

**CITY OF TALLMADGE
BOARD OF ZONING APPEALS**

MINUTES OF MEETING HELD July 9, 2019 7:00 p.m. Council Chambers
Date Time Place

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

MEMBERS ABSENT: Richard Schunk

CHAired BY: Richean Kuzior

SECRETARY: Kelli Funk

REGULAR MEETING

SPECIAL MEETING

PRESENT: Dave Kline, Mayor
Megan Raber, Law Director
Helene Hussing, Planning and Zoning Manager

ITEMS TO BE DISCUSSED

Item #1 Case No. 1021 **7:01 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 12 ½ feet from the right of way.**
- For review and determination

Item #2 Case No. 1023 **7:05 PM**

Todd Ridenour, applicant
Jacqueline Jackson, owner
75 Parker Ln

- Variance requested from Subsection 1154.06(a) Minimum lot width is 100 feet at street right-of-way
- **Request variance to allow 20 feet at street right-of-way.**
- For review and determination

The July 9, 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 with the exception of Richard Schunk.

Mrs. Kuzior: **I'll move to excuse Mr. Schunk for the meeting tonight, in case he doesn't come.**

Mrs. Bushey: **Second.**

Roll called. All members present voted in favor. (4-0)

Mrs. Kuzior: Next item of business is the approval of the minutes from June 11, 2019. Do I hear a motion?

Mrs. Bushey: **I move to a motion for correction of the minutes, Mrs. Bushey motioned on, it was in our minutes January 14, 2019 and it should be May 13, 2019. It was our last meeting.**

Mrs. Kuzior: Any other corrections or additions? Do I have a second?

Mr. Victor: **Second.**

Roll called. All members present voted in favor. (4-0)

Mrs. Kuzior: Do we have any agenda additions?

Mrs. Hussing: We do not.

Mrs. Kuzior: How about correspondence and communications?

Mrs. Hussing: We received none.

Mrs. Raber: Mrs. Kuzior, if I can just put on the record, we did receive for Case #1021, a letter from Fair Housing Contact Service Inc dated June 18, 2019 as well as one dated July 3, 2019 and you did receive a Memorandum from me dated July 2, 2019.

Mrs. Kuzior: Ok, the first item of business is case number 1021. This is a continuance of the last meeting:

Case No. 1021

**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 12 ½ feet from the right of way.**
- For review and determination

Mrs. Kuzior: Megan, you wanted to take over the floor?

Mrs. Raber: Yes, thank you very much. I just wanted to kind of give a timeline, an update, so members of the audience can understand what happen between the last hearing and today's date. On June 11, BZA had a hearing for the applicants request for a variance, as was stated by the chair. After a lengthy discussion, the applicant requested a continuance to explore the possibility of a compromise positioning of the fence. On June 17, the City Administration met with the applicant and a Fair Housing

representative at the property to explore a modified position to the fence. The City then received a letter from Fair Housing Contact Services Inc. dated June 18, 2019, which did formally request a reasonable accommodation and they did present a compromised variance request. In that request, the fence was moved back from the property line, which was what was originally proposed, to now a 12'6" on one end of the fence and 16' on the other end. Additionally, the applicant sent a second letter from Fair Housing dated July 3 that incorporated correspondence, which was signed by 2 doctors, supporting the need for the 6-foot fence. BZA also received a Memorandum from me, the Tallmadge Law Director, explaining and detailing the necessary legal analysis for a Reasonable Accommodation under the Fair Housing Act and making a legal recommendation to grant the modified or compromised variance as requested as a reasonable accommodation. For purposes of today's hearing, we are not going to entertain any discussion of the applicant's son's disability, which has been established. Additionally, we are not going to entertain any comment on the treehouse itself, which is not at issue before the Commission. As was previously explained, the applicant received all the necessary Summit County Building Department permits and Zoning permits. Lastly, given the legal analysis required in this case, and the fact that we did have public comment on June 11, we will not entertain any further comment unless it addresses new concerns not previously discussed and pertains only to the amended request. Mayor, do you have a picture of the amended request? The one with the 12 foot and the 16? It was in the letter. So, that's the diagram now showing where the fence would be located. The variance request itself still remains, the issue only whether it's the 3 ½ feet to the 6 foot. Again, the applicant amended the request with a compromise with City Officials and moved it back so that we have that additional setback. To the roadway it's 27' and 31' before the pavement. With that said, if you want to continue, if anyone has any additional comment, again, given the restrictions of what we're asking people to only comment on.

Mrs. Kuzior: Ok, we only have one person that signed in, Denise Slack, would you like to come to the podium?

Mrs. Slack was sworn in.

Mrs. Slack: So, I live at 313 Whittlesey. I will tell you, I spoke to a couple neighbors that could not be here tonight, Jackie and Tom Stewart being one at 300 Whittlesey, Gary Varvaro, who I know attended last time, who lives on Milton directly across the street and we all feel that a 6 foot fence is not necessary and it will not look right. I mean, a 6-foot fence is quite high. We have some in the neighborhood, even though they are in the back yard, so we know what the fence is going to look like and if it borders that side of the road, we have to look at that, it will not present well and as far as I'm concerned, it lowers our property values, because if I went into a neighborhood to buy a house and I saw that fence, I would refuse to buy in the neighborhood. And I think we, as Tallmadge, have continued to allow some of this stuff to pass that shouldn't, and all we have to do is look at our neighbors in Hudson and see that their property values stay much higher and their community looks much nicer because they don't allow this stuff and they listen to their residents and they enforce the... they enforce these vari... these ordinances that have been put before. I have.... I pulled my title from when we bought our house, our deed 34 years ago and it definitely states in there, no fence can be over 3 ½ feet and I think if you question these neighbors too, they would all feel exactly the same as I do.

Mrs. Raber: So, any deed, just for your information, any deed restrictions are in fact deed restrictions. They are not enforceable by the City in any way, that's a civil enforcement issue, but you would have to consider the fact that, I believe in your neighborhood there is quite a few fences so if you took action against any particular individual, that would be problematic potentially.

Mrs. Slack: Well this is... this... this particular point only has to do with the height of the fence as far as frontage goes.

Mrs. Raber: Thank you for your comment.

Mrs. Kuzior: There's nobody else that would like to comment, that has signed in at least? Is there anyone in the audience that would like to sign in and comment on this? Ok, I need you to come forward and sign in please.

Mrs. Bacher was sworn in.

Mrs. Bacher: I was just wondering how far 27 feet was back, since I can't visually see it right now, I just want to make sure my view of backing out of the driveway, which is to the right of that house, would not be obstructed by a 6-foot fence.

Mrs. Raber: Is that your question?

Mrs. Bacher: Yes, is there any landmark I could compare that to?

Mrs. Raber: We can pull it up on the GIS. The City Administration did go out to the site to review that and felt that there was adequate line of sight. Additionally, I believe your driveway is all the way to the right part of your house and there is a straight away there so there should be no issue with line of sight. The Mayor is pulling that up right now.

Mayor Kline: That's your house right there. There's a guidewire, the telephone pole, it's beyond that so the property pin is approximately right there. 27' foot off the pavement came back... that tree, the fence line will be back in this approximately.

Mrs. Bacher: Is the tree to the outside? Because I know that was mentioned at the previous meeting.

Mayor Kline: The tree will not have to be removed with that, but your driveway is way up there so you have absolutely no line of sight from your driveway. The concern last time was the fence, if it was all the way out to here, would somebody see it walking through your yard. You could stand from here, let me draw a line... That's about 27 feet right there, from the edge of pavement. So, then if you take the line of sight straight through, to your front door. You can see pretty far from your front door and definitely from your driveway, it is not impeding at all because you're so far up the road. We did look at that, so I wanted to make sure of that.

Mrs. Bacher: Ok, because cars do speed up there and we have young children.

Mayor Kline: The driveway I was concerned about was their own driveway. With the fence out that far, their backing out would almost have to be in the road but now that's not the case, by moving it up. On that side it was a 31' from the edge of pavement. All the way up from that fence so the fence would go from there straight across there back to tie into the other fence.

Mrs. Bacher: Thank you.

Mrs. Slack: My questions is, what is the necessity for a 6-foot fence?

Mrs. Raber: They have submitted doctors notices that say that that is necessary for Ian and his safety.

Mrs. Slack: So, he's lived there for 7, 8 years and all of a sudden, because we put a tree house up, he has to be safe? I've seen him...

Mrs. Raber: Ma'am we are not discussing his disability at all.

Mrs. Slack: I'm not discussing his disability; I didn't ask about his disability. I asked that he's lived there 7 or 8 years and he's never barely been outside and when he has been outside, alone, which we have seen, I live right around the corner, he's never attempted to go near the road. This is a child, this is not about a

disability, that his mother was helping him yesterday on a ladder, climb up. He can't even climb, so what's a 6-foot fence going to do if a child can't even climb up a step on a ladder? Is he going to climb up 3½ feet and jump over? I think you have to take into consideration how we feel as homeowners. This is not attractive at all in our neighborhood. And as far as her concern with her child, I'm not sure that's even accurate. Until that fence is up, I don't even know if that's accurate, that her sight lines will be that clear.

Mrs. Raber: Thank you. I will, while this person is signing in, just advise the commission that you have received information from a medical doctor submitting that this is a necessary accommodation, so again I would ask you to disregard comments from people that are not aware of the disability itself.

Ms. Greenhall, Associate Director of Fair Housing Contact Service, was sworn in:

Ms. Greenhall: I just wanted to speak here today to give a little bit of understanding. I obviously was not present at the previous meeting and so I do not know how much was discussed in regards to fair housing law and specifically in regards to reasonable accommodations, which are granted under fair housing law for persons with disabilities, and that does apply to zoning as well. It really applies to any housing transaction, which includes zoning. So, I just wanted to give a little bit information on that and how our agency has advocated in this matter as well, just for the record. So, for folks to understand, fair housing law covers a whole variety of characteristics that exist under the law that folks have. One of those happen to be disability. It has been protected under the law since 1988. So, 31 years now, persons with disabilities have been protected, where they can't be treated differently in any housing transaction, including zoning context. In a zoning context, often times we will see the need for reasonable accommodations, which are changes to rules, policies or procedures, in this particular instance, and ordinance, that is necessary because of a disability. So, it's very different than an actual variance. This is something that is granted under fair housing law as a change to the rule, policy or procedure or ordinance because of a disability. In the rental context, if I walked across the street here to get an apartment and said that I needed a designated parking space because of my disability, that would be considered a reasonable accommodation in the rental context. In the zoning context, when you have those ordinances that apply to housing, whether that's homeowner occupied or rental housing or anything of that sort, and those ordinances need to be adjusted because of someone's disability, that traditionally in our experience, 54 years of work that we've been doing, so we predate this law by a lot, shows that if it's necessary and reasonable, that it needs to be granted. A 6-foot fence in our experience as far as case law and other work with Department of Housing and Urban Development, and other administrative bodies around the country, specifically also here in Ohio, recognize that whether it's a 6 foot fence, whether it's a change in setback, anything like that, if it's necessary for a disability, then it's something that needs to be considered and if it's reasonable, then it needs to be granted. I stand here today to affirm the recommendation that has been made by your Director of Law, Ms. Raber and that what has been recommended to approve, this is something that we stand behind as well, as the advocacy organization for this community, and we are here to provide education outreach to City Officials, to residents, to community members and provide advocacy when individuals do need that on their behalf and that is why we got involved in this matter. So, I'm hoping that, with some understanding of what a reasonable accommodation is and with the information that's been provided to you by Ms. Raber, that you will affirm this request that is being made. Thank you.

Mrs. Kuzior: Thank you.

Public Hearing closed at 7:21pm.

Mrs. Kuzior: Any further comments from the Board?

Mrs. Bushey: I just have a question. From our last meeting, our applicant wasn't aware of what the fence color would be or what it would be like. Does she have any more information on that?

Mrs. Raber: No, and really the variance is not granted based on that. There was some discussion about that, I think because that had to do with a safety issue at first, at the property line, however that's not really relevant at this point and really no matter what's presented, while it's intended to give the Commission Members a general idea of what a new barn may look like or what a garage may look like, or what the fence may look like, that's really not the request... it's not tied to the request. The request is just specifically this and then it will be at the height requested. So, you can probably assume it would be the privacy fence, as she indicated before. And, I would ask that you follow the recommendation under the legal recommendation on my memo, you'll see a sample motion for you this evening, if you so desire to make that motion.

Mrs. Kuzior: Ok, I'll entertain that motion.

Mr. Gregg: I'd like to make a motion. I move to approve the variance request as a reasonable accommodation for Case No. 1021, Applicant/Owner Ms. Alaniz, for the property located at 270 Whittlesey Dr., Tallmadge, Ohio, for 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 to allow the height of 6 feet based on the amended variance request submitted June 18, 2019 and evidence presented.

Mrs. Kuzior: **I'll second.**

Roll called. All members present voted in favor.

Mrs. Kuzior: Ok, next item of business:

<p><u>Case No. 1023</u> Todd Ridenour, applicant Jacqueline Jackson, owner 75 Parker Ln</p> <ul style="list-style-type: none"> • Variance requested from Subsection 1154.06(a) Minimum lot width is 100 feet at street right-of-way • Request variance to allow 20 feet at street right-of-way. • For review and determination

Mrs. Kuzior: Are you present? Can you come to the podium please?

Mr. Ridenour was sworn in.

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

Mr. Ridenour: Well, I'm not a public speaker but I'll do the best that I can. We live on 51 Parker Lane and we got approximately, in the back yard there, like 2 acres. It's like a flag shaped property and I approached the Jacksons because they've got 2 lots technically, I basically want a right-of-way just to put a driveway in to possibly build a home back there in the next couple years. That's my story. It's been a property we've had in the family for 4 generations, just want to downsize and build a smaller home in the back and possibly maybe... that's it. I've seen a few other lots in Tallmadge that did that but I don't know when they were allowed to do that or...

Mrs. Kuzior: So, you say you've bought property from those 2 neighbors?

Mr. Ridenour: No, we own the property in the back but I approached the Jackson's and they're more than willing to sell that 20 foot. That was the first step to see if it was even feasible before we went through all the steps. Theirs would be right here. This is the Jackson's driveway here and this is their garage and the driveway would be in between Gayle's house and... basically we would put the drive in here, build the house back where the apple trees are eventually. So, nobody would see us back there. We wouldn't have to put a fence up or nothing.

Mrs. Kuzior: Mayor Kline, what does the City think about this? I mean, I was under the understanding that flag lots were not allowed. Does that make it a flag lot?

Mayor Kline: This would prevent the flag lot.

Mrs. Kuzior: I thought that since that piece of property would come up and then the back would be... that would be the flag.

Mayor Kline: But this property right now has no public frontage. Not now, but by adding the variance it does. That's how he's able to do that so it's really... will it be hard to get the driveway in and out of there?

Mr. Ridenour: I'd have to cut some trees down which there's a lot of dead ones in there anyhow, the old ash trees.

Mrs. Kuzior: Would that be a single car?

Mrs. Ridenour: This is a single car garage here. I found the property pins but I couldn't stretch the string across because there's so much brush back here and trees but that's basically what we would do, put the driveway here and then put a house back here where the apple trees are. Cause this is our existing, that's the Jackson's and ours is up here.

Mrs. Kuzior: So, your family owns...

Mr. Ridenour: My great grandfather built this house on East Ave and my grandfather built the one... yea this would be 1111 East Ave and this is 1103.

Mrs. Kuzior: All that land back there is one parcel?

Mr. Ridenour: Yes, back this way. It had originally went with this house then when grandpa got back from the war, they divided this up and he built a house here. Then all the property went with 1111.

Mrs. Kuzior: Wow. So, is that a single car driveway? Is that how wide that is?

Mr. Ridenour: I got a picture of how we would like to do it so it wouldn't be real invasive on nobody, there's one on 34 S Munroe... there's one almost identical to what we want to do there.

Mrs. Raber: Can we keep those photographs? We're going to mark them exhibits A & B then.

Mr. Ridenour: I'm not going to be upset if you guys deny me or nothing. Like I said, if it works great, if not, I'm not going to lose no sleep over it.

Mayor Kline: What are you going to do with your existing house?

Mr. Ridenour: We'll definitely sell it. We're hoping to sell it to our oldest daughter. She lives up there on 261, Mark Damon's old house, but if it doesn't work that way then we'll hopefully sell it to a good neighbor. It's just too big of house and too much trees and yard to take care of.

Mr. Victor: Question, the neighbor to the north of your proposed driveway, do they have any thoughts, input or...

Mr. Ridenour: That's Gayle Malizia. She would be the only one that... I talked to her a couple weeks ago when she got the letter and she wasn't upset about it. We're good friends anyhow, I just told her I didn't want to get her upset at me for it but she did tell me her bedroom was on that side but we wouldn't be roaring in and out of there at midnight anyhow. We wouldn't be putting a big concrete drive in there because that would be too expensive to do anyhow. That's basically it.

Mrs. Kuzior: If she opposed it, she could also have come and spoken against it.

Mr. Ridenour: Yea, that's my main thing, I didn't want any of the neighbors to get upset about it but I don't see why they would get upset about it but...I wouldn't care if somebody did the same thing too. Originally when we built the house, Mosholder was going to buy all this property before they built them newer homes and put an allotment back there. You know, there's 15 dead acres back there, which that wouldn't have been good. You would have had a road, you had to have been a corner lot then, which I like the green space. We got a lot of deer back there.

Mrs. Kuzior: There isn't anybody else who wants to speak on this case so I'll close the public hearing. Are you done?

Mr. Ridenour: I'm done.

Public Hearing closed at 7:33.

Mr. Victor: I have a question for the City. Any thoughts or direction on landlocked parcels like this? Right now, it's unbuildable because it doesn't have any frontage but does the City have a position on that?

Mayor Kline: He could build on that by doing this process. Do we like having house behind other houses? We have quite a few of those around town with the driveways coming alongside properties. The only way they could eliminate that whole area is sell each portion to the people off of Parker so everybody would have to buy it just like we did down on W Overdale, just a couple weeks ago through Planning and Zoning, you had this back corner lot and so the lady just wanted to buy a portion of it, we wouldn't allow that to happen. She had to buy the entire thing. In this case, he owns it. If the variance is granted, he'd just have a driveway coming off. Water and sewer, I'm not sure how you'd get sewer back there.

Mr. Victor: That was my next questions, how would you get utilities, although that's not within our....

Mr. Ridenour: I've got elevation there. I probably could put a manhole. There's plenty of elevation. I'd be building right in the middle of a hill there. There's easily probably 15, 18 foot of fall to get out to Parker Lane and the water would be simple.

Mayor Kline: Yep, water would be simple, the sanitary sewer, I'm not sure the depth of Parker and how, because you'd have to come down that easement, unless he obtains another easement from either himself, because he has the other far end, or somewhere along there to get it out to Parker. And that's Summit County DOES, not City of Tallmadge.

Mr. Victor: So, even if we approve this variance, there's still other hurdles before you would build a house or could build a house.

Mr. Ridenour: Yea, I mean this would at least give me egress.... I might not ever build a house there, but someday I might, I don't know. Jacksons, they're thinking about selling in the future. They said they're getting older; I figure that might be my only opportunity.

Mrs. Raber: Just so you understand, the variance requested is only granted for a year. You have to take steps to do that.

Mr. Ridenour: You'd have to put the driveway in right away?

Mrs. Raber: Yes.

Mr. Ridenour: You wouldn't have to build the house right away would you?

Mrs. Raber: No, but you would have to build that driveway right away.

Mr. Ridenour: I could do that.

Mrs. Raber: Within a year.

Mr. Gregg: So, the City's position is it's not a detriment to the community.

Mayor Kline: It's not a detriment to us.

Mrs. Kuzior: Would he be able to get safety services back there if he needed them.

Mayor Kline: He would have to design the driveway proper enough to get into it.

Mr. Ridenour: Yea, it would be big enough to get a firetruck.

Mrs. Kuzior: Ok, is there anybody in the audience that would like to speak in favor of this or against this? Ok, I'll entertain a motion.

Mrs. Bushey: **I move to approve the variance request for applicant for Todd Ridenour for the property located at 75 Parker Lane, Tallmadge OH for the variance request from Subsection 1154.06 (a) Minimum lot width is 50 feet at street right of way, seeking to allow 20 foot based upon the plans and application submitted and dated June 10, 2019 and the 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. Raber: Thank you. Before you have a second, would you amend your motion to reflect the minimum lot width is 100 feet, I believed it was misstated as 50.

Mrs. Bushey: I'm sorry. **I amend it to say the minimum lot width is 100 feet.**

Mr. Victor: **Second**

Mrs. Bushey: I see his hardship and I don't think it's a detriment to the public.

Mrs. Kuzior: Me either. I think as long as your neighbors are ok with it and it's not going to change anything from the street and the City's fine with it then I don't see a problem with it.

Roll called. All members present voted in favor. (4-0)

Mrs. Kuzior: Your variance is granted.

Mr. Ridenour: Thank you

Mrs. Kuzior: **I make a motion that we adjourn.**

Mrs. Bushey: **Second.**

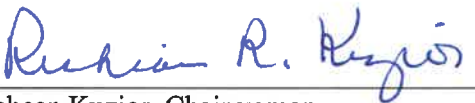
All members in favor. (4-0)

Meeting adjourned at 7:40 pm.

Respectfully submitted,



Kelli Funk, Secretary



Richean Kuzior, Chairwoman