

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
August 18, 2022**

New Business:

Approval of Minutes of Regular Board of Zoning Appeals Meeting held on July 21, 2022.

- 1. 8971 Brookside Road, Robert Perko** - Requesting a variance to 1143.02(b)(2)B of 16 sq. ft. to permit an accessory building to be 160 sq. ft. in size (144 sq. ft. permitted, 160 sq. ft. requested), a variance to 1143.02(b)(2) to permit an accessory building to be located in the side yard (not permitted), and a variance to 1165.01 of 7 ft. to permit an accessory building to be located 8 ft. from the side yard (15 ft. required, 8 ft. requested).
- 2. 6815 Bradford Circle, Justin Percio** – Requesting a variance to 1165.02 to permit a deck to encroach 13 feet into the rear building setback (not permitted).
- 3. 6414 Pebblecreek Drive, Charles & Lisa Cimino** – Requesting a variance to 1143.02(b)(2)B of 16 sq. ft. to permit an accessory building to be 160 sq. ft. in size (144 sq. ft. required, 160 sq. ft. requested), a variance to 1143.02(a)(3) of 4 ft. to permit an accessory building to be located 6 ft. from the rear property line (4 ft. requested, 10 ft. required), and a variance to 1165.01 of 9 ft. to permit an accessory building to be located 6 ft. from the side yard (15 ft. required 6 ft. requested).
- 4. 6583 Cheryl Ann Drive, Michael & Jenny D’Aiuto** – Requesting a variance to 1143.02(b)(1)A of 6 ft. to permit a garage to be 21 ft. in height (15 ft. required, 21 ft. requested), a variance to 1143.02(b)(1)B to permit a two-car garage to be 26’ x 26’ (24’ x 24’ permitted), a variance to 1143.02(a)(3) of 4 ft. to permit a garage to be located 6 ft. from the rear property line (4 ft. requested, 10 ft. required), and a variance to 9 ft to permit a garage to be located 6 ft. from the side yard (15 ft. required, 6 ft. requested).
- 5. 6626 Beechwood Drive, Tony Anzalone** – Requesting a variance to 1143.02(a)(2) to permit an additional accessory structure on the property (not permitted), and a variance to 1165.01 of 5 ft. to permit an accessory structure to be located 10 ft. from the side yard (15 ft. required, 10 ft. requested).
- 6. 6978 Ivandale Road, Michael Sliwinski** – Requesting a variance to 1363.01(c) to permit a fence to extend into the front setback line of the adjacent property (not permitted).

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7. **6107 Elmwood Avenue, Jim & Kim Romanchik** – Requesting a variance to 1165.01 of 9.7 ft. to permit a garage addition to be built 5.3 ft. from the side yard (15 ft. permitted, 5.3 ft. requested) and a variance to 1165.02 of 26.9 ft. to permit a garage to be built 13.1 ft. from the rear yard setback (40 ft. permitted, 13.1 ft. requested).
8. **7616 Hemlock Road, Jeffrey McKinley** – Requesting a variance to 1143.02(b)(2)B of 48sq. ft. to permit an accessory building to be 192 sq. ft. in size (144 sq. ft. permitted, 192 sq. ft. requested) and a variance to 1143.02(a)(2) to permit an additional accessory building on the property (not permitted).

The meeting was called to order by Chairman Mark Moreal at 5:30 p.m. and the following responded to Roll Call:

PRESENT: **Mark Moreal, Chairman**
 Charles Bredt
 Carol Fortlage
 Pasquale Monteleone, Jr.

ALSO
PRESENT: **Will Doyle, Assistant Law Director**
 Michael Gero, Building Official
 Anne Lynch, City Planner

ABSENT: **Councilperson Chris Walchanowicz**

Chairman Moreal stated that at this time he would like to ask the Board if there were any corrections, changes or additions to the July 21, 2022 meeting.

A motion was made by Carol Fortlage, seconded by Charles Bredt, to approve the Minutes of July 21, 2022.

ROLL CALL: **Yeas: Fortlage, Bredt, Monteleone, Moreal**
 Nays: None
 MOTION CARRIED

Chairman Moreal then proceeded to read the Board of Zoning Appeals opening statement.

The Board of Zoning Appeals is a quasi-judicial body and, as such, its role is similar to a judge in a court case. The Board will hear evidence and testimony that is factual and will make decisions based upon the facts which are presented and the rules as set forth in the Zoning Code principles of Ohio law.

The City of Independence has adopted a Zoning Code and, per the City’s Charter, has appointed a five-member Board of Zoning Appeals. This Board is empowered to hear and decide appeals and

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to authorize variances from the strict terms of the Zoning Code where the variance will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the Zoning Code will result in practical difficulty or undue hardship, depending on the type of variance requested.

With this being stated, the Board's proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest, mainly contiguous property owners (or their legal representatives), the opportunity to present the evidence, certain procedures need to be followed:

All interested parties must be sworn in. The applicant will be asked to present evidence to support the requested appeal, the Board will ask questions, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence. Any party may ask questions to another party.

It is the applicant's burden to produce evidence to support the application. The Board will not make the applicant's case for them. In order to prepare appropriate meeting minutes, each person who speaks will need to state, for the record, his or her full name and address. The meeting may be continued by either the applicant or the Board. The Board must base their decision upon facts and not on expressions of concerns or non-factual matters. The action of the BZA does not become final until 30 days after the date of the meeting that the minutes are approved by the BZA. Any appeal may be made to the Cuyahoga County Court of Common Pleas by an interested party within 30 days of the date the minutes are approved.

Assistant Law Director Doyle stated that he wanted to put into the record that the Chairman mentioned it was a five person panel, but there were only four members in attendance tonight. The applicants would be within their rights to table their application until next month in light of that because for some reason if there would be a 2-2 vote, that basically under the law would get treated as a denial of the request. A tie would be a denial. There would not be a tie-breaker scenario. The applicant would be in a position of not being able to come back with the same request next month. So, given that there are an even number of members, any applicant would be entitled to table their matter until next month if they would so choose.

8971 Brookside Road, Robert Perko – Homeowner Robert Perko was in attendance via Zoom. The Chairman asked if there were any neighbors present. There were no neighbors in attendance. Mr. Perko was asked by the Chairman why he needed the variances.

Mr. Perko stated that the area on the side of the house would be the only flat area. He stated that (inaudible).

The Chairman stated that Mr. Perko was breaking up, and if he could repeat what he just stated.

Mr. Perko stated that the backyard had very limited flat area, nothing large enough to put a shed structure on. He stated that the side yard area would be the location for a shed. He stated that he

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wanted to avoid putting a shed in any other area. He stated that in the photo with the base of the tree trunk, the yard begins to rise, and then goes all the way up to Bramley Road.

Chairman Moreal stated that he met with Mr. Perko the other night, and he explained everything to the Chairman. He asked if the rest of the Board also went out. Several members had gone out.

The Chairman stated in the backyard Mr. Perko had nothing. There was no way to put a shed back there.

Mrs. Fortlage stated that she had a question. She asked if there was another building behind the garage? She stated that he was not allowed two accessory buildings, and she wanted to know what his plan was for that building.

Mr. Perko stated that he was going to take down the existing structure.

Mr. Monteleone asked the Chairman if he wanted to swear Mr. Perko in. The Chairman then proceeded to swear in Mr. Perko.

Assistant Law Director Doyle stated that the Chairman should also stated that Mr. Perko agrees to the testimony already given.

Mr. Perko replied yes, I do.

Mr. Bredt asked if the neighbors were notified.

The Secretary stated that the neighbors were notified.

Mr. Bredt stated that he understood that the neighbor to the west had no objection.

The Secretary stated that she had not heard from any of the neighbors.

Chairman Moreal asked Mr. Perko if the neighbor to the west had no objection.

Mr. Perko stated that they had spoken a number of times about it. He emailed the neighbor some photos of the structure. He stated that yesterday they spoke on the phone, and the neighbor was going to come in person today, but he had another obligation. He stated that he had no issue.

A motion was made by Carol Fortlage, seconded by Pasquale Monteleone, to approve the above variances, subject to the removal of the existing shed.

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ROLL CALL: Yeas: Fortlage, Monteleone, Bredt, Moreal

Nays: None

MOTION CARRIED

6815 Bradford Circle, Justin Percio – Homeowner Justin Percio was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. There were no neighbors present.

The Chairman asked Mr. Percio to explain the reason for the request.

Mr. Percio stated that he had moved in late last year, and there was a walkout basement. He stated that there was an exit door on the west side of the sunroom about 8 feet from the ground. He wanted to put in a deck. He apologized for not speaking with Mrs. Fortlage last evening, but was on a conference call. He stated that as Mrs. Fortlage could attest, the backyard was almost totally unusable. He stated that he wanted to put in a second floor deck. He stated that in the picture, both neighbors have similar structures that extend a similar distance.

Mr. Bredt stated that he had a question based on Mr. Percio's layout. He stated that he didn't see any stairs shown.

Mr. Percio stated that there will be stairs on the east side. They were not shown there. He stated that the first phase was going to be the deck on the left side, minus the walkway. He stated that when he first put it up he wasn't planning on stairs. He stated that would be the second phase.

Chairman Moreal asked if there were any easements back there.

Mr. Percio stated that there was one.

The Chairman stated that the lot to the left had a retention basin on it, and was not a buildable lot.

Mr. Percio agreed.

Mr. Bredt asked when the stairs would get put in, would they be over towards the walkout egress door.

Mr. Percio stated that the plan was to have them on the opposite side.

Mr. Bredt asked if they would extend any further than the setback.

Mr. Percio replied correct. He stated that the plan was to actually make them go along the house. He stated that was one of the struggles with a walkout, that there were windows everywhere.

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Building Official Gero stated that Mr. Percio wasn't showing any steps on any of the drawings that he submitted. He stated that Mr. Percio's house was right on the ten foot side yard mark going towards the retention basin. He asked if that was where Mr. Percio was looking to put the stairs.

Mr. Percio stated that was the plan.

Building Official Gero stated that Mr. Percio would need a variance to encroach into that, and he would also be encroaching into an easement.

Mr. Percio stated that it would be along the house.

The Building Official stated that Mr. Percio's house was right on that line. He stated that anything that he would do he would have to come back. He wanted to make sure Mr. Percio was aware.

Mrs. Fortlage stated that she thinks that the Building Official wanted to mention too that there was no guarantee that Mr. Percio would get that variance.

Mr. Monteleone stated that he would be more concerned that if there was any damage to the swales in the back, he wanted to make sure they would be restored.

A motion was made by Charles Bredt, seconded by Pasquale Monteleone, to approve the variance to encroach into the setback.

ROLL CALL: Yeas: Bredt, Monteleone, Moreal, Fortlage

Nays: None

MOTION CARRIED

6414 Pebblecreek Drive, Charles & Lisa Cimino – Homeowner Charles Cimino was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. There were no neighbors present.

The Chairman asked Mr. Cimino to state for the record why he would need the variances.

Mr. Cimino stated that they have a need for more storage, and that was the best area in the yard. He stated that there was already a shed there, a plastic shed, that would be coming down. He stated that the shed that was shown matches the design of the house, the roof line. He wanted to go with that size and shape of shed that would be manufactured on the site and then delivered and put in place.

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The Chairman stated that he was there the other night, and it looked like Mr. Cimino, other than the shed being bigger, would it line up with the shed behind him.

Mr. Cimino stated that the left side of the new shed would be roughly where the left side of the existing shed was. He stated that there was an empty space.

The Chairman asked if it was the same with the rear setback.

Mr. Cimino stated that right now the plastic shed was a couple of feet off the property line. This would come forward off of that line and extend up further to the right.

Mrs. Fortlage stated that she wanted to understand. The left side of Mr. Cimino's shed would align with where the smaller one was now, which means that he will further encroach towards the neighbor.

Mr. Cimino stated to the right.

Mrs. Fortlage asked if there was any reason that he couldn't move it.

Mr. Cimino stated that there were trees there that would have to be removed. He stated that he figured he would block the shed behind him and use some empty space to the right. He stated that if you would go to the right. He stated that if you would go to the right of his existing shed, there was a dead area there, so he thought he could use that area for the shed.

He stated that he talked to his neighbor on the right, and they were signed off on the six foot. He stated that they didn't have any issue.

Chairman Moreal asked if Mr. Cimino would be lining up with the shed behind him.

Mr. Cimino stated that the shed that was there was 8' x 10', and this one would be 16' wide by 10' deep. He stated that 7 of the 8 feet would go to the right, and the left side of the new shed would be approximately where the old shed was. It might be a foot or two to the left. He stated that if approved, he would have the far right end of the shed right on the six foot line.

Chairman Moreal stated that the neighbor next door was okay with that.

Mr. Cimino agreed. He stated that he didn't speak with the neighbor behind him. He stated that was just a shed facing a shed.

Mrs. Fortlage asked if it was physically possible to put the shed on the same line that would be following the right side and have the additional size be not further increasing the size of the variance?

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Mr. Cimino stated that he could move the whole shed to the left, but he would have to take one or two trees out.

The Chairman stated that there were trees on the left side.

Mrs. Fortlage stated that she knows there are, but she was there, and they were not that close.

Mr. Cimino stated that if the Board looked at the top right picture, he stated that he didn't think he could do it.

Mrs. Fortlage stated that four or five feet out of the amount requested was kind of a lot.

Mr. Cimino stated that looking at the shed, the lawnmower entrance was on the left-hand side. He stated that the bottom right picture shows the dead area to the right.

The Chairman asked if the double doors would be by the tree.

Mr. Cimino stated that it would be in the same orientation as the bottom picture. He stated that there would be double doors on the left, and a single door on the front.

A motion was made by Pasquale Monteleone, seconded by Charles Bredt, to approve the variances that were requested.

**ROLL CALL: Yeas: Monteleone, Bredt, Moreal
 Nays: Fortlage
 MOTION CARRIED**

6583 Cheryl Ann Drive, Michael & Jenny D'Aiuto – Homeowner Michael D'Aituo was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. There were no neighbors present.

The Chairman asked Mr. D'Aiuto to explain the need for the variances. He wanted to start with the first variance for the height. He asked Mr. D'Aiuto to explain why he needed 21 feet instead of 15 feet.

Mr. D'Aiuto stated that the request for the 21 feet over the 15 feet is to add a small storage space. He stated that his home did not have any attic space, and it also has a small basement. They were hoping to get a small storage area above the garage for Christmas decorations and things like that. He stated that the height would not impede the height of the house, nor will it impede the height of the neighbors' homes. He stated that they were mostly two-story homes around them.

The Chairman asked the 6 foot off the side yard. He asked the reason for that.

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Mr. D’Aiuto stated that in the picture if you would look towards the front of the property, there was a horseshoe shaped driveway. He stated that eventually what they would like to do is have the driveway so that it would connect to the rear garage, and then they would have really simple access to it and also to retain the use of the rest of the backyard for the kids. They have an 8 year old and 11 year old that they would like to have adequate space for them to play as well. He stated that they were hoping to have the garage far back on the property. He stated that the 6 foot would give them enough room to get mowers through.

Chairman Moreal asked about the 6 foot on the rear property line.

Mr. D’Aiuto stated that the 6 foot on the rear would be for the same reason. He stated that he was trying to get it as close to the property line. He stated that he spoke with the neighbors behind them, and they didn’t care. He stated that there was actually a vacant lot behind the house for the majority of it.

The Chairman asked if it was a buildable lot.

Mr. D’Aiuto stated that it wasn’t.

The Chairman asked if it was a paper street.

Mr. D’Aiuto stated it was just some land, he didn’t know how it ended up that way. He stated that it was 10 to 12 feet wide by 100 foot long.

The Chairman asked if the neighbors were notified.

The Secretary stated that the neighbors were notified.

Mr. Monteleone stated that the one photo showed a driveway going back.

Mr. D’Aiuto stated that he wasn’t going to be putting a driveway initially. He asked to see the picture and stated that was a sample off the website. He stated that was not part of his application. He stated that eventually it would be similar to that.

Chairman Moreal stated that Mr. D’Aiuto was allowed a 24’ x 24’ garage, and he was asking for 26’ x 26’.

Mr. D’Aiuto stated that went along with the second-story. He wanted to have a full staircase so it would be easy to walk up without falling or getting hurt from a drop down ladder. They want to easily walk up to store stuff. He stated that he also drives a larger truck, a half ton crew cab truck, and his wife drives an SUV. He stated that if you open up the doors, a 24’ x 24’ in his opinion, was close to a perfect size garage, but they want to use the garage to keep lawn and garden stuff,

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and he doesn't want the stuff being able to fall on his vehicles. He wants to make sure they can get in and out easily without having to worry about that and have room for the lawn and garden stuff.

Mr. Monteleone asked the Building Official if they would be allowed to have a four-car garage.

Building Official Gero stated that Mr. D'Aiuto would be allowed to have up to a five-car garage for the size of the lot.

Mr. Monteleone stated that he didn't look at the existing garage, was it a two-car garage.

Mr. D'Aiuto stated that it was a two-car garage. He stated that one vehicle could fit in, but that was it.

The Chairman stated that he wanted to see the dimensions of the second floor.

Mr. D'Aiuto stated that it should be in the packet.

The Chairman asked from floor to ceiling on the attic area, what kind of dimensions were they looking at.

Mr. D'Aiuto stated that he didn't recall the exact measurements, but thought they were approximately 6'6".

Mr. Bredt stated that they were 7'6".

Mr. D'Aiuto stated that was in the middle.

The Chairman asked if it would be below the roof line of the house.

Mr. D'Aiuto agreed.

Mr. Bredt asked if the garage would be stick framed.

Mr. D'Aiuto stated that it would be all stick framed.

Mr. Bredt asked if there would be electrical and plumbing in the garage.

Mr. D'Aiuto stated that he would put in electrical for sure. He stated that he was hoping to have a floor drain, but he was hoping just for electrical.

Chairman Moreal asked Mr. D'Aiuto if there would be gutters on the garage.

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Mr. D’Aiuto stated that there would be gutters that would be tied in. He stated that he would like to build the garage the best way he could. He stated it would be all wood. It will not be a steel commercial looking building. He stated that he wanted the building to be really nice because what they intend to do is come back and re-side the house. He stated that they would like to remodel the house as they have only lived in it about a year. He stated that for a short period of time the garage will look nicer than the house.

Building Official Gero stated that just for the record, Mr. D’Aiuto would need to go before the Architectural Board of Review also for the garage. He stated that any type of floor drain in the garage would be required to be connected to the sanitary sewer system. He wanted to make sure that Mr. D’Aiuto was aware.

Mr. D’Aiuto asked if it was just for the drain that he would have to go before the Review Board.

Building Official Gero stated that it would be for the whole structure, the materials, elevations, and that type of thing.

A motion was made by Charles Bredt, seconded by Pasquale Monteleone, to approve the variances as requested above.

**ROLL CALL: Yeas: Bredt, Monteleone, Fortlage, Moreal
 Nays: None
 MOTION CARRIED**

6626 Beechwood Drive, Tony Anzalone – Homeowner Tony Anzalone was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. There were no neighbors present.

The Chairman asked if all the neighbors were notified.

The Secretary stated that all the neighbors were notified.

Chairman Moreal asked Mr. Anzalone to explain the reason for the variances he requested.

Mr. Anzalone stated that they moved in about a year ago, and as part of agreement, they saw issues with the basement. He stated that there was an existing patio that was put in last spring two months before they purchased the house. He stated that they had to waterproof and cut up some of the existing patio. He stated that it was a stamped concrete patio. He stated that it abuts a sunroom on the house, and they had to waterproof around the sunroom. He stated that there was a door coming out of the sunroom. They have to fix what was broken from the existing patio, and they want to add to that. He stated that part of that addition was building a covered

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area so they would have shade in the backyard. He stated that they want to surround it with landscaping. He stated that the green behind it was three giant trees that were expected to be 15 or 20 feet tall. The lowest one was 14 feet tall. He stated that the structure was expected to be 11 ½ feet tall, so it will be covered by the existing trees.

Mr. Anzalone stated that the reason for the side yard variance was that the existing stamped concrete patio, they wanted to cut right on the existing concrete line there to avoid any further damage to the existing stamped patio because it would cut along the front side of it going across, there was a lot of damage so they have to cut another 4 feet off the existing patio to repair it.

Chairman Moreal asked if it was going to be an all wood structure.

Mr. Anzalone stated it would be an all wood structure.

Mr. Bredt asked how far to the left looking at the picture would the existing gazebo be located.

Mr. Anzalone stated that the existing gazebo was all the way back of the property. It would be 25 to 30 feet from this structure. He stated that it was about a 5 to 6 foot circular gazebo. He stated that they just heard a story, the Niro's kids got married there, and it had been there for approximately 25 years. He stated that they were just trying to add value to the house and repair and revitalize what they had to fix.

Chairman Moreal asked that the trees that he saw that Mr. Anzalone mentioned were also staying.

Mr. Anzalone stated that those were staying, and they would even be adding landscaping to the sides of it to kind of cover the whole area.

Mr. Bredt stated that he thought Mr. Anzalone stated that the height of the new structure would be 11 ½ feet.

Mr. Anzalone stated that was correct. He stated that it would be a gable structure, so it would be a little taller than a hip roof.

Mr. Monteleone asked if Mr. Anzalone was working with Precision on the project.

Mr. Anzalone replied correct.

Mr. Bredt asked so the accessory building was to the gazebo.

Mr. Anzalone stated that it was to the new building. He wasn't quite sure if the gazebo counted as a third structure; so if that would count, it would be a third structure.

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Several people began speaking at once.

Mr. Anzalone stated that there was a shed and a tiny 5 foot gazebo in the middle of the landscaping back by the shed.

Mr. Monteleone asked if there was anything behind his property.

Mr. Anzalone stated it was just a fence. He stated that he thought they owned 3 feet beyond the fence.

A motion was made by Pasquale Monteleone, seconded by Carol Fortlage, to approve the variances that were requested above.

**ROLL CALL: Yeas: Monteleone, Fortlage, Bredt, Moreal
 Nays: None
 MOTION CARRIED**

6978 Ivandale Road, Michael Sliwinski – Homeowner Michael Sliwinski was in attendance.

Chairman Moreal asked if there were any neighbors present.

Neighbor John Veres stated that he was there.

Chairman Moreal asked Mr. Veres if he wanted to step forward and get sworn in.

Mr. Veres asked if it would be right now.

The Chairman stated that Mr. Veres could come up right now.

The Chairman swore in Mr. Sliwinski and Mr. Veres. He asked Mr. Veres to state his full name and address for the record.

John M. Veres, 6944 North Renwood.

The Chairman asked the Secretary if all the neighbors were notified.

The Secretary stated that all the neighbors were notified.

Chairman Moreal asked Mr. Sliwinski to explain the need for his variance.

Mr. Sliwinski stated that their proposal was to put a fence in the backyard. He stated that it was as simple as that. He stated that the site plan that everyone sees was pretty simple. He stated

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that they were on a corner lot, and because of the way the lots were zoned when they were built, and he did confirm today that there was a variance needed to build on that lot. He stated that because of that, the side of their house which was on the north side of the drawing, did not line up with the front of the neighbor's lot. He stated that in order to put a fence there, he would need a variance of approximately 34 feet to fence in their backyard.

Mr. Sliwinski stated that when they bought the house they drove around the neighborhood, and he knows that he did discuss with just about all of the Board members, right down the street another house. When he went back to look at the meeting minutes from when they got their Zoning approval, it was almost the exact same dimensions that he requested. It was a 34 foot variance from the front setback along, and even the measurement from the sidewalk was identical, he measured 17 feet from the sidewalk where he was proposing to put the fence.

Mr. Sliwinski stated that they bought the house in Independence because they have two kids and also have two dogs. He stated that where they currently live, they have no yard to let the dogs out and run. They take them for walks sometime, and they will continue to take them for walks. Now that they moved from West Park to Independence, a lot of their help is no longer nearby. He stated that his wife used to be able to come home right from work and let the dogs out, take them for a walk. They no longer have that ability, and it was the exact reason they bought the house because they saw the lot down the street, they saw that it was fenced in; and when this house came up for sale, they thought they could do the same thing since it was already there.

He stated that he had pictures of the house down the street that he was referring to, and he also has pictures of other houses in the neighborhood. He stated that they walked around the neighborhood of the corner lots that have fences. He stated that he thought he found 4 corner lots in just his neighborhood that had fences. He stated that only one of them would have conformed to the ordinances, and the only reason that one would conform because they didn't have the same issue. He stated that every house that had a fence that had the issue that he had was (inaudible) at that time. He stated that he had pictures that he could pass around to get them on record.

Chairman Moreal stated to Mr. Sliwinski that the Board would treat every request on its own merit. He stated the Board didn't set precedent by what he was saying. He stated that the Board gets that all the time, People saying they see things all over the City. He stated that the Board treats every one separate. He stated that he understood what Mr. Sliwinski was saying. He stated that the Board was just worried about Mr. Sliwinski's request right now.

Mr. Sliwinski stated that for the record, he would like to introduce the pictures. So, this right now is 6977 North Renwood.

Chairman Moreal stated that Mr. Sliwinski mentioned earlier about looking up a variance.

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Mr. Sliwinski stated that the whole subdivision, it was understanding that the zoning of residential lots in Independence was supposed to be 100' wide by 200' deep. He stated that the entire neighborhood had to have gotten a variance to build, and he assumed it was because the builder was trying to squeeze more houses on a lot. He stated that his point bringing that up was that this was really a City created problem because the City approved the zoning. He stated that the City was the one that allowed the house to be built like this. He stated that if you look at the ordinance and look at the house, not just in their neighborhood, but in what he would call Old Independence, they don't have the issue that they have. He stated that other lots, the side of the corner lot naturally would line up with the front setback of the adjoining property. He stated that if you would look on Brecksville Road, on Chestnut Road where a lot of the older houses was, which was presumably when the ordinance was passed. He stated that the fencing ordinance was updated recently, but he doesn't believe it was that part of the ordinance, it was more along the lines of getting the property surveyed and some of the procedural issues.

Mr. Sliwinski stated that he had a few other pictures and obviously for the record what they were doing here, but he also wanted to pass along the picture of 6942 Carol Drive. He stated that this was another corner lot, and in that picture you can not only see that it would extend, the fence extended beyond where they were proposing and really lands about a foot from the sidewalk. He stated what they were proposing was to be 17 feet back from the sidewalk. He stated that when you are shopping around for houses, you drive around the neighborhood and see what is there, and see what the potential is. He stated that he understand what they were saying that the variances were all decided individually, but every single lot in their neighborhood that has the issue they have that has a fence, essentially has the same variance they were requesting. He stated that it was typically greater than what they were requesting.

Mr. Sliwinski stated that the next picture was 6668 Beverly May.

Mr. Monteleone asked Chairman Moreal if the Board was going to go through all the pictures. He stated that he wanted to decide on this one.

The Chairman stated that Mr. Sliwinski was just passing them around.

Mr. Sliwinski stated that his understanding that there was opposition here, and his intention was that if they do not get the variance, that they will appeal it, and he knows it is time-consuming to pass the pictures around; but he does want all the evidence for the appeal if it becomes necessary.

Chairman Moreal stated that the Board all met with Mr. Sliwinski, he believes almost all of them. He stated that they all talked about different things. The Chairman asked if anything had changed from what Mr. Sliwinski was asking for.

Mr. Sliwinski stated that the Chairman was asking about the design of the fence. He stated that his original request was for a cedar fence, and he doesn't want to use the word panel because it's

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not going to be panels. I understand that a lot of the Board members have issues with some of the panel fences; so this is not going to be a Home Depot or Lowe's panel fence that just gets thrown up. He stated it will be site built. It would go with the grade of the property.

Mr. Sliwinski stated that when he submitted the application, and again it was a pretty simplistic drawing here with all the measurements that were needed, he submitted a picture of a cedar fence. He stated that it never really crossed his mind that this body would also be approving the style of the fence. He stated that when he submitted the application, it was for a variance for the side line of the northwest corner. With all due respect to the Board, it seems to him that it should be the City Council that should be deciding what type of fence goes up, and his intention was that if he would get the variance, and he has had discussions about changing the style of the fence; but obviously if he got a variance, he would then have to go through the permit process, and it would have to be approved by the City. He stated that was his decision, the style shouldn't matter, the issue right now because the style doesn't change whether he has a practical difficulty with using his yard. He stated that whether there is a wrought iron fence or white vinyl panel fence, it wouldn't change any of the factors that he read in *Duncan v. Middlefield* which sets out factors that the Board of Zoning Appeals is supposed to use when deciding these things. He stated that he had given a lot of thought to do more of a decorative fence, and there were a lot of good reasons. He stated that when he says decorative fence, he was talking more of a wrought iron style which is similar to what they were putting in front of City Hall on Brecksville Road. He stated that was the direction he was leaning, but because it just came up in the last couple of days.

Mr. Sliwinski stated that when they bought their house, they couldn't wait to get in. He stated that the intention was to put a shovel in the ground as soon as possible so they could get a fence up and get their dogs there and let them run around the yard. He stated that he submitted an application to the City the day after the title transferred for the permit, and it got denied. He stated that he thought in the process of filling it out he realize for the first time that he was going to have to get a variance. He stated that certainly when they bought they property, they were relying on the pictures that were shown and riding around the neighborhood, there was no reason for them to believe that they would need a variance. He stated that there were four other fences exactly with what they wanted to do. He stated that come to find out that one of them was just approved by this body, and had the same dimensions, last October.

Mr. Monteleone asked if he could speak on behalf of that. He stated that the fences that the Board approved, and he was new on the Board, he was in his second term, he drove around and checked on some of the work that he approved in the City, and he doesn't that it looked very good; and he explained all the reasons why. He stated that was where he stood, and that was where he was at with this big panel fence. He stated that he wanted Mr. Sliwinski to know that he liked the decorative fence.

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Mr. Sliwinski stated that he understood that. He stated that he will tell the Board that when they were looking for houses and every time they saw a listing that said Homeowners Association, they did not look at it. He didn't want to have to deal with a Homeowners Association, and he was getting the impression that this was about as bad as dealing with a Homeowners Association when they start telling you what style fence you can put up, what color you can paint your house, and he doesn't think that is what the Board should be doing. He stated that if City Council would want to pass legislation that says you can't have a panel fence, that would be their prerogative to do that. He stated that having said that.

Chairman Moreal stated to Mr. Sliwinski that you are allowed to put a fence up that would be in line with the neighbor's house. He could put up the board fence, but he obviously wanted more square footage.

Mr. Sliwinski stated that he wanted the full use of his yard.

The Chairman stated that Mr. Sliwinski and he talked, and he told Mr. Sliwinski that he would be willing to entertain the decorative wrought iron fence pretty much where he was requesting it with a couple of little changes. He stated that they were close, and they were not trying to be a Homeowners Association, they were just trying to do what they feel would be best for the neighborhood.

Mr. Sliwinski stated that he understood that.

Mr. Bredt stated that Mr. Sliwinski's point earlier was right on, the Board was not here truly to address the construction of the fence. He has applied for a variance for the location of a fence, and as presented in the location that Mr. Sliwinski has drawn, before the Board would get to a vote, he would say he would not be in favor. Having said that, if the variance would be denied, and he can't speak for his peers, then Mr. Sliwinski would not have the ability to come back with a different design or different tweak to the location, either one of which could sway his opinion. He stated that he was not trying to put words in Mr. Sliwinski's mouth, but the Board is not here to design the fence, they were here to look at the location that he applied to put a fence.

Mr. Sliwinski stated that in regard to the location of where to put the fence, addressing the factors in *Duncan v. Middlefield*, he stated that he didn't know if it sounds like Mr. Bredt considers it a substantial variance, and the law stated that not one of these factors controls, that you have to look at all of them. He stated that the reason he circulated pictures, was that the next factor was whether the essential character of the neighborhood would be substantially altered, whether an adjoining property would suffer a substantial detriment. He stated that it would have to be substantial, it couldn't be just that's not what I want, as a result of the variance. He stated that he passed around the pictures. He stated that he drove around the City. He looked at corner lots all over the City, none of them were in line with the front setback. He stated that when the corner lot does not naturally meet the front setback of the adjoining property, the fence is never,

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and he has not seen one single fence, and he is not saying it does not exist, but he has not seen one single fence in this city where somebody said I will just put a fence halfway through my backyard. He stated that was why he brought up the point of these variances for building these lots. He stated that was the problem the City created when they did that, and now they have to figure this out.

Mr. Sliwinski asked would it adversely affect the delivery of governmental services? That was pretty obviously no. Did the property owner purchased the property with knowledge of a zoning restriction? He stated that he was sworn in, he testified under oath that he did not know that, and he has given evidence to the fact that as to why he wouldn't have known that because four houses down, that gave them the idea to do this.

Mrs. Fortlage stated that she knows Mr. Sliwinski is a lawyer, but she thinks he already knows that ignorance of an existing law is not covering the point he just made. The law was there.

Chairman Moreal stated that it was public knowledge too.

Mr. Sliwinski stated that was not a factor, the issue was whether the homeowner knew.

Mrs. Fortlage stated that well they could carry that one out to its obvious conclusion, an appeal would not be whether he knew or not, it would be about whether it was there to be known, which it was.

Mr. Sliwinski stated that whether the property owner's predicament could be easily (inaudible) through some method other than a variance.

Chairman Moreal stated that it could be with arborvitae. It could be with an invisible fence. He stated that there were other options.

Mr. Sliwinski stated just to address that point, the arborvitae could not keep his pets in the yard. That would not contain them, and the invisible fence, he doesn't think it would be a reasonable alternative to electrocute his dogs.

Chairman Moreal stated trust me I have dogs too, I understand.

Mr. Sliwinski stated that he didn't consider that a reasonable alternative. He stated that when you get to the spirit and intent of the zoning requirement. He stated that he could see in the older lots where the side yard would line up with the front setback. He stated that he could see not wanting to take further than to the side yard because you would get what he has been showing, some of those pictures of the fence one foot from the sidewalk. He stated that he didn't think that was the variance he was requesting, particularly nobody seemed to think it violated the spirit

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and intent behind the zoning requirement in October. He stated that he didn't see how it could all of a sudden violate the spirit and intent of the zoning requirement now.

Mr. Sliwinski stated that he just wanted to address the factors.

Chairman Moreal stated that he wanted to hear from Mr. Sliwinski's neighbors.

The Chairman called up Mr. John Veres. He told the Chairman to hold on one second as he was forwarding an email to the Secretary.

The Secretary asked Mr. Sliwinski if Colleen was his wife as she was on Zoom and had her hand raised. The Secretary stated that she was going to promote her to a panelist if she wanted to speak.

Chairman Moreal then swore in Mrs. Sliwinski.

Mrs. Sliwinski stated that before Mr. Veres would speak, she wanted to address something that he might address as well; however, and it was something her husband could speak to as well. She stated that it seemed to her as she was listening that they were saying things that their opinions would be swayed, and if they were willing to consider this and consider that. She stated that in fact they have been willing to consider those things, and it was her understanding that as of even yesterday it was brought to the attention of Mr. Veres that maybe they would consider doing some of the things that the Board was suggesting, and Mr. Veres has, as to her understanding, balked at that and had all these demands and questions and asked what the landscaping plan was and so on and so forth. She stated that again, those weren't questions that he should be able to ask. She stated that the Department of Building and Engineering and so on and so forth should be able to ask, but they have been more than willing to discuss and approach both neighbors individually and also her husband could also attest to the fact that he spoke to other neighbors of them that would be looking directly at the fence, and they had absolutely no problem with them putting up the fence. She stated that they bought the house, all the intentions that her husband had explained to the Board, and in addition to the fact that she was sure that Mr. Veres will explain what it was that he was proposing, but the only thing they were obstructing would be the view of the back of their house, and they should have some right to privacy to enjoy their yard and for their children and be able to enjoy a deck, a hot tub, enjoy a similar type of private oasis such as Mr. Veres has which she thinks he would appreciate them not being able to see right into the back of his yard as well.

Mrs. Sliwinski stated that she just wanted to mention those things, and also my husband could speak to the conversations that he had because she understands what she was attesting to here would be kind of hearsay, but he did have those conversations with Mr. Veres, with Mrs. Veres, with the additional neighbors, and she wanted to make sure that it didn't get lost in the (inaudible) because it seems to her like the Board was trying very hard to see all the perspectives

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and say let's compromise here, maybe this and maybe that. She stated that they have also done that, and Mr. Veres has balked at that. She just wanted to point that out.

Chairman Moreal stated that before the Board would go any further, he asked Mr. Veres to step forward.

Mrs. Veres wanted to be sworn in. The Chairman then swore her in.

Mr. Veres asked the Secretary if she got the email.

The Secretary stated that she did, but she didn't think the Board could consider emails.

Mr. Veres stated that he wanted the pictures on the record, and the emails and texts that Mr. Sliwinski's wife just mentioned because he doesn't know what the hell she is talking about.

He stated that first of all he had to say wow. You really can't trust attorneys.

Mrs. Fortlage stated to Mr. Veres if he could get to the point please.

Mr. Veres stated that he was getting to the point because he talked to Mike over the last week, and it just goes right back to the initial site plan that they spent time talking to Mr. Sliwinski about maybe adjusting, and to his wife's point, they cannot see them from their backyard because they have arborvitaes, they have pine trees, and because they have a fence to keep their dogs in their backyard, so that is an option. They said arborvitaes and trees are not option, the fence is an option, it is an option. It has worked 27 years for them.

Mr. Sliwinski asked if it was a fence.

Mr. Veres replied yes.

Mr. Sliwinski stated that was what he was asking for thank you.

Mr. Veres stated that Mr. Sliwinski stated that he didn't want a fence with arborvitaes.

Mr. Sliwinski stated that he never stated that.

Mr. Veres stated yes you did, and you can check the record. He mentions the white fence down the street which is a corner property which is similar to his situation. He stated that it was completely different. He stated to go to the front porch of that house, and you cannot see the fence from the front porch of that house because the garage juts out. He stated that it was a driveway side yard, not a greenery side yard. He stated that it was completely different than that situation. He stated that you would think an attorney would know that.

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Mr. Veres stated that the integrity of the neighborhood was being threatened with the cedar board-on-board fence that he was proposing. He stated that they have spent hundreds of thousands of dollars on their house over the years. He stated that the backyard was just grass and trees when they moved in. They made improvements to keep their dogs in their yard. They made improvements for privacy. You can all see those improvements and most recently they added to the front of their house, a nice porch, extended porch, a very welcoming porch to sit in the front yard as well as the backyard. He stated that they don't want to sit on their front porch and stare at a six-foot board-on-board fence, over 20 feet beyond their property line of the front of the house. He stated that the other corner was not similar.

Mr. Veres stated and my text, you wife thinks you were spending hours and hours of conversation. Obviously, you didn't show her the text. He stated that all that Mike asked him, he think Mike mentioned to one of the members that he wanted to talk to him; so he texted Mike. He stated that Mike gave one of the members his contact information, so he texted Mike, and said Mike Mark Moreal mentioned you wanted me to call you. My wife will be home most of the day today. I am busy at work, so stop by the house if you see her out and about. Thanks. Mike's reply was I was just wondering if you guys would still object to a decorative fence with landscaping as a privacy screening. My reply to Mike, I spoke with my wife, and that seems like a much better option. Can you send a new layout and type of landscaping, and I probably should have put type of greenery or trees, but I didn't, the type of landscaping you are thinking of. This was yesterday at 11:53 a.m., and no reply since then.

Mr. Veres asked Mrs. Veres if she wanted to talk?

Mrs. Veres stated that she walked over and asked him. She stated that as far as any other type of communication, the first communication she had with him was well he came over and told me we would get a letter about the zoning issue. She stated that she told him okay, and then second time she walked over and she asked if he could map out so she could see it, and she thinks he was surprised that she needed to see it because it was on paper. She thought maybe she could get a view of it from their yard, and she said we (inaudible), and he stated that he had extension cords. She stated that they had some flags, so she gave him little flags to kind of just map out. She stated that he put a few out so they could kind of get a visual. She stated that she told him she didn't know if he had a Plan B, and she wanted to be fair, but they were not real keen on it. She stated that was exactly what she said, that they were not real keen on it, but she didn't go no. She stated that she was just kind of real subtle, and that was the end of it. She stated that they did take the time to reach out.

Mr. Veres stated that he was not done. He stated that he also wanted to mention, Mike your parents walk the neighborhood. They walked the neighborhood during the whole construction project, and multiple times your dad said wow the house looks really nice, you have done a great improvement. He asked do you think we want to stare at a six-foot cedar fence? We don't.

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He stated that he wanted to show the picture of the neighbor next to the white fence at the corner. He asked Mr. Sliwinski if he saw a fence in that picture.

Chairman Moreal stated that he wanted to say something. He stated that he didn't like the way this was going. He stated that he wants them to be neighborly, they are going to be neighbors for a long time.

Mr. Veres stated that was done.

The Chairman stated that they have to work this out. He stated that he wanted to table the matter. He told them both to work it out. He stated that he lives in that neighborhood.

Mr. Veres stated that he can't trust a thing Mr. Sliwinski says, how can he work it out?

The Chairman stated that they need to work it out, somehow, some way. He stated that Mr. Veres could call him. He will stop over, but he wanted to make a motion to table this because he didn't like where it was going. He stated that it was not going to end well.

Mr. Veres stated that he thought the Board should vote on it.

A motion was made by Chairman Moreal, seconded by Carol Fortlage, to table the matter.

**ROLL CALL: Yeas: Moreal, Fortlage, Monteleone, Bredt
 Nays: None
 MOTION CARRIED**

Chairman Moreal stated that they could call him anytime.

6107 Elmwood Avenue, Jim & Kim Romanchik – Homeowner Jim Romanchik was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. There were no neighbors present. The Chairman asked if all the neighbors were notified.

The Secretary stated that all the neighbors had been notified.
The Chairman stated that he sees that one neighbor has signed off.

Mr. Romanchik stated it was two neighbors actually, on the east and west sides. He stated that they were the ones probably most affected. He stated that in the rear lot it was all trees.

Chairman Moreal stated that Mr. Romanchik was in front of the Board a couple of years ago.

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Mr. Romanchik stated that it was suggested to him at that time to put up a garage by the Board, and at the time he didn't have the funds to do it. He stated that he had been able to save some money and has the funds.

He stated that two things actually happened. He stated that his father-in-law, his wife died in November, and he recently had to move in with them. He stated that his father-in-law lived in Indiana, and at 92 years old, the best place for him was to come here and live. He stated that they were not only adding the garage but adding onto the house to accommodate him.

He stated that because they were adding onto the house, it will be a little taller in the back, and it will match the garage roof. He stated that they had an architect, and Butch Bilinovic will be the builder. He stated that they both came over and looked at the lot and looked at what they wanted to do. He stated that they came up with the plan, and in thoughts of the neighbors and everything else, on the right of the garage door will be where the driveway will be for the RV. He stated that it was the distance and length of the RV so they could park in there, and his father-in-law's car and get everything in there nice and neat.

Mr. Romanchik stated that they also showed the plans to Norm Casini and Mike Gero just to get an idea before they appeared before the Zoning Board. He stated that they wanted to make sure everybody saw what they were planning on doing. He stated that it would be in the rear of the house. At the front view you really wouldn't see anything. They were going to put brick along the front to match the rest of the house. He stated that on the sides they plan on doing siding. He stated that on the front there will be one garage door, and on the other two sides facing the west of the lot, there will two garage doors that they would put in. He stated that was not part of the variance, but the variance would be for the east side, and that was in order to get the garage in, they were asking for that. He stated that his neighbor, Cheryl Kunevicious, was most affected by that, and she had no problem with what they were doing. He stated that it would look a lot better than what they had now.

Chairman Moreal asked if the shed was coming down in the back.

Mr. Romanchik stated that it would come down. He stated that he couldn't wait for that shed to come down, and everything behind there will all change. He stated it would be all grass. He stated that it didn't quite go to their lot, but from the back of it and from the side, the side that faces east, there will be arborvitaes that go around the back and meet up with the arborvitaes that they have. He stated that they do like arborvitaes, and their neighbors love them too.

Chairman Moreal stated that it was not in front of the Board, but why the height difference.

Mr. Romanchik stated that it was to get the RV in there.

Chairman Moreal stated that the height of the garage was higher than the house.

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Mr. Romanchik stated that they wanted to get on top, and that could be changed. He stated that in order to service the RV, that was why they did it.

The Chairman stated that he sees a 12 foot wide door.

Mr. Romanchik stated that RVs are 10 foot so it would give them room on either side.

Building Official Gero stated that he was looking at the elevation right now, and the door would be 12 foot wide. He asked how tall would it be. He stated that it looked like it was about 14 foot.

Mr. Romanchik stated it was 14 foot.

Building Official Gero asked Mr. Romanchik why he would need 14 foot.

Mr. Romanchik stated that he didn't know that he would need 14 foot. He stated that was what the architect drew in there. He stated that he could go with a 12 foot door. He stated that it would be really close to get it in there with the air conditioning unit on the top.

The Building Official stated that he was just going to throw out that Mr. Romanchik will need to go before the ABR. He stated that ABR would look at that door and probably want a door that would be more than just a white panel, maybe something ornamental. He stated that in addition to that, on that wall of vinyl, something would need to be done with the wall of vinyl. He stated that he was just giving Mr. Romanchik a heads-up on that. Something to break it up would be needed like windows.

Mr. Romanchik stated that he didn't know why they weren't drawn in, but the windows that were going to be on that side would be transom windows.

Building Official Gero stated that he was just letting Mr. Romanchik know that as a rule ABR would not approve, or has not approved a wall of vinyl to that extent.

Mr. Romanchik stated that there were a few things that he didn't like on how he drew it, but this was just to go for the variances.

The Building Official stated that he just wanted to mention those things while he was before the Board.

The Chairman asked Mr. Romanchik if he was changing the garage door on the house.

Mr. Romanchik replied no. He stated that the garage was going to stay there.

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The Chairman asked if Mr. Romanchik could match the existing door.

Mr. Romanchik stated that would make sense. He stated that they were trying to make it look nice.

The Chairman stated that he would like to see that.

Mr. Bredt asked Mr. Romanchik how close to the property line was the neighbor.

Mr. Romanchik stated that they have possibly 25 feet. He stated that his original house where it sits was maybe 25 feet from his property line. He stated that there was a good distance between the two houses. He stated that the neighbor has a fence in the back, and it adds to her privacy as well. She has a deck out there as well. He stated that they like to enjoy their backyard as well. He stated that he didn't know how else to position the garage where it would not eat up their yard as well. He stated that when you go to sell your property, whoever would want to buy it, they would want to make it look nice. He stated that in that whole area, all the houses look pretty nice.

The Chairman stated that it was nice that Mr. Romanchik was finally doing that.

Mr. Romanchik stated that it took them a little while to get there.

The Chairman stated that the Board worked with him. He stated that the ARB would like to see the garage door match the house garage door.

Mr. Romanchik replied absolutely. He stated that Butch Bilinovic was going to build everything, and he will know how the City would want this built. He stated that this was as basic as it would get. He stated that they will do that.

Mrs. Fortlage stated that perhaps the motion should be made contingent upon the other building being removed.

Mr. Romanchik agreed.

The Chairman asked if that was a motion.

Mrs. Fortlage stated that it could be. She asked the Building Official if the height would need a variance.

Building Official Gero stated that the height would not need a variance because it would be attached. He stated that it would not come into play because he would not be exceeding the 35 foot limit.

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Chairman Moreal stated that he was 13 feet into the rear setback of 40 feet, so he would be 27 feet.

Mrs. Fortlage stated that it was the opposite.

The Chairman stated that the applicant would have to be 40 feet by rights.

Building Official Gero stated that he was leaving 13 feet. It would be 5'3" on one side, and 13'1" on the back side. He stated that would be more than 50% on both of those.

The Chairman stated that shed would definitely have to go.

Mr. Romanchik agreed.

Several people began speaking at once.

The Chairman asked who was behind Mr. Romanchik.

Mr. Romanchik stated it was Lauren Brown, and her kids are all grown, and she is never there. He stated that he didn't ask her because she wouldn't see it anyway. She had all the pine trees and everything else. He stated that she told him she liked his arborvitaes because it gave her super privacy. He stated that this would add to the privacy for her yard.

A motion was made by Carol Fortlage, seconded by Pasquale Monteleone, to approve the variances requested, contingent upon removal of the shed and the matching of the two garage doors.

**ROLL CALL: Yeas: Fortlage, Monteleone, Bredt, Moreal
 Nays: None
 MOTION CARRIED**

7616 Hemlock Road, Jeffrey McKinley – No one was in attendance with regard to this matter, and there was an incomplete application, so there will be no action taken.

There being no further business, the August 18, 2022 meeting of the Board of Zoning Appeals was adjourned at 6:47 p.m.

Chairman Mark Moreal

Debi Beal, Secretary
Minutes Unapproved at Time of Release 08/22/22