

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

**Meeting of
October 14, 2009
7:30 p.m.**

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

Administration: Assistant Law Director, Daniel Kolick

Building Department Representative: Joe Allen

Recording Secretary: Kathryn Zamrzla

The Board members discussed the following:

1) 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.

Ms. Zamrzla stated that this fence was erected prior to obtaining a permit and that Affordable Fence has been licensed here for several years in a row. Mr. Baldin was inquiring as to why the fence didn't go further down the property lines than it did. Ms. Zamrzla advised the Board that this is going to Mayor's Court on October 22, 2009. Mr. Evans reminded the Board that the BZA cannot enforce homeowner's association covenants and deeds. The Board reviewed the time line of the events of this objection. Mr. Harr stated that that Western Reserve Management Company speaks for the Echo Lake Townhomes Association and is an association within Echo Lake Association and that Western Reserve Management Co. is the agent for the property and should be present.

2) 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.

Mr. Allen reminded the Board that the fence was erected without a permit or variance 13 or more years or ago. In addition, Ms. Zamrzla advised the Board that Mr. Biondillo advised the contractor at the Building Department counter that their interpretation of repairing a fence is incorrect and not in compliance with Mr. Biondillo's interpretation.

3) **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 Board stated that a house was demolished and this proposed project received a variance in November 2008. Now there is a new contractor and the owner is applying for a larger garage than previously approved. Mr. Allen stated that the lot was not previously consolidated with another lot. The Board looked at the plans for the previous variance compared to the plans for the current variance. Dr. Goist stated that he will reiterate that leagues will not be allowed in the basketball court.

4) **JOHN R. REHS JR. & TAMMY L. REHS & RICHARD CARTER, OWNERS/
Wayne Homes, Builder**

Requesting a 154 SF Floor Area variance from Zoning Code Section 1252.22 (c), which permits a 1,000 SF Floor Area and where a 1,154 SF Floor Area is proposed in order to construct an Attached Garage on a New Single Family Dwelling property located on 19955 Bowman Drive PPN zoned R1-75.

The Board discussed that due to the disability of the applicant, the Board has no plans to not approve the variance but Mr. Evans stated that the justification should be stated on the floor. Dr. Goist stated that he would like to hear from any audience participation. Mr. Harr stated that it is a small variance and not for a luxury item.

STRONGSVILLE BOARD OF ZONING & BUILDING CODE APPEALS

MINUTES OF MEETING

October 14, 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

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 October 14, 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 EXCEPT FOR MR. BOHAC

Mr. Harr – I make a motion to excuse Mr. Bohac for good cause.

Mr. Baldin – Second.

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

ROLL CALL: ALL AYES: MOTION CARRIED

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. We have minutes from September 9, 2009 and September 23, 2009 that were submitted. So, unless there are any corrections or additions, I'll ask for a motion.

Mr. Baldin – Motion to accept.

Mr. Harr – Second.

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

ROLL CALL: ALL AYES: MOTION CARRIED

Dr. Goist - Now, for all the people who are here who would like to speak before the Board of Zoning and Building Code Appeals this evening, if you would now please stand and be sworn in by our Assistant Law Director.

Mr. Kolick then stated the oath to those standing.

Dr. Goist – Our meetings are in two sections. The first section is New Applications of which we have three and we have one Public Hearing.

1) **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 – We will start right out with our first New Application, which is Echo Lake Homeowner’s Association, the objecting party to Affordable Fence, contractor. Do we have the representative here from Echo Lake? Could you give us your name and address please.

Mr. Rakowsky – Tom Rakowsky, 19929 Echo Drive. I am president of the homeowner’s association. We are objecting to this permit based on the fact that our by-laws and covenants dictate that any structures, fences, decks, etc., sheds, require the approval of the homeowner’s association. This particular case is a fence that was going up within the Echo Lake Townhomes, which is a sub-association of the master homeowner’s association. So, it was the sub-association that contracted with Affordable Fence, which the sub-association Echo Lake Townhomes is managed by Western Reserve Property Management and they contracted with Affordable Fence to have this fence erected in that area and they, of course, did not come to us as the master association for approval and beyond not coming to us for approval, what they did erect does not meet our criteria anyways because we stipulate nothing over 4’ in height; they put a 6’. We stipulate wood; they put vinyl. There are a few other minor things. None of it conforms anyways beyond the point that they didn’t seek approval in the first place and then it was our understanding when we were notified that the applicant had sought a permit but the ten-day waiting period had not elapsed yet so they were not issued a permit. Although we did file the objection, they went ahead and erected the fence without having the permit having been issued to them. So, that is pretty much where we stand.

Mr. Kolick - Mr. Chairman, if I may, for the applicant for Echo Lake, subsequent to your filing this objection have they now come before your association?

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

Mr. Rakowsky – No, they have not. We have not had any contact. We did send a letter to them asking them – in light of the situation that has occurred, we sent a letter to Western Reserve Property Management representing the townhome sub-association and they have not responded to that letter. Basically, we sent a letter requesting a meeting to discuss what is going on, etc. We don't even have any idea what motivated them to erect the fence in the first place. So, we have had no contact with them other than us sending them a letter but they have not had any contact with us.

Mr. Kolick – We should hear, Mr. Chairman, if there is someone here on behalf of Affordable Fence. Maybe they can enlighten us on some of the items here.

Dr. Goist – Is there anyone here who would like to speak for Affordable Fence? I'm, kind of, getting the idea that from what I'm hearing you say that Affordable Fence may have caught one on the blind side here thinking that they were dealing with Western Reserve Management who in all good faith thought they were doing it correctly and they did not follow the associations rules, which I'm not familiar with. I happen to used to live in High Point and Mr. Evans can confirm that we lived in our own little sub-section but we had to follow the master association. There are some legalities here, wouldn't you agree, Mr. Kolick.

Mr. Kolick – Yes, they're bound by the overall as well as their smaller association covenants and deed restrictions. However, just so the applicant knows too, we as a City can't enforce your covenants and deeds. You may need to take your own action to enforce them as to what they can do. We can't enforce those but we should notify, by certify mail, both Affordable Fence and Western Reserve that we would like to have them present at the next meeting because on the other side, if they are just going to blow us off when there is an objection to a permit and there may be some other action that we may need to look at for them that goes even beyond what we have here. So, we should, at least, inform them at the next meeting that they need to be present but again, for the applicant, so you understand, this Board does not have authority and the City doesn't have authority to enforce your covenants and deeds. You may have some internal authority and I believe you probably do in your covenants and deeds but at any rate, we should have both a representative from Affordable Fence and a representative from the management company here to see what occurred. While the applicant is here, do you know when the fence was actually erected on the property?

Mr. Rakowsky – Well, what happened was it was a Thursday either last week or the week before, I believe if we calculated correctly their permit would have been issued the following Monday. They erected the fence on the prior Thursday and Scott Maloney, one of the other Board members saw them out there working, went over to them and said, "Hey, you haven't been issued a permit yet" and he called Affordable Fence and was thoroughly chastised with many colorful words and hung up on when he brought up the point that they were putting a fence up without a permit. So, at that time, Scott called the Building Department and said

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

Mr. Rakowsky continues - that they were out there erecting the fence without a permit and at that point the Building Department went through the process – I don't know whether – it was fairly late in the day by that point and they were almost done when Scott approached them on site and to the best that I could tell, they completed the work and I don't know whether the Building Department was out there that same day or the next morning to actually red tag the job.

Mr. Kolick – Again, Mr. Chairman, it's a bit disconcerting that Affordable Fence applied for the permit and then went and erected it before it was issued. Once in a while you might run into a case where someone doesn't know they need a permit but obviously they knew they needed the permit or they wouldn't have applied for it to begin with and yet, then to still go ahead without issuing the permit is a bit disconcerting to us as a City. So, I do think we should send out a letter by certified mail and request that both of them be here, the representative from the management company and the representative from Affordable Fence at the next meeting so we can address this with them. Again, understand for the applicant, in the end we still need to address whether the application for the fence meets the City Ordinances and that is what we need to act on immediately. That is what is in front of us. So, we always want to hear if someone is not following the homeowner association by-laws or covenants and deeds but understand, we as a City don't have the authority to enforce those.

Mr. Rakowsky – We do understand the City cannot enforce our by-laws and covenants, however, we felt it was necessary for us to go through this process because this is the correct process that the applicant applied for a permit and we objected on the fact that they aren't meeting the by-laws and covenants. So, for whatever future process we may get involved with over the issue with them, we felt it was necessary to follow this procedure.

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes, Mr. Harr?

Mr. Harr – Perhaps, Mrs. Zamrzla, was Affordable Fence or Western Reserve notified of any part of the process of this meeting?

Ms. Zamrzla – Yes, both of them.

Mr. Harr – By regular mail?

Ms. Zamrzla – Yes.

Mr. Harr – Mr. Rakowsky, the sub-set of this association that governs that particular area has its own set of officers?

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

Mr. Rakowsky – That is correct.

Mr. Harr – Western Reserve is a contractor for them so it seems to make sense that anybody that does work for you, you have the ability to get the answers you need and to find out exactly what it is. I assume you have some type of rapport with that association as well, with those officers.

Mr. Rakowsky – (shakes his head in a “no” fashion)

Mr. Harr – Okay, Western Reserve are people on the payroll and we should be able to get the answers that we need from Western Reserve as to what the answers are.

Mr. Rakowsky – We attempted to make contact and there was no response.

Mr. Harr – With Western Reserve or with the officers?

Mr. Rakowsky – With Western Reserve there was no return call.

Mr. Kolick - Mr. Chairman, I think Mr. Harr brings up another good point though. It might behoove your association to contact the sub-association because they're the ones who retain the management company to do this. I don't know if they even know what is going on. Maybe they do and maybe they don't but I think by certainly notifying them it would put them on notice so they'll know what is going on and they may be able to address it with the management company who would be their agents.

Mr. Evans - Mr. Kolick, I think you're right but I would think that we should also do a certified letter to that Board.

Mr. Kolick – We can do that as well.

Mr. Harr – We don't know if someone acted independently on that Board or what have you and I think it's in our best interest to put them on notice as well.

Mr. Kolick – Do you know, Mr. Rakowsky, who the president of that Board is?

Mr. Rakowsky – No, I don't. Unfortunately, that Board seems to have a rotating membership there. It's hard to keep track of who is on that Board and frankly, they go through management companies as often as the Board changes as well.

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

Mr. Kolick – I would ask if you could get that information and at least get a name and address and relay that to our secretary here because we do have records that show things but they're not always up to date for the reasons that you are saying. Those Boards change so we want to make sure we get it to the proper party.

Mr. Evans - Mr. Kolick, in the absence of getting that information or perhaps in addition to getting that information might I suggest that we use those four addresses of the residents that we have and send a certified letter to each of those for or on behalf of the Board of the cluster group or whatever. At least that way we put out some kind of communication since those four seem to have some connection to the fence. It would behoove them to make sure that that information is passed on and it might even be presumptuous to say that those four perhaps are involved in being on the Board. So, at least we have made some kind of a cognitive attempt to make sure that we have established communications with the Board. If we can't find a president, then I would do that but only as a last resort. The one thing that I don't want to start is a war between the two different homeowner's associations or the members of them because again, there is only so much we can do by way of looking at those issues anyway. I would only do that as a last resort if we can't get a president from the association. These people may not even know what went on. I don't know.

Mr. Rakowsky – I'll attempt to try and locate a president or someone from that Board and I'll get whatever information I can to Kathy.

Mr. Kolick – Thank you.

Dr. Goist – The Public Hearing will be November 4, 2009 and we'll try our best to make contact and I'm sure that you will too. I appreciate your bringing this to our attention and I think we'll try and work it out also that Affordable Fence knows. They could have been blind sighted themselves but obviously they have not been real cooperative to whoever they spoke with. We can see if that can change too.

Mr. Baldin - Mr. Chairman?

Dr. Goist – Yes?

Mr. Baldin – You look on their application for permit on 9/23 and they have on there that they expect to start construction ASAP.

Dr. Goist – The stop work order was on the first of October.

Mr. Baldin – So, apparently the fence was already up by then.

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

Mr. Rakowsky – As I said, when we discovered that they were working, at that point in the day they were pretty well done with the work and I think they went ahead and completed it.

Mr. Baldin – They must have.

Mr. Rakowsky – I guess it was the next day that they got the stop work order.

Dr. Goist – Thank you again.

RULING: PUBLIC HEARING SET FOR NOVEMBER 2, 2009

2) **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 – Our second application is Dave Zaleski. If you would come forward and give us your name and address and your reason for requesting a variance.

Mr. Zaleski – My name is Dave Zaleski. I live at 10115 Prospect Road. I'm sorry to take up your valuable time but there was a fence on my property since I bought it about twelve or thirteen years ago and I just wanted Affordable Fence to replace it because it was in disrepair, falling down and slats falling out of it and they told me "Don't worry about the paperwork, we'll take care of it". Apparently they didn't so that is why I'm here. Actually, Affordable did apply for the variance, the paperwork.

Dr. Goist – The permit?

Mr. Zaleski – I'm not sure if they put in for a permit. Kathy called and told me that they put it in. So, I actually haven't seen the request for the variance.

Dr. Goist – Was that after the fact, Kathy?

Ms. Zamrzla – Yes.

Dr. Goist – The fence is up. The fence as you're asking for a variance has already been erected, is that correct?

Mr. Zaleski – Yes sir.

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

Dr. Goist – Okay. Again, I'm not going to belabor the point but obviously two in a row - we now have Affordable Fence again going ahead and doing something. They are licensed by the City. They do know the rules, at least we thought they did.

Mr. Zaleski – I called them because there are friends of mine at the American Legion Post.

Dr. Goist – That's fine. I think we just have to find out where things went in the wrong direction and obviously someone saw that the fence had been put up whether it was a City person or someone else.

Mr. Zaleski – Steve.

Dr. Goist – I don't know who Steve is.

Mr. Baldin – The inspector?

Mr. Zaleski – Yes.

Dr. Goist – So, he saw that this had been put up and brought it to the attention of the City that this was not correct. I don't have any other questions. I can tell that the fence has been put up. I think we need to come and look at it and we need to see if this is in line. We need to have a discussion with Affordable Fence and we would like to have them - we thought they were going to be here for the meeting and so we will then ask that he be here for this.

Mr. Zaleski – You do understand that there was a fence and I just had it fixed.

Dr. Goist – Did you change the material? Was it cedar and you went to plastic?

Mr. Zaleski – It's the same, identical.

Dr. Goist – Okay.

Mr. Kolick - Mr. Chairman, for the applicant, when was the fence actually erected, the new fence?

Mr. Zaleski – Six weeks ago; eight weeks ago; a few weeks ago.

Mr. Kolick – Then maybe for our Building Department Secretary, when did they apply for the permit.

Mr. Baldin – Apparently, it was after the fact and we were talking in caucus that a permit was never applied for or a variance in the first place way back when, and from whoever you purchased the house from.

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

Mr. Zaleski – Apparently.

Mr. Baldin – That’s what we’re finding out. Then Affordable Fence comes along – you know these Affordable Fence people you say?

Mr. Zaleski – Kind of.

Dr. Goist – You sort of know them and they say “Don’t worry about it, we’ll put the fence up for you, we’ll take care of the paperwork, blah, blah, blah.”

Mr. Zaleski – Right.

Mr. Baldin – As simple as that. X amount of dollars and get it done.

Mr. Zaleski – Yes.

Mr. Baldin – Thank you.

Ms. Zamrzla - Mr. Chairman, the fence was noticed that it had been replaced and that there had been no permit. Affordable Fence was sent the violation notice on September 11, 2009, which was in your packets and then Affordable Fence came in on September 18, 2009 in response to the violation notice.

Dr. Goist – Does that answer your question Mr. Kolick?

Mr. Kolick – It does. It think the other item when the Board looks is that we have the same issue with this along with other ones but clearly we need to be concerned with sight lines and those types of things at least according to the picture there. It looks like there is a driveway behind it. I don’t know if that is his driveway or the driveway behind him but there could be a real sight issue here. The reason people have to come in and get the permit in advance is so that we can see number one, if it complies with the code and number two, if we need to look at a variance, we need to do that before your fence is up. We don’t want someone to walk on the sidewalk and get hit by car because they can’t see. So, that’s the issue and I’m sorry that you’re caught between it but I think it would behoove you to have your contractor or whoever you paid to put up this fence to be here with you at the next meeting to help explain what occurred as well.

Mr. Zaleski – I will give them a call.

Mr. Kolick – I don’t know if this is something that you want to refer to the CPTED Officer, so do you know how close you are to the sidewalk there?

Mr. Baldin – Three or four feet?

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

Mr. Zaleski – Yes, where the fence is over there and the garage is over here (indicating with his hands).

Mr. Kolick – How close is the fence to the sidewalk?

Mr. Allen - Mr. Chairman?

Dr. Goist – Yes?

Mr. Allen – The application shows that it's 4' from the fence to the sidewalk.

Mr. Kolick – So, would he be in line for the easement for all the utilities too Joe?

Mr. Allen – I'm not sure that there are utilities easements there because it's an overhead feed.

Mr. Kolick – Okay.

Mr. Zaleski – The utilities are on the other side of the sidewalk. I know because they called OUPS (Ohio Utility Protection Service) and they marked them all. That's why I know where they are.

Mr. Harr - Mr. Chairman, I agree. Just looking at the photo that was provided here I have some real concerns if someone was on a bike heading down the sidewalk there. Even in the car actually the placement is perfect because if you were driving this vehicle right now, you're practically in the sidewalk area and you still could not see around the corner. We really should have that checked.

Dr. Goist – I think to our applicant, what Mr. Harr is saying to you is that we look very carefully and closely at the stockade type fences now. You can have a child on what we always called and I think they are still called a big wheel or a bicycle, very low and they could be coming down that street on an extremely high rate of speed and you could be backing out of that driveway and a two year old or a three year old on a big wheel is coming down that street going as fast as I know they can go, you would hit that child. I think we will ask, Kathy, if you would ask CPTED to go out there and give us their evaluation. Even as the fence is erected now, is it a potential danger because they may ask us to have that changed. So, your Public Hearing, again, will be on the 4th of November.

Ms. Zamrzla - Mr. Chairman, Affordable Fence is the applicant for the variance. Mr. Zaleski was going to come in do it all himself but then he spoke with Affordable Fence. They came in and they paid for the variance, they were fully aware of the meeting this evening. In addition, on your application for a variance, it said that it was only a repair not a brand new fence. That was the words of Affordable Fence. When they stated that at the counter the Building Commissioner came out and spoke to the representative from Affordable Fence,

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

Ms. Zamrzla continues - who is not the owner, but spoke to him and explained what his definition of what a fence replacement is, which was not the same definition as what Affordable Fence thinks a fence replacement is.

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Mr. Harr – To the applicant, are you aware if they replaced posts or they replaced any of the structural elements of the fence? Not just the fascia but also the actual support posts that run along that side?

Mr. Zaleski – I have drainage problems because of the neighbors in the back and that contributed to the deterioration of the fence and the posts and the original posts were not cemented in. So, it's not a very good design in the first place.

Mr. Harr – I don't disagree that it made an improvement over what was there but I think that – correct me Mr. Allen is I am wrong – when we start to talk about structural elements, that changes from a simple repair to replacement.

Mr. Allen - Mr. Chairman?

Mr. Harr – Yes?

Mr. Allen – Section 1274.04 Maintenance and Repair, a non-conforming building may be continued to be used and normal repairs and improvements may be made. For the purpose of the Zoning Code, normal repairs shall include the ordinary maintenance of the building or structure, the replacement of equipment, which is required for safety of operation and the replacement or substitution of machinery or equipment. It shall not include the replacement of structural parts in any non-conforming building except when required by law to restore the structure to a safe condition or to make the building use conforming. So, if they are replacing a structure that is non-conforming they are not allowed to do that.

Mr. Baldin – Mr. Chairman? Mr. Allen and Kathy, has Affordable Fence been in front of the City in the past with these kinds of problems, do we know? Or is this the first time that this is happening here? All of a sudden we get two cases.

Ms. Zamrzla – This seems to be a new pattern.

Mr. Baldin – A new pattern for them?

Ms. Zamrzla – Yes, sir.

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

Mr. Baldin – Thank you.

Dr. Goist – To the applicant and Mr. Zaleski, do you understand what our engineer, Mr. Allen, just told you about replacement versus repair? If they took up all the posts and cemented them in, that is a different situation then if they have just replaced the fascia of the fence.

Mr. Zaleski – It's different, of course, but what I thought I heard was that you could replace something to make it comply with the law.

Mr. Allen – Mr. Chairman?

Dr. Goist – Yes?

Mr. Allen – It says it shall not include the replacement of structural parts in any non-conforming building. What you have is a non-conforming structure so it does not include replacement of the structural parts.

Mr. Harr – Had it been properly – of course, there was no variance granted that we can find in the first place but had the structure as it sat been grandfathered, if you were making minor repairs to it and so forth that's one thing but as soon as you replaced the structural elements you are replacing what is already a not approved element. So, without getting the variance in advance you put yourself in violation. Even though there was a fence there previously, you have chosen to actually replace the structural elements.

Mr. Zaleski – I should have just left the posts in the ground.

Mr. Allen - Mr. Chairman, regardless, he still would have had to come get a variance because you had no permit to start with and you had no variance to start with.

Mr. Zaleski – If I left the posts in the ground and took off the fascia and put on new fascia, what do I need to do then.

Mr. Kolick – Let me answer that because there are a couple of things here. One, we're just speculating. This is all done. I don't want to get involved with that but as a practical matter, we don't know that there was a permit ever issued for the original fence to begin with. So, if there was no permit for the original fence, you had no right to replace it because you don't even have a non-conforming fence. So, that's another issue. At this point, we know you're in violation. Without the variance, that fence has got to come down. So, I suggest you have Affordable Fence here to address what happened. We'll look at the CPTED report. I think that is all we can do here today.

Dr. Goist – Okay. So, we will see you on November the 4th.

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

Mr. Baldin – Make sure you call Affordable Fence and we'll send a certified letter to them as well.

RULING: SET FOR PUBLIC HEARING NOVEMBER 4, 2009

3) **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 – Our third New Application is Jim Ptacek.

Mr. Giovinazzi - My name is Brian Giovinazzi, 5909 Hodgman Drive, Parma Heights, Oh 44130.

Dr. Goist – Okay, again, if you would explain what you're asking for in this variance request.

Mr. Giovinazzi – Sure, we are requesting a significant square foot garage variance, 1,132 square feet. I guess it's just from an aesthetic point of view the house was designed on this large property and I think the frontage is 800 square feet and the house is 200' wide or something like that. So, I wouldn't say that there is really a purpose other than just from the aesthetic design of the house. That is why he is requesting this variance.

Dr. Goist – If it's aesthetics – this would be my first question – is the additional square footage the reason the aesthetics will be changed? It appeared to us when we were looking at it that it was all interior.

Mr. Giovinazzi – I was not privy to those original plans. That is why I was, sort of, wishing I could peek over your shoulders when you were looking at them in the other room. I never really saw the old plans. I came in later. So, I'm not sure how the old garage really looked. I only know about this garage.

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Mr. Harr – It appears from looking at the original plans to the new plans, basically, as you're looking at the house, a couple of things changed. They went from two double bay overhead doors to a single double and two singles. They bumped the garage just a little bit to square it off with the basketball court and then used some of the interior space to what was to the left of the garage as you look at it and melted that into the garage.

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

Mr. Giovinazzi – Just how it angles there.

Mr. Harr – Yes. We had previously approved a couple hundred feet.

Mr. Allen - Mr. Chairman?

Mr. Harr – Yes?

Mr. Allen – On November 12, 2008 this Board approved a variance of 221 square feet.

Dr. Goist – What we're saying to you as the representative is that we have given a variance to make it larger and now he wants to make it larger again. He has changed the door pattern and the one thing that we were very specific about and rightfully so, when a person has a big house and a big lot and they are building a basketball court, your first question is is this for your own personal enjoyment. What we do not want and I don't want to go into all specifics but we don't want a league of basketball teams that are going out there and practicing on this court. It appears that if we make this garage bigger we now make the driveway bigger, which gives more space for people to come and park and I see a pattern coming here. You build a basketball court and if it's for your own family, I hope you have five boys or girls to play but obviously there is a reason and if that reason turns out to be and we asked for the assurance and we will ask again that this is not the intent because if it's found later that that is what is happening then I think there are some particular legal issues. I want to cite one example. I happened to formerly be an owner of a building in Berea. We had a racquetball court for our own personal use. That personal use included our friends who we gave keys to but that got out of line. The keys got given to their children and I got calls at two or three in the morning and I'm back at the racquetball court with the police monitoring parties that would have never happened had they been the people that we knew. So, our graciousness in letting them use our court turned into a fiasco and we don't want that happening on Benbow Road.

Mr. Giovinazzi – Can you tell me what assurances we made at that meeting? Was the homeowner there or the previous contractor that made the assurances that there wasn't going to be leagues?

Mr. Allen – I believe it was the previous contractor. I don't think the homeowner was here.

Mr. Baldin – No, it was the contractor.

Mr. Giovinazzi – He has one son. As far as I know, it's for personal enjoyment. Again, certainly he can come to the meeting and maybe explain more the purpose.

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

Dr. Goist – There will be a Public Hearing as you know and you have heard us say that it's going to be on November the 4th. We would appreciate the owner being here to explain why and again, all the neighbors in the neighborhood within 500' will be notified, which this is a huge lot. There can't be too many neighbors.

Mr. Giovinazzi – I did talk to one neighbor, Carl. I didn't know how far you go.

Dr. Goist – We go a diameter of 500' and those people have a right to be here and listen to what is going to happen so it behooves the owner – are you now the contractor?

Mr. Giovinazzi – Yes.

Dr. Goist – You are the contractor. I think everybody needs to be on board with what is going to happen with this house and basketball court.

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Mr. Harr – I have looked at both prints. To the naked eye, I don't see a tremendously significant difference as far as the look at the front of the building. There are a few changes and some bump outs on the final prints and so forth. A simple aesthetic item is not a hardship that justifies a sizeable variance like this. So, obviously we always recommend that the owner be here to tell us explicitly what the hardship is in their mind or why they want a variance of this size but absent their ability to be here, you need to have that conversation so we can understand what the nature of the need is really.

Mr. Kolick - Mr. Chairman, it might also behoove the applicant since we have a new contractor, we can certainly provide him with a copy of the minutes so you can see what representations were made by the prior contractor. I hope those – and I would ask this applicant to at least share them with the owner in case there was something that was said that was not what the owner understood. He needs to understand what representations were made by his agent here to the Board as well. I think that is important and so we can certainly – if you contact our secretary – she can supply you with the section of the minutes that were from the two meetings to see at least what was said that would have addressed what is there and the representations that were made. I want to make sure the owner is on board with those representations before we act on anything else. If there is any doubt, and I'm not saying there is, but in case there is since we are dealing with a whole new contractor here.

Mr. Harr – We continue to rely on those representations on the owner's behalf..

Mr. Giovinazzi – Did you say it was November the 8th?

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

Ms. Zamrzla – Mr. Chairman, the last variance was approved on November 12, 2008 and the meeting before that, if it was for two meetings, would have taken place in late October. Those meetings are all online at strongsville.org. You can go to that and read the minutes.

Mr. Giovinazzi – If there were friends coming over to play how does that affect the decision for a variance?

Mr. Harr – This is why we want to have a very clear understanding as to what the use of that facility is planned to be so that we can take that into consideration. Whether it's just for their personal enjoyment for their child, whether it's their family occasionally having a pickup game, whether it's thirty kids from the neighborhood –

Mr. Giovinazzi – Starting a league? Okay.

Mr. Kolick - Mr. Chairman?

Dr. Goist – Yes?

Mr. Kolick – One other thing for the applicant. What does the owner propose to do with the garage? We're looking at a 2,100 square foot structure. Does he have a business that he stores cars there? Does he have a workshop?

Mr. Giovinazzi – He has three cars. It's really just the new architects, Steve's design. I don't think if you told him that his garage got 1,000 square feet bigger from the previous design that he even knows. He just knows that last time I had a four-car garage and this time I have a four-car garage.

Mr. Kolick - Mr. Chairman?

Dr. Goist – Yes?

Mr. Kolick – It might be important then to have the homeowner here because some of the problems we could run into with this thing if he sells the house and someone else sees we have 2,100 square feet I'll put my landscaping business in this house because I have room for all my trucks and all. It's important that we know why he needs the garage the size this is and even if he didn't ask for it, what he intends on doing with that space. So, the City needs to have a clear understanding and we want to make sure the owner has a clear understanding. I don't want to see him go through all this money to put this in and start doing something and then we come in and tell him you can't do this and that and he never anticipated that. Let's let him know up front that there are restrictions and what our expectations are so that he doesn't have unrealistic expectations for that area. Thanks.

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

Dr. Goist – Any other questions? Thank you and we'll see you on November the 4th and you did get the dates from Ms. Zamrzla of where you can go online. Thank you.

Mr. Giovinazzi – Thank you.

RULING: SET FOR PUBLIC HEARING NOVEMBER 4, 2009

(G) **PUBLIC HEARING**

4) **JOHN R. REHS JR. & TAMMY L. REHS & RICHARD CARTER, OWNERS/ Wayne Homes, Builder**

Requesting a 154 SF Floor Area variance from Zoning Code Section 1252.22 (c), which permits a 1,000 SF Floor Area and where a 1,154 SF Floor Area is proposed in order to construct an Attached Garage on a New Single Family Dwelling property located on 19955 Bowman Drive PPN 393-36-006 zoned R1-75.

Dr. Goist – I will open the meeting to the Public Hearing and the Public Hearing is the Rehs family.

Ms. Rehs – I'm Tammy Rehs and I live at 5342 West 148 Street, Brook Park, Ohio.

Dr. Goist – Again, if you will go over the reason for the variance.

Ms. Rehs – I have MS and I have good times and bad times but right now I'm good. I had a relapse not too long ago but it's basically to make the garage handicap accessible if it needs to be and room for it if I needed that van or whatever.

Dr. Goist – I think we had talked in caucus and I understand and I know that one of our members had some reason to ask some questions. Mr. Evans if you want to ask what you wanted to ask.

Mr. Evans - Mr. Chairman, I just wanted to make sure that as we were talking with Ms. Rehs that we understood that the reason for the handicap access would be in order to get a van into there, which a van requires additional space and there might also be a necessity to create a ramp inside of the garage there. Those two dependencies based on her medical condition would certainly warrant a different consideration on the part of the Board as a basis for the granting of the variance. I just wanted to be sure that we had recognized that as a part of the proceedings this evening.

Dr. Goist – Any other questions this evening?

4) **JOHN R. REHS JR. & TAMMY L. REHS & RICHARD CARTER, OWNERS/
Wayne Homes, Builder, Cont'd**

Mr. Harr - Mr. Chairman?

Dr. Goist – Yes?

Mr. Harr – Ms. Rehs, you have not had any negative feedback from any of the neighbors or anything along those lines?

Ms. Rehs – No, I haven't.

Mr. Harr – I know in taking a look at the print that it appears that the majority of the space that you are adding is from the road back if we will. We aren't necessarily widening tremendously the look of the garage or creating any type of elevation issue that I can see. It's a pretty small increase, I think, to give you the potential for mobility so that you can live in our great city for a long time. I have no other comments.

Dr. Goist – Ms. Rehs, this is a Public Hearing. There is no one else in this room. I will just do it for formality. There is no one here to say anything for your variance. There is no one here to say anything against the variance. I will ask my Board members to give me a motion and we will proceed.

Mr. Baldin - Mr. Chairman, before we do that you are down on the end of the street on the cul-de-sac, right?

Ms. Rehs – Yes.

Mr. Baldin – Looking at that property down there I was trying to figure if other homes could be built on that property. Joe, is there any room there for any other homes to be built?

Mr. Allen – On that particular property?

Mr. Baldin – The way it turns. She is off to the left and the street dead ends right in and I didn't think the lot would be wide enough for another home.

Ms. Rehs – I don't think so either. I'm not sure though,

Dr. Goist - Mr. Baldin, why the question?

Mr. Baldin – Just because of the size.

Dr. Goist – So what.

4) **JOHN R. REHS JR. & TAMMY L. REHS & RICHARD CARTER, OWNERS/
Wayne Homes, Builder, Cont'd**

Mr. Baldin – Well, I'm just questioning it just because of the size. Whoever else goes into building there they might be looking at the same thing.

Dr. Goist – But they would come to us.

Mr. Baldin – I understand that.

Mr. Allen - Mr. Chairman, without reviewing it, I couldn't tell you if they could get another lot in there or not.

Mr. Baldin – Thank you.

Mr. Harr – As we discussed, you aren't really widening the house per say towards that potentially thin lot. We're going back.

Dr. Goist – I had asked for a motion.

Mr. Harr - Mr. Chairman, I make a motion that a request for a 154 SF Floor Area variance from Zoning Code Section 1252.22 (c), which permits a 1,000 SF Floor Area and where a 1,154 SF Floor Area is proposed in order to construct an Attached Garage on a New Single Family Dwelling property located on 19955 Bowman Drive PPN 393-36-006 zoned R1-75 be approved.

Dr. Goist – Do I have a second?

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 - Your variance has been approved. There is a twenty-day waiting period. After that you may go to the Building Department and you may proceed from there.

Ms. Rehs – Okay, thank you very much.

RULING: VARIANCE APPROVED

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

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Dr. Goist - Meeting adjourned at 8:46 p.m.

<u>Signature on File</u>	<u>Signature on File</u>	<u>November 4, 2009</u>
Glenn Goist, Chairman	Kathryn A. Zamrzla, Sec'y	Approval Date