. I'm not aware of any homeowner association developments that have clusters that have been not supervised in the filings by the City because the City is a party to those documents that would have allowed any loopholes that would have created a situation where a cluster association was not under the control of a master association. That being the case, Mr. Schilling is saying that he wasn't aware of it wouldn't hold water because those are public record and they as homeowners would have been required through their title companies at the point of taking ownership of their individual properties to acknowledge the fact the not only were the covenants and restrictions in place for the townhomes but also that they were a subset of the master association and therefore the claim that they were ignorant of that doesn't hold water as far as I'm concerned.

Mr. Kolick - Mr. Chairman, the title to each one of these properties will show that it's encumbered by both an overall association and a smaller association. So, a look at the public records, which you are on notice on as a matter of law, would show that it has both associations. Having said that though, as I have informed the Board before, we can't enforce private covenants and deed restrictions whether it's the minor association or the overall association and that is an item that the smaller association and the owners of the smaller

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

**Mr. Kolick continues** - association have to work out with the overall association. They need to enforce and they need to take the actions against them. One of the reasons the law doesn't permit us to do this is because we can't sit here in judgment as to who said what and how they were led to believe and whatever. So, we can't take that into account. I would just - for future purposes for the smaller association, they need to get in touch with the overall association and work through their own differences and they may need to do it beyond here because regardless of what action we may take as a City, there is private action that can be taken from the overall association against the smaller association or the owners. For our purposes here, as was mentioned at the first meeting, we can't enforce those covenants and deed restrictions. We can only determine if everything was done according to our City Codes. We know the fence was put up without having pulled the permit but that doesn't change the fact that the fence as constructed meets all the City Codes and Ordinances. I think we have to move on at this point with all the parties to understand that we're not taking any action, forming any opinions as to whether this fence is proper under the covenants and deed restrictions of either association and we don't have authority to do that and there is another forum to have that determined in. All we can do is determine whether it meets the City Codes. I think with that we need to take some action unless there is some other comment and move on.

Dr. Goist – I also would like to invite anyone else who may be from the Echo Lake Townhomes who wants to speak. Do you want to speak, sir?

Mr. Krawczyk - Yes.

Dr. Goist – Come to the microphone and give us your name and address.

Mr. Krawczyk - My name is Andrew Krawczyk. I'm the resident at 19400 Bradford Court. I am one of the interested parties in this case. I do want to bring to your attention that I'm a licensed professional engineer and David did come to me and did discuss the situation with the fence with me. I was directly involved with the noise situation from the back properties. I did advise him that he needed to check with the City. He needed to have the property lines staked. He did everything that I was aware of and I'm one of the homeowners there. I was not aware of any documentation and neither was David that they needed to go back to the overall Echo Lake Association. This was one of the questions that was asked. The original letter that was written to Carlyle Management was to ask them to deal with the noise situation and you saw their reply. That lead us to believe that it was on our initiative that this fence was supposed to go up. We did have the property lines staked by a licensed land surveyor. We got a reputable contractor to do the fencing. I simply want to point out that we went out of our way to perform our due diligence here to make sure that all of our bases were covered, that we contacted everyone that we needed to contact, that we did everything according to the City Ordinances, the regulations and what we were supposed to do. We did not want to have an issue with this. As David said, we are in no possession of any

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

**Mr. Krawczyk continues** - documentation which says that we should have asked for their permission. If we had, we would have because we did perform our due diligence.

Dr. Goist – I appreciate your thoughts and I think again, Mr. Kolick will address that but as a homeowner and having a deed, in your deed it is written, as Mr. Kolick referred to earlier, that no one has the excuse to say that you did not know. You are a licensed professional and I appreciate that and I recognize that but I am saying to you that somewhere in your deed you have what is proper. They have objected and we as a Board are not here to decide between the two. We can uphold their objection or we can deny their objection. The other problem that we have with this is that the fence was built without a permit. Again, you did your due diligence. It didn't work. That is a different issue with the fence people. That is why I'm trying to be fair with everyone here. I certainly believe, Mr. Kolick, since it's been years that he has worked with the City and has every bit of knowledge that that is in your deed and I know Mr. Evans has been on the Board for many years at High Point and he has some background in the overall association type situation. I would say to you I appreciate your thoughts and you did what you thought was correct but what you did was not quite enough and so we as a Board – we have no authority to uphold this. If we – again I will ask Mr. Kolick – uphold their objection, it still comes back to the two of you having to take care of this between you. Am I correct in saying that?

Mr. Kolick – The only objection that we have any jurisdiction to uphold is the fact that they constructed the fence without the permit. We don't have any legal authority to grant the objection based on the fact that it doesn't comply with covenants and deed restrictions with the overall association. That is a separate item and we can't act on that. As I said earlier, regardless what this Board does, whether you uphold or don't uphold the objection, the smaller association and the overall association have got to know that they still have some issues between themselves that they need to work out. They should know for the future if for nothing else that the covenants and deed restrictions for the overall association bind that smaller association and they need to look to them in the future for any type of changes on those lots to do their quote/unquote due diligence, that they do look to see that they comply with that for their own purposes. Again, for purposes here tonight, we are not going to make any judgments one way or another whether you comply or don't comply with any particular covenants and deed restrictions. All we are going to do is judge whether you comply with the City Ordinances. Thank you.

Mr. Evans - Mr. Chairman?

Dr. Goist – Yes, Mr. Evans?

Mr. Evans – One other note too that I think is important here is that I think it's unfortunate that we don't have Western Reserve Management here this evening because that would to me be the greatest part of the problem here and I think for the townhomes I would certainly

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

**Mr. Evans continues** - question a management company that doesn't understand covenants and restrictions of association and doesn't know what they are doing. They obviously employed Affordable Fence and I don't think it's up to Affordable Fence to determine whether or not they are a sub association and things like that. Certainly if Western Reserve is being paid to manage properties, that is their responsibility to do that. We can't really hold Affordable Fence responsible for that but certainly Western Reserve Management is responsible for that and should be certainly brought to bear on that and it is unfortunate that they are not here tonight.

Mr. Baldin - Mr. Chairman?

Dr. Goist – Yes, Mr. Baldin?

Mr. Baldin – I would like to bring Affordable Fence back up to podium. Mr. Allen, I'm looking here, they made application for a permit on 9/23 and on 10/1 there was a stop work order. Was the fence put up between 9/23 and 10/1?

Mr. Allen – It must have been otherwise the stop work order would never have been issued.

Mr. Baldin – Was it completed?

Mr. McMillen – The gentleman behind me called me when the guys were putting the last panel in, Mr. Baldin.

Mr. Baldin – When the last panel was going in?

Mr. McMillen – Yes, sir.

Mr. Baldin – Okay, so that was some time between 9/23 and 10/1?

Mr. McMillen – The paperwork that I got from Kathy was six days or seven days, is that correct?

Mr. Baldin – That is about right.

Mr. McMillen - Because the association filed an objection on the sixth or seventh day.

Mr. Baldin – So, they finished putting the last panel up and the job was complete?

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. McMillen – Yes, Tom had called me that afternoon when they were putting that last panel in and said that I was going to have a lot of problems and I told him I had the paperwork from the association. I told him that we had applied for the permit. I told him everything had been staked and done.

Mr. Baldin – We understand all that and you are the owner of the company and you do have people that work for you, you delegate authority to someone down the line. So, you're saying this just sort of slipped through the fence.

Mr. McMillen – I'm not going to make excuses, Mr. Baldin.

Mr. Baldin – We can't have this going on in the City because we're going to go to another case in the next issue coming up where you are involved again.

Mr. McMillen – I understand that and I have a problem with that whole thing.

Mr. Baldin – All right. I just wanted to make this clear.

Mr. Harr – Mr. Kolick, the issue of upholding the objection, if the objection is upheld purely on the basis of the permit not being taken out, it's somewhat moot now that the structure is up other than if we would require for it to be torn down, correct, or removed?

Mr. Kolick – That is correct. That is what we would have to do then, require for the fence to be torn down.

Mr. Harr – If we uphold it on that basis, which really is the only basis we have to uphold it on, we're in essence saying to remove the fence.

Mr. Kolick – Correct. What that means is they can come in the next day and apply for the same fence in the same spot and if they follow the correct procedures, waited the ten days, we will issue that permit because it complies with the City Ordinances.

Mr. Harr – May I briefly ask Mr. Rakowsky to return to the podium please. Is there an opportunity - with the fence in place presently, do you believe there is any opportunity that this could be negotiated out between you and the other association? It seems silly to go through the effort of removing the fence when they can in fact reapply for it again if there is going to be some middle ground reached between you folks. I don't want to put you on the spot and obligate you to anything.

Mr. Rakowsky – Let me first state for clarification that the gentleman from Affordable Fence did not talk with me. I was not the person who called him. That was Mr. Maloney, one of our Board members, who had observed the fence being erected and he contacted Affordable

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

**Mr. Rakowsky continues** - Fence and said, "Hey, you haven't met your ten day period yet and there is no permit issued". When he was made aware by Mr. Maloney that they were erecting a fence without a permit, they still chose to complete the project. Mr. Allen can probably determine when that stop order was done.

Mr. Harr – I don't want to speak for the rest of the Board and I don't want to minimize the fact that the permit was not issued. I have concerns about that and that certainly is a problem. In the same token with the fence there, if we are going to circle the same maypole again twenty days from now –

Mr. Rakowsky – To answer your question, I don't know only because from the standpoint that had the correct process been followed and they had come to us on paper, what they wished to do and looking at approval and our Board saying that it doesn't meet the height restriction, etcetera, then as you know when you're negotiating those things some ground could have been made at that time and said we can do this or that or whatever, now when the structure has been erected, how do you negotiate after the fact when it's already there. I understand what you're saying from the standpoint of saying pull it down and then turn around and seek a permit to put it up again. If we don't wish to grant that then there is still nothing to stop that. So, honestly, I don't know how to answer that question.

Dr. Goist – There is another gentleman who would like to speak. Give us your name and address please.

Mr. Maloney – Scott Maloney, 19532 Stoughton Drive, Treasurer of the Echo Lake Homeowner's Association. I also wanted to respond to that. The issue right now is that the residents of the four homes that are on the other side of that fence came to me. I happen to live near them. They expressed an objection to what they saw as a 100' long white wall that went up on the back of their property. Really, what we would have liked to have had was the opportunity to talk to them about material and what they said was that they didn't even necessarily have an issue with 4' versus 6' but they would have liked something in wood that matched what was going up in the rest of our neighborhood. To them that would have been less obtrusive and blended in more with the natural surroundings. That is part of what prompted all this in the first place and unfortunately and because of all the sequence of events that happened, we didn't get that opportunity to have that dialogue.

Mr. Harr – I appreciate that. I wanted to have a flavor for where the middle ground is and whether it makes sense to seek the removal of the fence because that is probably where it's going to go anyway depending upon what your homeowner is looking for and what your association is. Thank you.

Dr. Goist - Mr. Kolick, do you have any other guidance for us before we –

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Mr. Kolick – No, I think we have heard all the information. As I stated before, this Board only has jurisdiction to consider whether or not it meets the Ordinances of the City. The motion should be made in the affirmative. If you vote in the affirmative, you are voting to grant the objection of the overall association in which case the fence would need to come down. If you vote in the negative, you're saying you're recognizing that they didn't get the permit but that you're not going to require it to come down and you would be overruling the objection of the association. As I stated before, we cannot take into effect whether or not it meets or doesn't meet the covenants and deed restrictions of either association. That is a private matter. That can always be handled between the parties here on their own.

Dr. Goist – Board members, any other questions?

Mr. Evans – I guess on another point and this might go to either of the representatives from the Echo Lake Association, if the objection from the people on the other side of the fence is to the 100' white wall, does landscaping mitigate that because if I heard right, the fence was installed 3' within the confines of the properties of the townhomes. Part of the reason for asking that question is to follow up Mr. Harr because if this Board requires the fence coming down, it can be put back up as long as the permit process is followed correctly and would be in the same location doing the same thing and I think what Mr. Harr was alluding to was alternatives and would landscaping break up that wall if landscaping were put on the back side of the fence. Mr. Maloney, if you want to be the one to answer that, that is fine.

Mr. Maloney – Mr. Evans, at this point, I wouldn't want to speculate as to whether that would ultimately resolve the situation at this time. What we had asked for at one point I know was to hopefully have dialogue with Western Reserve and/or representative from the townhome association and as Mr. Rakowsky pointed out earlier, that hasn't as of yet occurred but we are hoping that we will be able to get that scheduled some time in the near future and have some conversation around what can be done to get this whole issue behind us and hopefully with the least pain as possible.

Mr. Evans – Okay, I was trying to find a shortcut.

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Dr. Harr – For me, if I pull out the civil matter and the disagreement with the associations of what is there, it irritates me that we don't have a permit pulled but if there are no other Code violations and that is the only issue at hand here, we have had other situations where in good faith permits have not been pulled. There has been an error, there has been a mistake, what have you. A clerical error or another party. I don't know in my mind if that is sufficient to go ahead and tear down the structure in the belief that it is an isolated incident.

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Dr. Goist – I think the one thing that we definitely have to do and we know that we have something else coming up a little later on the agenda, that Affordable Fence has to be put on notice that they are going to have to pull permits if they are going to continue to do business in the City of Strongsville and comply with the permit. It cannot fall through the cracks and just as we said to the homeowners at the townhomes, ignorance of your own deed is not the excuse. You have your deeds and you definitely have it in writing what is available to you and what is not available to you. With that, I'm going to ask for a motion.

Mr. Baldin – Mr. Chairman, before that, is there anyone here from the neighbors on the other side to object to this fence. Wasn't a letter sent out?

Mr. Evans – No.

Ms. Zamrzla – No, because it's not a variance.

Mr. Maloney – Mr. Baldin, the residents were all comfortable having us represent them. Partly why the fence went up is that they all have a lot of little kids and coming to something like this would be tough to arrange so they were comfortable for us to speak on their behalf.

Dr. Goist – Thank you.

Mr. Baldin – Thank you,

Dr. Goist – May I have a motion please.

Mr. Baldin – I would like to make a motion that the objection by the Echo Lake Homeowner's Association to the application for a building permit by property owner Western Reserve Property Management for a 6' Fence; pursuant to Codified Ordinance Section 1418.03, property located behind 19408, 19404, 19400 and 19396 Bradford Court PPN's 393-34-021, 393-34-022, 393-34-023 and 393-34-024 zoned PDA-2 be upheld.

Dr. Goist – Do we have a second?

Mr. Bohac – Second.

Dr. Goist – We have a motion and a second. Mr. Kolick, do you want to make it clear to the Board members again?

Mr. Kolick – If you vote affirmative or you vote yes, you are voting to approve the objection by the overall association and if you're voting no you are voting not to approve that objection and permitting that fence to stay.

2) **ECHO LAKE HOMEOWNER'S ASSOC., OBJECTING PARTY/ Affordable Fence, Contractor, Cont'd**

Dr. Goist – Kathy, would you call the roll:

ROLL CALL:           Dr. Goist – Nay           Mr. Baldin – Aye           Mr. Bohac – Aye  
                          Mr. Harr – Aye           Mr. Evans – Aye

Dr. Goist – Okay, the objection has been upheld. Where do we go from here, Mr. Kolick?

Mr. Kolick – The City will notify the applicant that the fence needs to be removed.

Dr. Goist – Okay. Thank you, gentlemen. We appreciate you all being here.

**RULING:   OJECTION UPHELD**

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor**

Requesting a 23' Setback variance from Zoning Code Section 1252.17 (c) which requires that the fence be located within the setback of the residence and where the applicant has extended a fence 23' beyond the setback of the residence in order to Replace an Existing 6' Fence; property located at 10115 Prospect Road PPN 391-23-018 zoned R1-75.

Dr. Goist – The next item on the agenda is the Prospect Road, Dave Zaleski fence. If you would come forward and give us your name and address please.

Mr. Zaleski – David Zaleski, 10115 Prospect Road. Again, Mr. Zaleski, we are pretty familiar but again if you would like to tell us your situation in your own words for the record exactly why and where and how this fence was put up. I will ask you this question, when you bought this home, was the fence there?

Mr. Zaleski – Yes, sir.

Dr. Goist – In exactly the place that it is now?

Mr. Zaleski – Exactly.

Dr. Goist – Another question I have for you, when you hired Affordable Fence, did you tell them that you wanted to replace the fence? You did not want – did you want it completely replaced or were you repairing the fence?

Mr. Zaleski – Replaced.

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor, Cont'd**

Dr. Goist – Okay and they told you at this point that you could have it replaced and they could put in new structures and put up new fencing?

Mr. Zaleski – Yes.

Dr. Goist – Board members, do you have questions?

Mr. Baldin - Mr. Chairman?

Dr. Goist – Yes?

Mr. Baldin – Did you realize that the way the fence was situated that there is a safety hazard there pulling out of your driveway that children on bicycles or people walking that it's a hazard? Did you ever realize that or think about that?

Mr. Zaleski – Yes, I did actually. I have been there twelve years now. There is actually pretty much like three lanes in the driveway. Two in front of the garage door and then one extra one to the side. Coming out of the garage door, the sight line is pretty good. You can see pretty good but the one nearest to the fence on that corner, you can't see very well. So, yes we are aware that you have to go really slow and keep looking.

Mr. Baldin – Did Affordable Fence bring any knowledge that maybe there might be a problem with where the fence is? Did they make any comment to you at all saying it is too close to the sidewalk and it's very possible that it's a bad sight line. Did they say anything whatsoever to you at all about that? They were interested in doing a good job and putting a fence up, a brand new fence, not a repair job?

Mr. Zaleski – I don't know how to repair a fence that is falling down other than replacing it.

Mr. Baldin - It's new posts and everything?

Mr. Zaleski – If the posts are rotten and falling down, you need to do that.

Mr. Baldin – Right. I have no further questions.

Mr. Kolick - Mr. Chairman?

Dr. Goist – Yes?

Mr. Kolick – For the property owner, did you have any discussions at all with Affordable Fence about obtaining a permit from the City or ask them whether they were going to get the permit or whether a permit was needed or whatever?

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor, Cont'd**

Mr. Zaleski – Yes, I was told, “Don’t worry about it. We’ll take care of the paperwork.”

Mr. Baldin – Okay.

Mr. Bohac - Mr. Chairman?

Dr. Goist – Yes?

Mr. Bohac – Was the gentleman that owns Affordable Fence the one that told you this by any chance?

Mr. Zaleski – Yes?

Mr. Bohac – He was?

Mr. Zaleski – Yes, sir.

Mr. Bohac – Thank you, no other questions.

Dr. Goist – Board members, any other questions for this gentleman? Mr. Harr?

Mr. Harr - Mr. Chairman, not a question per say but Mr. Zaleski, we have looked at a number of variance requests over the years with regards to fencing as it approaches the sidewalk or moves away from the house because the Code requires it to be pulled back to the house. In most of those cases we have looked for some type of middle ground, some type of reasonable solution that resolves the safety issue and sight lines, still giving the owner some operating room in the back yard that is fenced in and gives us a concession to the Code. So, I don’t know how much of our conversation in caucus you caught but one of the things that we discussed is looking to move that fence back perhaps not to the house as Code would require but to a reasonable distance in between that would open up those sight lines so that we would remove the safety hazard that exists right there.

Mr. Zaleski – Kathy, is this the time?

Ms. Zamrzla – Yes.

Mr. Zaleski – I have an alternative, a middle ground if you will and I have sketched it out.

Mr. Baldin – Would you tell us what it is and pass the copies out?

Mr. Harr – So we get it on the record.

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor, Cont'd**

Mr. Zaleski – If I may describe what we're talking about. There is some parking spots in front of the garage and if you're facing the house, to the right of those parking spots is a fence that extends from the house towards the street and for some 20'. If you're sitting in any one of those parking spots, it's difficult to see down the sidewalk to your left. To open up that sight line, if you remove the fence completely, of course, you can see all the way to the end of the side street, Wolzhaven. What I'm proposing is to take an angle off the corner of the back yard from a point at the corner of the gate at a 45 degree angle or so to where the existing replaced fence is. If you did that then, if you were sitting in a car in the left most parking spot, the sight line as I estimated from my sketch would be near 35' down the sidewalk and I don't know if there is any rule as far as how many feet of sight line there needs to be but that is an estimate of 35'.

Mr. Baldin – Your garage door is 16' wide the one that is east, the furthest one towards Prospect Road.

Mr. Zaleski – That is west.

Mr. Baldin – West, I'm sorry. Is there another little garage door there? That is pretty wide. You can park two cars in there or three cars?

Mr. Zaleski – Two cars in the garage. On the drawing it says garage door. That is this 16' garage door.

Mr. Baldin – How much room is there between that and the little line that is there? Do you see where I'm saying here?

Mr. Harr – It looks like there is an extra 9' of driveway there.

Mr. Baldin – I'm sorry, I see that now. There is 9'. So, this is all driveway in here.

Mr. Zaleski – No, this is driveway here. This is grass. This 6' is grass.

Mr. Baldin – All right.

Mr. Zaleski – The x's is existing fence. I was going to take these two pieces out and put that one in.

Mr. Baldin – From here to here is 20'.

Mr. Zaleski – If you were sitting in the car here and if you take a sight line down this way from here to here measures about 35'.

Mr. Baldin – How far are you from the house to this area?

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor, Cont'd**

Mr. Zaleski – Each square is 3’.

Mr. Baldin – So, you have 6’ or 7’ is where you’re thinking of bringing it back that far.

Mr. Zaleski – Yes.

Mr. Baldin – Thank you.

Dr. Goist – I think everybody has certain things that they would like to say but Mr. Zaleski, one of the things and one of the reasons that the Administration changed the law and I’m going to say that it’s been in the last three years, was to get away from the stockade look of a fence right down along the sidewalk and what you have and I appreciate what you’ve done to cut that off but the thing that you haven’t done that we really want to help be more in compliance with what the City Administration wants is to move that fence off of the sidewalk and you’ve opened a line of sight but you have not gotten rid of the stockade look and so I think in our situation, and we talked about it in caucus, we would like to have you move that whole fence 15’ from the sidewalk in. You are 4’ off the sidewalk now. You have 5’ on the drawing but I think you’re closer to 4’ when I was out there and I didn’t have a tape measure but I think that is close and if you came in 15’ from the sidewalk you are still - you have off of your house you have 25’. That would still keep you off your house about 13’ if I’m correct. You would be 15’ off the sidewalk. Would you be willing to move that fence 15’ and not angle it – well, I don’t care if you angle it. That’s fine. The angle is even more helpful but will you move that fence in 15’?

Mr. Zaleski – I would like to make some more comments.

Dr. Goist – There are reasons, I say, that is because this is a compromise. If we decide not to give you the variance and since this again was built without a permit then you would have to move it back to your house to comply with the City Code. Our compromise to you is to have you come in 15’ off the sidewalk. If you say, Yes, then that’s where we think you ought to be. You can go ahead with your comments.

Mr. Zaleski – Not showing on this drawing there is a patio if you will. It’s constructed of paving stones, 2’ square paving stones about midway between the house and the back fence. There is an, albeit, ground level structure there already and it goes within 3’ of the fence.

Dr. Goist – Is that where your trailer sets that is within the yard?

Mr. Zaleski – Yes, I was just getting to that. Yes, and that is where I park my camper trailer on that patio.

Dr. Goist – Since there are all paver stones, can they be moved in if they are in 2’ sections? Can you move them in further?

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor, Cont'd**

Mr. Zaleski – Yes. That's a lot of work sir.

Dr. Goist – I'm going to press you a little bit harder because the one thing we're trying to do is get you to move that stockade fence in 15' and we also want to do this with an exclamation point to Affordable Fence or any other fence company that is doing business in this city that we are not going to continue to allow people to put fences up next to the sidewalk. That's old Strongsville and we are a new Board and this is a four year new Administration. What we're trying to do is to compromise with you and we would like to have you move it in 15'. That is a compromise.

Mr. Zaleski – Furthermore, there are trees. I think they're in the way. It's a big problem. There are big trees all the way down in the backyard. I may have to come even closer to the house because of the trees.

Mr. Harr – Closer would not be an issue.

Mr. Zaleski – The issue being I'm losing 15 or 20 percent of my backyard.

Dr. Goist – We appreciate that. What we're trying to do is get rid of the stockade look in town. If you have to come inside the tree, we're not trying to force you in there but trees come down and trees get planted. We don't mean to do that either.

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Mr. Harr – In deference to the fact that you have done the work and you've replaced the fence and we appreciate that as opposed to having a dilapidated structure, all these things would have come to light had the permit been applied for. We would have been having this conversation at that time anyway if they hadn't just gone ahead and done the work.

Mr. Baldin – Mr. Zaleski, how close is the nearest tree to the fence right now?

Mr. Zaleski – Four or five feet to the fence.

Dr. Goist – Mr. Zaleski, could you angle it as you showed us in this drawing and come 10' off the sidewalk?

Mr. Zaleski – Angle and then 5' more back?

Dr. Goist – Angle as you've shown and then start from that angle and come right up next to that – we asked for 15' and we'd like 10' or 12'.

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor, Cont'd**

Mr. Zaleski – Up to the trees but keep the trees inside.

Dr. Goist – Keep the trees inside the fence. Would you be willing to do that?

Mr. Baldin – But he wouldn't have enough room there. He is saying the closest tree is 4' from the fence.

Mr. Evans – I think it's farther than that Rich. I didn't go into the backyard. I looked in the yard.

Mr. Baldin – I would say up to the trees. So, we would like you to take the fence up to the trees. We still like the angle, which we think you have done fine with that and then you're going to bring the fence – do we need a figure from the trees Mr. Allen?

Mr. Baldin – Yes, Mr. Chairman, because the Board has to put a figure in for the variance.

Dr. Goist – He needs to put it a foot off the trees.

Mr. Harr – Or we need a measurement.

Mr. Baldin – We have to get the correct numbers here.

Mr. Allen - Mr. Chairman?

Dr. Goist – Yes?

Mr. Allen – That would be up to Mr. Kolick if it would be sufficient indicating that 1' off the tree or not or do we need an actual dimension.

Mr. Kolick - Mr. Chairman, I would rather see an actual dimension but we could probably live with the Building Department to determine it as long as this Board gave them the guidance. It's just a matter of a measurement. In other words, if you're going to say the furthest the fence could come out would be 1' from that tree towards the sidewalk and then it would be angled over. The Board could then determine the exact measurement if you're comfortable doing that.

Mr. Harr – Not to inconvenience the gentleman, but the work is done and we're not waiting on anything. We could wait for accurate information.

Dr. Goist – Are you saying Mr. Harr that you would like to have that measurement?

Mr. Harr – I'm saying that aside from Mr. Zaleski having to spend another Wednesday night with us, maybe we could get you first on the agenda.

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor, Cont'd**

Mr. Zaleski – This has me scared to death, listening to all this.

Mr. Allen - Mr. Chairman, what I would suggest then is that a new site plan be prepared with actual dimensions so the Board has something they can officially approve.

Dr. Goist – And table it for this meeting and ask him to come back at the next meeting.

Mr. Harr – I didn't look inside the yard. I don't know which tree we're talking about.

Mr. Kolick - Mr. Chairman, for the applicant, if you can give us a site plan that shows where those trees are, how far off they are and maybe redo your drawing to show the angle to the trees and we would at least have a dimension and it may accomplish what you want to do without taking as much of your yard away and yet accomplish what the Board wants to do to get the stockade look away from the sidewalk plus accomplish the sight line would be there and as Mr. Harr said, since the fence is already up, temporarily it's not going to hurt anything. We do not have to have another Public Hearing. You can just come up and we will conclude the Public Hearing today because everybody has been noticed. It's just a matter of coming to the correct number putting it on and this Board acting on it.

Mr. Zaleski – Let me understand what I need to do now. I need to make another drawing –

Mr. Evans – Use this drawing.

Mr. Baldin – Overlay it in red pen. Use this drawing.

Mr. Zaleski – and put in some dimensions of where the trees are.

Mr. Baldin - As close as you're going to come to the closest tree.

Mr. Harr – Whichever tree is the closest to Wolzhaven, you're going to want to go 1' farther so it's not right up against the tree, obviously, and then we need that measurement from that point to the sidewalk.

Mr. Zaleski – Draw it on here with the new dimension.

Mr. Kolick – Continue to angle that corner out like you have it so you still have the same sight line that you have here.

Mr. Zaleski – Actually, if you move the fence in, the angle doesn't need to be 45 degrees.

Mr. Baldin – We understand that.

3) **DAVE ZALESKI, OWNER/Affordable Fence, Contractor, Cont'd**

Mr. Kolick – We understand that. We want to make sure the sight line though would remain the same.

Dr. Goist – It's going to open up even further because you're coming closer to the trees.

Mr. Allen - Mr. Chairman, I'll need that plan so that when he makes application for the revised plan we have something to approve.

Dr. Goist – Take it to Mr. Allen.

Mr. Zaleski – Take it to Mr. Allen.

Mr. Kolick – He still needs to come back here even though he doesn't need another Public Hearing so that we can take action on it.

Mr. Zaleski - Mr. Allen does, not me.

Mr. Kolick – No, you need to be at the meeting.

Ms. Zamrzla – Dave, if you could bring me eleven copies –

Mr. Kolick – We still need to do the Public Hearing.

Dr. Goist – Is there anybody else who would like to talk for or against this variance? Do we need Affordable Fence up here again?

Mr. Kolick – I don't believe we need Affordable Fence. I think Affordable Fence understands the issue is the same as last time, he can't be putting these fences up without the actual permits in hand. I think this could have been avoided had we had that but I don't see any reason to ask him to come back up.

Mr. Zaleski – So, the procedure is to get the new drawing to Mr. Allen, come back on the 18<sup>th</sup> of November, if everyone approves I'll get a permit and the permit –

Mr. Allen – Will be issued 20 days after the meeting.

Dr. Goist – So, as of this meeting, this Public Hearing is concluded.

Mr. Kolick - Mr. Chairman, for the record item 3) was tabled with the approval of the applicant, although the Public Hearing was done, to get more information.

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Dr. Goist - If there is no other business to come before this Board, meeting is adjourned.

Dr. Goist - Meeting adjourned at 9:20 p.m.

<u>Signature on File</u>	<u>Signature on File</u>	<u>Dec. 2, 2009</u>
Glenn Goist, Chairman	Kathryn A. Zamrzla, Sec'y	Approval Date