

**CITY OF TALLMADGE  
BOARD OF ZONING APPEALS**

MINUTES OF MEETING HELD June 11, 2019 7:00 p.m. Council Chambers  
Date Time Place

MEMBERS PRESENT: Richean Kuzior, Melanie Bushey, Richard Schunk, Tim Gregg, Chuck Victor

MEMBERS ABSENT:

CHAired BY: Richean Kuzior

SECRETARY: Kelli Funk

REGULAR MEETING

SPECIAL MEETING

PRESENT: Dave Kline, Mayor  
Megan Raber, Law Director

**ITEMS TO BE DISCUSSED**

**Item #1** Case No. 1020 ..... **7:01 PM**

Dr. Na'Tasha Evans, applicant/owner  
**120 Westwood Circle**

- Variance requested from Subsection 1154.08(a) Minimum rear yard setback 25 feet.
- **Request variance to allow 12 feet.**
- For review and determination

**Item #2** Case No. 1021 ..... **7:05 PM**

Darlene Helems-Alaniz, applicant/owner  
**270 Whittlesey Dr**

- Variance requested from Subsection 1181.04 (a) Fences or walls erected within the minimum front yard setback shall not exceed 3½ feet in height; (c) Corner lots where both sides of the lot face the street shall be treated as a front yard.
- **Request variance to allow 6-foot fence in front setback.**
- For review and determination

**Item #3** Case No. 1022 ..... **7:10 PM**

Shawn Frick, applicant/owner  
**569 Northeast Ave**

- Variance requested from Subsection 1181.04 (a) Fences or walls erected within the minimum front yard setback shall not exceed 3½ feet in height; (c) Corner lots where both sides of the lot face the street shall be treated as a front yard.
- **Request variance to allow 6-foot fence in front setback.**
- For review and determination

The June 11, 2019 meeting of the Board of Zoning Appeals was called to order at 7:00 p.m. by Chairwoman, Richean Kuzior.

The meeting was opened with the Pledge of Allegiance.

Roll called. All members were present.

Mrs. Kuzior: The next item of business is the approval of the minutes for April 9, 2019.

Mrs. Bushey: **So moved.**

Mrs. Victor: **Second.**

Roll called. All members voted in favor. (5-0)

Mrs. Kuzior: The next item of business are agenda additions. I know we have this letter that's pertaining to the 2<sup>nd</sup> item so should we wait to do that?

Mayor Kline: That's under correspondence.

Mrs. Kuzior: Ok. I'll just wait till the next one. Ok, so item number 1:

<b>Item #1</b>	<b>Case No. 1020..... 7:01 PM</b>
	Dr. Na'Tasha Evans, applicant/owner <b>120 Westwood Circle</b>
	<ul style="list-style-type: none"> <li>• Variance requested from Subsection 1154.08(a) Minimum rear yard setback 25 feet.</li> <li>• <b>Request variance to allow 12 feet.</b></li> <li>• For review and determination</li> </ul>

Dr. Evans was sworn in.

Mrs. Kuzior: Can you tell us why you're seeking this variance?

Dr. Evans: For safety and personal reasons. I have a high elevation so the door is actually on the 2<sup>nd</sup> story. When we open the door, there is potential for someone to fall so I would like the deck to be built there so that once we open the door, we're able to have it for safety reasons but also for pleasure reasons.

Mrs. Kuzior: And your yard is not big enough?

Dr. Evans: No, it's not big enough.

Mrs. Kuzior: So, you're seeking the variance for the minimum yard setback.

Dr. Evans: Yes.

Public Hearing opened at 7:03.

Mrs. Kuzior: Do any of the Board members have any questions for Dr. Evans? We've had a lot of these from your neighborhood.

Mr. Schunk: This is probably the 4<sup>th</sup> maybe the 5<sup>th</sup> identical request from that Westwood Circle and there's another Circle... because of the topography of the land. I think it's a real travesty that we make people pay \$250 to come in here... to pay for the bad design that the developer charged them for. If there was some way that we could... we can't do it now but could charge back the developer for each one of those fees, it would be appropriate because it's just horrible, horrible design just for the purpose of squeezing as many houses into that development as possible.

Mrs. Kuzior: I agree. The trouble is, when they lay the land out and they approve it with the City, you can't tell how the houses are going to be placed on the land so it's kind of...

Mr. Schunk: Well, they've got people with transits and stuff like that to determine the elevation going in there. It's not that difficult.

Mrs. Kuzior: Is there anyone in the audience that would like to speak on this variance? For or against, anyone in the audience that would like to speak on this variance?

Public Hearing closed at 7:05. I'll entertain a motion.

Mrs. Bushey: **I move to approve the variance request for applicant for Dr. Na'Tasha Evans for the property located at 120 Westwood Circle, Tallmadge OH for the variance request from Subsection 1154.08(a) Minimum rear yard setback 25 feet, seeking 12 foot based upon the plans and application submitted and dated ~~January 14~~, 2019 and the evidence presented that:**

- ↙ MAY 13
- 1. The strict application of the provisions of the Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Code.**
  - 2. There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development or the property that do not apply generally to other properties or uses in the same zoning district or neighborhood;**
  - 3. The granting of such a variance will not be of substantial detriment to the public interest or to property or improvements in such district in which the variance is sought and will not materially impair the purpose of this Zoning Code.**

Mr. Victor: **I second.**

Mr. Victor: I would like to echo Mr. Schunk's comments that I think it would bear looking at this development because, as he indicated, this is the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, I'm not sure how many come in with the same exact set of circumstances. I'm not sure what the solution could be but it would be nice if someone could take a look... the City, whoever...

Mayor Kline: We did work with the property maintenance folks from this development. They were requesting, I think through Planning and Zoning, the potential of relooking at that and grant it, because they have the right to grant variances on different things, but it was determined that there was only a small handful left for the variances to go and to do that replat to add all those in, I don't think they were going to go forward with that so I think we're down to a few but you'll see it back again. I agree with you.

Mrs. Bushey: Dr. Evans, when you submitted your plans to the Homeowners Association, was it approved or did you have to do any additional? I'm just kind of curious because we've been through these so many times.

Dr. Evans: So, the Homeowners Association already knew that it was going to be an issue. They actually told me it was going to be an issue so they just wanted to see the drawings, so once I submitted the drawings, they approved it.

Mrs. Kuzior: I personally think it will be a nice addition to your house. It will give you some use of your backyard that's kind of sloped off.

Roll called. All members voted in favor. (5-0)

Mrs. Kuzior: Your variance has been approved.

Dr. Evans: Thank you.

Mrs. Kuzior: Ok, next item of business is case number 1021. It's now 7:10, so we're ok with the time. That is:

<b>Item #2</b>	<b>Case No. 1021</b> ..... <b>7:05 PM</b>
	<p>Darlene Helems-Alaniz, applicant/owner  <b>270 Whittlesey Dr</b></p> <ul style="list-style-type: none"> <li>• Variance requested from Subsection 1181.04 (a) Fences or walls erected within the minimum front yard setback shall not exceed 3½ feet in height; (c) Corner lots where both sides of the lot face the street shall be treated as a front yard.</li> <li>• <b>Request variance to allow 6-foot fence in front setback.</b></li> <li>• For review and determination</li> </ul>

Mrs. Kuzior: Is the applicant present?

Mrs. Helems-Alaniz was sworn in.

Mrs. Kuzior: Can you tell us why you're seeking this variance?

Mrs. Helems-Alaniz- I'm seeking a variance, it's kind of two-fold, my son just received a Make-a-Wish through the Make-a-Wish foundation for a tree house, is what he wished for. The tree house right now is being built as we speak and so because we have our one side of our backyard is facing Milton, I understand from when we started looking into some kind of a fence that we had to come in 30 feet and basically, the treehouse is at 31 feet and so part of the tree house is going to be having a ramp, wheelchair accessible, so the 1 foot between the fence and the ramp wouldn't work to be able to get him up and in and out of the tree house. The reason, honestly for the fence to begin with is really safety for my son. This year he started taking off on us, even at school. He's at the middle school in Tallmadge. He took off on them and went out into the parking lot in the middle of the winter and that's because he has four adults taking care of him in his MD classroom so, if he can get away from 4 adults, he definitely can get away from all of us and so my main purpose is safety but because of the tree house, he's going to want to be out there quite a bit and so just to have a place to be more independent and feel like he can go out and play without my worry of him taking off on me. That's the main reason why I even thought about a fence. The State of Ohio is looking into paying for the fence for us for his safety and independence through a waiver that we have but again, we would have to have this variance approved in order to move forward with that plan because of the 1-foot issue with the ramp on the tree house.

Mrs. Kuzior: So, you actually have 2 issues.

Public Hearing opened at 7:12.

Mrs. Kuzior: You have 2 issues. The first issue is that, because it's a side yard setback, the zoning code considers that to be, since it's from the street of Milton and also from the street of Whittlesey, those are 2 front yard setbacks. So, normally when you have a street and you have a 50-yard setback on the front of all the properties, they're continuing that on Milton as well because of being a corner. So, that's the first issue. The second issue is that, because those are 2 front yard setbacks, it's considering a 3½ foot fence actually on your side yard as well as your front yard so those are the 2 things that we're looking at tonight. So, if you would like to take a seat, it looks like there's quite a few people that want to speak. Before we get started, I want to read an email that the City received:

*Board of Zoning Appeals*

*Because we are out of town and on vacation we are submitting our written statement regarding the variance requested from Subsection 1181.04 (a) Fences or walls erected within the minimum front yard setback shall not exceed 3½ feet in height; (c) Corner lots where both sides of the lot face the street shall be treated as a front yard.*

*As property owners for 34 years on Whittlesey Dr we are vehemently opposed to the proposed request for a variance for a 6-foot fence at 270 Whittlesey Dr.*

*The zoning code that prohibits a 6-foot-tall fences on corner lots was clearly written with the intention of precluding neighborhood "eyesores" and ensuing property devaluation within Stillmeadow Estates, so why would it make any sense to rule in favor of it now? The code was written with the explicit intent to maintain the aesthetics of a given neighborhood and we feel a fence this tall along the road completely does the opposite.*

*We are asking that this variance and the construction of this fence be denied.*

*Sincerely,  
Charles and Denise Slack  
313 Whittlesey Dr*

Mrs. Kuzior: So, that's one person that spoke about it. So, now we have Rebecca and Richard Bacher. Are you present?

Mr. and Mrs. Bacher was sworn in.

Mrs. Bacher: We are directly to her left. So, we want all the children to be safe, obviously, but that is a very busy.... It's not super busy, but people speed down that road, it's a straight road. So, were not opposed to a 3½ foot fence but we don't want the 6-foot fence. Especially since when we're backing out of our driveway, it would obstruct our view from the end of the road and people come around that corner very quickly so I wouldn't want an obstructed view if my kids are playing in the front yard ever.

Mr. Bacher: To piggyback off the email you received, one of the things for me was property devaluation and having the idea of a 6 foot fence in our front yard, again not opposed to a 3½ foot fence but having that 6-foot fence there as a relatively new homeowner in the allotment, we appreciate the idea of saving that property value when it comes time, if we do plan on moving. And again, we're new parents, we have an 18-month-old and a 1 month old and you know, we did within the rules and the variances allowed, we did build a rear fence in our yard but the kids like to play out front. My son, he is moving quicker than I can handle sometimes and having that there, not being able to see cars coming up the road doesn't seem to benefit us or anyone in the allotment.

Mrs. Bacher: We just want all the kids safe and no vision obstructed.

Mrs. Kuzior: Ok, thank you. Ok, second person that signed in to speak is Tom Stewart.

Mr. Stewart was sworn in.

Mr. Stewart: My concern is just in the whole neighborhood, the 6 foot fence definitely bothers me and plus whenever Mr. Atwood originally developed the neighborhood and number 1, there weren't supposed to be any fences to start with then they went to a 3½, 4 foot fence and had to be a see through fence and now the whole neighborhood, you're getting fences all over the place and I think that is devaluating property values. I think, where the fence is going along the street, I'm not sure what the difference is from the street and where the fence would actually go, how many feet is that? My concern about how we would mow the ditch, is there room to mow that ditch and take care of that property where the fence is going to be and then also it can obstruct view of people coming up and down the street so, it just seems like these fences are getting a little out of hand in the whole neighborhood.

Mrs. Kuzior: Dave, I'm not aware that we had a restriction...

Mayor Kline: It's probably a deed restriction with that development.

Mr. Stewart: It was a long time ago.

Mayor Kline: They're still in play, the deed restrictions, but they're only enforceable by property owner to property owner. The City cannot enforce deed restrictions but we can do City codes.

Mrs. Kuzior: Because we didn't have a fence ordinance at all until 10 years ago maybe, for the City.

Mayor Kline: In my allotment you're not allowed to have sheds but everybody has sheds.

Mr. Stewart: Also, the size of the structure going up seems pretty large. I was kind of surprised at the size of the structure.

Mayor Kline: It meets the square footage code.

Mrs. Kuzior: Which we reduced that about 15 years ago because that was one of my pet peeves too so...

Mr. Stewart: Like I said just the size of the fence...

Mrs. Kuzior: Ok. Thank you.

Mr. Schunk: I have a question. Is there a photograph of the type of fencing, what it would look like?

Mrs. Helems-Alaniz: Ok, yes. The one that we submitted to the State it's a vinyl fence. It would be a sand color because I didn't think that white fence would look so good in that neighborhood. I too care about the value of my property as well and so I was trying to find a fence that would aesthetically look as appealing as possible. So, because it would match the best to my siding, I went with a sand color and it would be a vinyl fence and this is basically what it would look like. So, you want me to pass it around?

Mrs. Raber: Just for the record, we will make a copy of the exhibit that's being passed around tonight so that we'll mark that exhibit A for the record.

Mrs. Helems-Alaniz: Am I allowed to ask questions or not?

Mrs. Kuzior: You said you've already submitted this to the state?

Mrs. Helems-Alaniz: Not yet, just to see if we can even get an approval for a fence at this point or they would pay for it actually.

Mrs. Kuzior: What was your question?

Mrs. Helems-Alaniz: So, what we're only talking about is the side that faces Milton, we're not talking about the property between myself and my neighbor behind me, is that correct?

Mrs., Kuzior: Your rear yard fence could be 6 foot.

Mrs. Helems-Alaniz: So, were just talking about along the Milton side.

Mrs. Kuzior: The Milton side and whatever little off shoot you'd come to go to your house on the Whittlesey side as well. Ok, the 3<sup>rd</sup> couple is John and Jane Huffman, can you come to the podium please?

Mr. and Mrs. Huffman were sworn in.

Mrs. Huffman: Our concern is, our property faces exactly where the fence is going to go so every time we come out the driveway, be on the front porch, look out the window you see that, so our concern is what kind of a fence is it going to be? Right now, there's 2 different fences on her property, joining her property and a 3<sup>rd</sup> one is going to look pretty bad. I agree with Tom, when we built out there, Mr. Atwood of course was available, was alive, there was to be no outbuildings, no hedge, no fences or anything and everybody's putting up a fence of some sort. So, that's our concern.

Mrs. Kuzior: Ok, thank you.

Mr. Victor: I have a question for clarification. Are we dealing with 2 separate issues?

Mrs. Kuzior: Yes.

Mr. Victor: One is the height of the fence and the other is...clarify that for me.

Mrs. Kuzior: The setback. Because it's the same rule when you look at a corner lot, you're considering 2 front yard setbacks.

Mr. Victor: I understand.

Mrs. Kuzior: So, if they require the house to be back 50 feet, they also require the fence... I mean the lot line changes with the setback.

Mr. Victor: Right, but the proposed drawing, is that showing the fence on the property line?

Mrs. Kuzior: Darlene, can you come to the podium again please?

Mr. Victor: Are you proposing that the fence is actually on the property line?

Mrs. Helems-Alaniz: That drawing does show the fence on the property line, that would be something that we could talk about. I know that there is already an established tree about where that 31 is. If we could put it on the other side of that tree so that is doesn't, so like my neighbor said, when they come out it's not glaring fence at them every time, it's already an established tree, I would be willing to do something like that.

Mrs. Kuzior: Ok, so Dave, I'm questioning myself here.

Mayor Kline: They're allowed to have a fence in the front yard, it's just the height has to be 3½ feet and a corner lot, this corner you cannot have a fence within 25 feet of that corner going this way or 25 feet going to way but they could have a 3 ½ foot fence going that direction and going this direction.

Mrs. Kuzior: And it would still have to be within that setback and then these are 2 different variances, right?

Mayor Kline: I think the variance is only the height of the fence.

Ms. Funk: It can go right on the property line.

Mrs. Kuzior: That's what I thought.

Mayor Kline: It can up to 3½ foot but they're asking for a 6-foot fence therefore that's why they're here tonight. So, the property line along this line, if it was 3½ foot from here going back to the setback line, so for this neighbor here that spoke, if it was 3½ from here going back to the setback requirement, let me draw a line here ...so if the line went straight across, that line up in front, that would have to be 3½ here and it would have to be 3½ here and from that point it could be 6 foot to the back because it's the setback line of the side yard. So, if they were just strictly asking for a 3½ foot fence, we wouldn't even be here. We would approve it City wise or we would consider it but we would have to approve it City wise but the deed restriction is something we don't enforce so just to put a 3½ foot fence along that property line and back so far, we wouldn't be here.

Mrs. Helems-Alaniz: I think the reason why I filed for the variance was the difference in height between the 3½ and the 6 foot number 1, mostly because the state wasn't willing to pay for a 3½ foot fence for the facts that very much thought he could jump the fence which I totally agree with them. On the days the he climbs, he can climb. So, it doesn't look like it because he's in wheelchair, but he definitely gets around town.

Mr. Victor: Can I ask a question? So, this is something new that, the tree house out there and being out there unsupervised, is he allowed in the yard now unsupervised or, what's been happening for the first 14 years?

Mrs. Helems-Alaniz: Ok, so we've been there, in September, we'll be there 7 years, and up until now, like I said, usually either I'm out there or my dad's out there, somebody is supervising him physically or for sure through a window. There's no way that he can be out there by himself, but I will say he has seizures and so as the seizures have gotten worse it's affected the part of short-term memory and so he forgets all the time where he's at or what's happening and that's what's happened. He's gotten away several times following the kitty cat and gotten lost and 2 or 3 neighbor houses down and I found him away from home and so that's part of the reason why I feel like I really need to be secure with him.

Mrs. Kuzior: Have you considered, obviously the neighbors are against this and what we try to do is come up with some kind of a compromise, so have you considered any other kind of fence like an aluminum fence that wouldn't obstruct anybody's view and you could see the yard through it and, I don't know if that would appease the neighbors but it seems more aesthetically pleasing than a solid fence of any kind whether is wooden or vinyl or whatever. It would still be safe because obviously if the rungs went up and down and not like a chain link, he couldn't find any place to climb.

Mrs. Helems-Alaniz: I think it just depends if the state would pay for it.

Mrs. Bushey: That was my question, when you introduced this, you said this fence is contingent on this tree house? You have to have a fence in order to have this tree house?



Mrs. Helems-Alaniz: No, the treehouse has already been gifted. It was a Make-a-Wish. It was part of the Make-a-Wish.

Mrs. Bushey: It's not contingent...?

Mrs. Helems-Alaniz: No, not at all.

Mrs. Kuzior: The fence was contingent on us.

Mrs. Helems-Alaniz: Yea, the fence is just because I want him to be safe and independent when he goes out. So, I want him to feel more independent in the tree house. He had a playhouse before, like a regular gym, go down the slide, swing and stuff like that but this tree house is going to be pretty amazing and I want him to feel like he can go out and play and be a little more independent. He's 14½ now so.

Mrs. Kuzior: Have you given that any thought, because a lot of time if you see those fences, the one I'm think of is on Cambrian, you really can't see it. You can look through and still see the green, it's not obstructing anyone's view, it seems like it would check all the boxes as far as the complaints we've had so far, although I haven't heard everybody speak yet.

Mr. Victor: So, you said a couple times that the state has said we won't pay for a 3½ foot but we will pay for a 6 foot.

Mrs. Helems-Alaniz: Yea, that's where we're heading with the state.

Mr. Victor: So that would jeopardize the project. You couldn't pay for the 3½ or you don't have the alternate funding to pay for the 3½. In addition, Ian's 14 now, will be using the treehouse for the next X amount of years, I guess some of my concern to the residents is what happens after that and, if this is approved, there's a 6 foot fence that lasts there forever and the treehouse 10 years from now, nobody's using the tree house and you've got a 6 foot fence there and the neighbors still aren't happy. That's one of my concerns that I have. But a 3½ foot is not in the budget.

Mrs. Helems-Alaniz: Right. That's the problem.

Mr. Varvaro was sworn in.

Mr. Varvaro: I've lived over there for 30 years and I appreciate what you want to do but for one, why was this thing, I mean this is not a tree house, it is huge. This is a big, I mean what's the size of that?

Mrs. Raber: Sir, you need to address...

Mr. Varvaro: I'm sorry, what is the size of the platform? It's huge. Right now, it's up about this high and it's just a big platform. I mean, size, I don't know, 12 by 20? It's big. So, how high does it even go up? I don't know. I mean, you may need a 6-foot fence because you don't want to see it. I really don't want to see it. And you start building it... is there a permit for that? I just had a driveway put in and I had to have a permit for my driveway, follow the rules, so anytime you have a variance, you set a new standard so, that's all I have to say.

Mr. Schunk: Did the state designate that you had to have a 6-foot opaque fence, such as you've shown here?

Mrs. Helems-Alaniz: No, the opaque was just something I chose to make it less obvious. They probably would rather pay for a white fence since it's much cheaper. They'd probably much rather pay for a wood fence too because it's much cheaper because that's what all the neighbors put in was wood fences. I was

trying to make it as aesthetically pleasing as possible. I mean, if wood is better for the neighbors, I'll put in wood, I'll just put in whatever.

Mr. Schunk: What about just vertical slats like 4 inches apart? Like the border fence along Mexico is going to be.

Mrs. Helems-Alaniz: Like a semiprivate? I'm not opposed to that.

Mr. Gregg: Something that allows for better view and it doesn't obstruct people from seeing traffic coming down the road.

Mrs. Helems-Alaniz: Yea, I'm not opposed to that at all.

Mrs. Kuzior: We have one neighbor that said maybe he'd like a fence because he might want to block to tree house and then we have other people that don't want any kind of obstruction at all and then we have the safety issue with the people with the young children and they want to be able to see the road so, I really don't know.

Mr. Gregg: Can they table this and submit it with a different fence style?

Mayor Kline: Something for the Board to think about. The distance between the corner of the house and the Street is almost 40 feet. They wanted the fence to come out so far and go closer to the property line to the corner but she had also mentioned this one tree, they would be willing to move that fence behind so that tree is on the street side. But you want to take it from here straight across and then...

Mrs. Helems-Alaniz: It would be on the other side of the sidewalk because I believe they're trying to put a sidewalk in to the treehouse for him so he would be able to, on a day that he's in the wheelchair... yea. They're going to try to put a sidewalk in to the ramp on the treehouse.

Mayor Kline: So, that sidewalk right there?

Mrs. Helems-Alaniz: Yea, if we could be on this side of the sidewalk.

Mrs. Kuzior: So, there's going to be a sidewalk constructed?

Mrs. Helems-Alaniz: Perhaps. It's not exactly all in but were hoping that will be the case.

Mrs. Kuzior: So, there's no sidewalk there now. It will be there.

Mrs. Helems-Alaniz: It wraps around the house now. The sidewalk wraps around the house, it's just backyard right now, but they talked about doing it but it's not part of the plans right now.

Mayor Kline: And again, if it were 3½ foot, we wouldn't be here.

Mrs. Kuzior: I know. But you think he would climb over 3½ feet?

Mrs. Helems-Alaniz: Yea, I really do.

Mrs. Kuzior: Even if it had the points at the top you think? How tall is your son?

Mrs. Helems-Alaniz: I can have him to stand up. When he gets something in his mind, there's no stopping him from changing his mind.

Mr. Victor: Megan, is there any option for the Commission to discuss this in an executive session? Nope? Ok. Thank you.

Mrs. Raber: You can feel free to raise and discuss possibilities or solutions.

Mrs. Kuzior: So, you're willing to do anything you need to do short of a 3½ foot fence.

Mrs. Helems-Alaniz: Yea, like I said, I feel like if we were able to put it on the other side of that tree then you would have 2 trees there, the fence would be on the other side of the 2 trees so it's not like you would be looking at the fence at all times and like the other neighbor said, a fence may at this point look better than the treehouse. Some people's opinions of the treehouse may not be what our opinion is, it's a blessing, it may not be what they want.

Audience member asks about height of tree house.

Mrs. Raber: We know that it's within code, I'm not sure exactly what the height of it is.

Mayor Kline: There it is.

Mr. Gregg: Well, it's over 12 because it's build on top of the platform.

Mayor Kline: 12' 9".

Mr. Victor: On top of the platform...

Mayor Kline: From the ground...

Mrs. Kuzior: And that's at the highest peak. I mean the roof slopes down so.

Audience member speaks off record.

Mrs. Raber: Sir, you cannot continue to talk from back in the audience. If you want to speak again, you'll have an opportunity to do so, you'll have to come to the microphone please.

Mr. Varvaro: I asked that question to begin with. How high was it going to be? So, it doesn't matter, 6-foot fence, you're going to see 6 foot of tree house. 12 feet. It's not a shed. It's like an outbuilding. I don't know. Why doesn't it sit back further? Why does it have to be that close to the road? Cause it's a corner lot? I don't understand. How do you start building something?... like I said, I had a driveway put in and I had to have permits and all kinds of things just to get my driveway replaced.

Mayor Kline: There is a Building Permit through Summit County. It's being inspected. It meets the square footage of an outbuilding. It's less than 900 square feet, footprint. Vertical height it's allowed to be there. That's the current code today. So, you could build the exact same thing on your property without going to... you still need a building permit and there is a building permit on this. Summit County building department has it. They inspect it. That had to come out and inspect the footers and everything else. Same thing that you had to go through.

Mr. Varvaro: Ok. I get that. It's just... I don't know. That's all.

Mr. Schunk: My other consideration that I've seen locally in homes with the solid, 6-foot wood fences, the summertime it gets warm inside there. It blocks the breeze and conversely in the wintertime it causes a lot of snow drifts. Small consideration but something to think about.

Mrs. Kuzior: Well, could we have some more discussion from the Board?

Mrs. Bushey: I guess I'm really concerned about how, when you go down your street, you see your community, it's very wide open. Yes, there's fences in the back but I'm just real concerned about the aesthetics of the neighborhood just because of how it looks and that's probably one of the concerns I have because of the neighborhood and your neighbors being oppositional about this. You have to live with them and that worries me also for your concerns.

Mr. Gregg: I can see it both ways. You're concerned with the safety of your son and I feel for you that way but I think, as proposed, and with all the neighbors input on this, I'd like to see a different style of fence proposed. Something that is more open that would provide security for your son and your family but would also keep the neighborhood with an open look and an open feel.

Mrs. Kuzior: And that was my suggestion with the, I wouldn't say rod iron, but I think they're aluminum now and they're sturdy and they come, black or something where you wouldn't see it. Your neighbors with the small children wouldn't be able to see through to the road. The only thing is, is the gentleman that said he'd like to hide it. We can't have both. If you need a 6-foot fence, that seems to be the best option.

Mayor Kline: I know the Board has to act on it unless the applicant asks you to table it then if she's willing to ask you to table it, I don't know what your time frame is, but I'm not sure what the consensus will be here and it might not be favorable for you. Maybe you ask them to hold it so you can go back to the drawing board. Maybe we can meet or we can talk and see if we can come up with a more pleasant solution. It will just be postponed then for a month. I hate to have the folks come back out but I think it's important. I understand the need of a fence, if it was 3½ again, you wouldn't even be here but I think if we can maybe meet out there and come up with a solution, look at different style of fences, get different inputs...

Mrs. Kuzior: I think we're headed in the right direction. You're willing to compromise and make the fence inside the tree line and you're willing to go with whatever kind of fence you can get as long as he can't get out so if we vote on it and we vote it down, you have to reapply and you have to pay money.

Mayor Kline: Not for one year.

Mrs. Kuzior: If we table it then you can come back, if you get your stuff in pretty quickly, your paperwork in pretty quickly, you can even be back here in July and then come with some other types of fences and maybe your neighbors would be more...

Mr. Victor: I think that we are, while seeking compromise, and solutions, we're also kind of handcuffed here in that it clearly says 3 ½ foot so that the movement of the fence back to the tree line at 6 foot still puts us in a bad situation.

Mrs. Kuzior: It's still a variance, right.

Mr. Victor: It's still a variance and so if you do take, as the Mayor suggested, that may not be the best option because we're still stuck with a 6-foot fence that's an eyesore as some have put it. I'm not sure. Compromise we're willing to consider but I'm not sure how much latitude we have on that.

Mayor Kline: Do you want them to table it or... you'd have to go up and request that if that's what you want.

Mrs. Helems-Alaniz: Ok, so I don't know how this goes but I'll request for it to be tabled until July.

Mrs. Kuzior: Now, you still have to get your paperwork in by the deadline for the July meeting.

Mrs. Helems-Alaniz: Ok, so the paperwork would just be the different fence?

Mrs. Kuzior: Which isn't really part of this variance but we listen to the neighbors.

Mrs. Helems-Alaniz: Right yea.

Mayor Kline: The Zoning Department will call you.

Mrs. Kuzior: **I'll make a motion that we table this request until the paperwork is submitted for whichever meeting that would be.**

Mrs. Bushey: **Second.**

Mrs. Raber: You can call it out to the next meeting so that the neighbors who have already been notified know when to return. So, if you do that, you will have it at the next meeting so you need to have everything kind of worked through by that meeting.

Mrs. Kuzior: **So, we'll table this until July 9<sup>th</sup>.**

Mrs. Helems-Alaniz: Ok, thank you.

Roll called. All members voted in favor. (5-0)

Mrs. Kuzior: So, Darlene, it will be the same time. 7:00 on July 9<sup>th</sup>. Ok, the next item of business:

<p><b>Case No. 1022.....7:10 PM</b></p> <p>Shawn Frick, applicant/owner 569 Northeast Ave</p> <ul style="list-style-type: none"> <li>• .... Variance requested from Subsection 1181.04 (a) Fences or walls erected within the minimum front yard setback shall not exceed 3½ feet in height; (c) Corner lots where both sides of the lot face the street shall be treated as a front yard.</li> <li>• <b>Request variance to allow 6-foot fence in front setback.</b></li> <li>• For review and determination</li> </ul>
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Mrs. Kuzior: Is the applicant present?

Shawn Frick was sworn in.

Mr. Frick: My property is on a corner lot as well and the current set up, my garages face the back side of my house, so with that, my driveway actually goes in a U around the entire back of the property. I bought the property in September of last year. There was a current fence on the side that was off of Swank, which you can see in that picture, but upon inspecting that fence and looking at it, it was in really bad shape and it was kind of an eye sore so my plan was to replace that and looking at it, the setback from Swank is 60 feet. The current fence that was there was a 45-foot setback so it wasn't allowable. There was nothing there for the permit before so I wanted to make sure I went through. I asked for 30 feet setback from the road of Swank, just to give us some area there. What was there was kind of a small area for us as a family with 2 small children. So, we wanted just kind of a private area that was able to have some privacy on our property somewhere. My neighbor behind us is great but her backyard butts up to our house so there's no real area for us behind our house to put any kind of fence or any area for us to be out in the yard at all so, with constructing the new fence instead of putting up what was already there, I wanted to ask for the ability to extend it out 15 feet from what pictured that way it gave us a little bit more area for family activities and things like that. As busy as Northeast

Avenue is, I really don't feel safe with my kids being just out in the yard. We have a big great yard and it's nice when we're out there and we're playing together as a family but having 9-year old's on their own with a street that's that busy is a concern for us.

Mrs. Kuzior: So, this picture is showing the fence that was there when you moved in?

Mr. Frick: Yes. I recently removed it, like I said, I pushed it down it was that dilapidated of a fence anyways so it was kind of old. So, we wanted to update it anyways. I figured since going through the update, I'd like to have a little more room because that was kind of not a whole lot of sq ft in there.

Mrs. Kuzior: So, would the new fence come as far as the tree?

Mr. Frick: It wouldn't be quite to that tree. It's probably 2 or 3 feet on the house side of the tree would be a 30 ft setback.

Mr. Victor: So, your request is essentially replace the fence that was there but add another 15 feet to it?

Mr. Frick: Yes, just adding 15 feet. You can see, that's the other side of my driveway that comes around so... if I had anywhere else where, behind the house or the other side of the house that we could really put an area but it would be reconstructing driveways or demo... the garages are attached and they're facing the back side of the house so, it really kind of ties my hands to an area that we can have any kind of privacy.

Mrs. Kuzior: Have you spoken to any of your neighbors about this?

Mr. Frick: Yea, neighbors on both sides, everybody was notified obviously, but I've spoken to them prior to applying for the variance and then when they got notified, they said we're fine...

Mrs. Kuzior: So, they were used to your other fence there...

Mr. Frick: Yea, and it was there and I don't want to go all the way out or obstruct anyone's view. The fencing that I have a picture of is just natural cedar fence. With our neighborhood, it's a lot of trees and a lot of kind of natural look to it anyway so I really didn't want to put anything that was going to obstruct views or be anything kind of different from what's already in the neighborhood.

Mrs. Bushey: Is the chain link fence that's by your driveway, is that your neighbors?

Mr. Frick: Yes. That's her property line is the chain link fence.

Mrs. Bushey: It's really close to your driveway.

Mr. Frick: Yea, I have about maybe 2 feet, maybe 4 from her property to the back of my house. It's pretty much driveway so...

Mr. Schunk: On your drawing that you submitted here, this little corner of Northeast Ave and Swank Dr, that it sort of rounded off by... is that an easement?

Mr. Frick: Yea that's an easement for the City of Akron, I can't even mess with that really or I would have to go through a lot more.

Mr. Schunk: You better believe it.

Mr. Frick: Even with the original setback being 70 feet off of Northeast and 60 off Swank Dr, that's 10 feet off my house. There's really nowhere to go and it's concrete around the entire other side.

Mr. Schunk: You have to cut the grass for the City of Akron?

Mr. Frick: Yea, I should charge them actually but I let it slide. I even trim around the telephone pole and the street signs.

Public Hearing opened at 7:58.

Mrs. Kuzior: Is there anyone that would like to speak on this request? Either opposed or for this? Any discussion.

Mrs. Bushey: I'm just very impressed that you gave us the statistics on traffic on Southeast Ave [Northeast Ave]. I was very impressed with that. I didn't realize that many cars went down that street now that they have that little roundabout, I thought it would probably slow down...

Mr. Frick: That was 2016, I think the last time that it was surveyed for that street but particularly in the hours that we're going to be out, which I tried to note, in the evenings, having kids and pets out without privacy where they're going to see that many cars going by. And it's just a nuisance, doing anything when it's constantly cars and semis and things like that.

Mr. Gregg: So, this fence isn't up, this is just...

Mr. Frick: No, that is just the picture I found that was closest to the type of fence that I was looking at.

Mrs. Kuzior: In looking at the old fence, it looks much the same as the old fence.

Mr. Frick: Correct, the old fence was a painted color, it was a little bit different style. It was the one and one but typically 6-foot privacy fence. I'd like to keep it more of a natural color just, aesthetically I think it's better.

Public Hearing closed at 8:00.

Mrs. Kuzior: I'll entertain a motion.

**Mr. Victor: I move to approve the variance request for applicant Shawn Frick for the property located at 569 Northeast Avenue, Tallmadge OH for the variance request from Subsection 1181.04(a) Fences or walls erected within the minimum front yard setback shall not exceed 3½ feet in height; (c) Corner lots where both sides of the lot face the street shall be treated as a front yard as related to this ordinance. Plat dated 9/13/1955 building setback is 60 feet, requesting to allow 30-foot setback for 6-foot fence based on the application submitted and dated May 13, 2019 and evidence presented that:**

- 1. The strict application of the provisions of the Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Code.**
- 2. There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development or the property that do not apply generally to other properties or uses in the same zoning district or neighborhood;**
- 3. The granting of such a variance will not be of substantial detriment to the public interest or to property or improvements in such district in which the variance is sought and will not materially impair the purpose of this Zoning Code.**

Mrs. Kuzior: I'll second.

Mr. Victor: I think it's interesting to note the difference between this and the last hearing that essentially, it's a similar request, however, point 3 on this is it will not be of substantial detriment to the public interest or to the property. There's no objection from the neighbors, it's replacing something that was already there and I think it fits in the neighborhood whereas the previous there we're some difficulties with that one.

Mrs. Bushey: Just to add on to that, I think the size of his lot and the way his lot is constructed, I think that has a lot to do as a safety for your children.

Mrs. Kuzior: And Northeast Ave is a lot busier than Whittlesey or Milton. I see the difference as well.

Roll Called. All members voted in favor. (5-0)

Mrs. Kuzior: Your variance has been approved.

Mr. Frick: Thank you.


Mrs. Kuzior: **I move that we adjourn.**

Mrs. Bushey: **Second.**

All members in favor. (5-0)

Meeting adjourned at 8:02 pm.

Respectfully submitted,



Kelli Funk, Secretary



Richean Kuzior, Chairwoman