

**WESTLAKE BOARD OF ZONING APPEALS  
MINUTES OF THE REGULAR MEETING  
MAY 30, 2006**

Meeting was called to order at 7:30 P.M. by Chairman Edmister.

PRESENT: Board Members Richard Edmister, John DesForges Jeff  
Neverman, Scott Fatzinger

ABSENT: Jim Mayer

ALSO PRESENT: Law Director John Wheeler and Clerk of Commissions Nicolette  
A. Sackman

Chairman Edmister explained the Sunshine Law and the procedures of the Board of Zoning Appeals.

**SELECTED CORRESPONDENCE**

**Calendar 2006-09 Hussein**

- Letter dated received May 25, 2006 from Tony DiBenedetto property owner to east – opposed to request
- Letter dated received May 30, 2006 from Ronald & Lucia McIntyre property owner PP# 216 31 025 Hilliard Blvd. – opposed to request

**Calendar 2006-11 McDonald's**

- Letter dated received May 30, 2006 from Jeffrey Hartman property owner of Westbay Plaza – in favor of request

**CALENDARS**

**Calendar 2006-07**

**Applicant: Harland Olsen**

**Premises: 26327 Hilliard Blvd., PP# 213 13 022**

**Requesting to construct a new fence in the front yard of his home that will be 48” high and to within 25’ of the public right of way at variance with 1211.04(b)(1) which limits the height of fences in the front yard to 30” and a 35’ setback for fences on corner lots; an 18” height variance and a 10’ setback variance.**

Mr. Harlen Olsen, owner, and Mr. Bill Ramsey, Elyria Fence, duly sworn in by Chairman Edmister, explained the request is to extend the line of an existing fence on the east side of the property north 90’ into the front yard. The fence will be 25’ off the Canterbury Road sidewalk. Mr. Olsen explained that having a corner lot, which is elongated at the corner, results in many people cutting through his yard daily. Children ride their bikes through wearing a path in his front yard and look into the windows of his home. The high school track team runs through his yard, as do pedestrians. He expressed that a 30” fence will not prevent people from coming through his yard, therefore he is requesting a

variance for a 48" fence. Mr. Olsen advised that he obtained a permit for the new section of fence along the east side of his house, which is located 25' off the right-of-way, and the request is for the extension.

Discussion ensued that his corner lot is no different than any other corner lot in the city and unfortunately people cut through corner lots. It was suggested to use bushes or other landscape material as screening. The need for 10' setback was questioned because a permit was granted for the existing fence. Ms. Sackman advised when the building department sent the variance request to her; the planning department reviewed the request determining that the fence on Canterbury has to be set 35' off the right-of-way not 25' so the 10' variance requested was added. She advised that Mr. Krause, assistant planning director and Mr. Konys, building inspector discussed the variance request at great length and it was determined that a 10' setback variance is necessary.

Mr. Jim Connole, Councilman Ward 2 commented that the neighbor to the east, across the street from Canterbury, has a 6' fence located 5' from the sidewalk. He advised that a path does get worn into the yard from bikes and people cutting through the lot. Corner yards are unique as is each separate variance request. Mr. Olsen should have the use of his yard and to prevent trespassers. Mr. Connole spoke to the police department, who recommended this fence be put in the yard and the building department issued a permit for the fence to be 25' off the right-of-way. Chairman Edmister noted that the fence across the street was installed before the code was changed and he believed that fence was one of the reasons the code was changed.

Mr. Ed Ptacek of 26376 Hilliard Blvd. expressed the following: everyone in Westlake has the same problem; the requested fence will not look good; agreed that bushes could be put in to prevent cut through; questioned how the 6' wood fence on the west side of Mr. Olsen's house got put up since only 30" height is allowed in the front yard, and it may not be 35' off the road. It was noted that the 6' fence is on the building line (47' from the right-of-way) so it is not in the front yard and permitted.

The Board made the following Findings of Facts:

- 1) applicant's property is located on Hilliard Blvd.;
- 2) applicant wishes to construct a fence in the front yard 48" high and 25' from the right-of-way;
- 3) code only permits a 30" high fence setback 35' from the right-of-way in a front yard;
- 4) applicant states that his hardship is that he is on the corner of Canterbury and Hilliard and that people cut through his front yard and look into his windows;
- 5) applicant stated that his hardship is that a 30" fence would not prevent people from cutting through his yard;
- 6) applicant stated that he obtained a permit for a new section of fence along the east side of his house 25' from the right-of-way and this request is for an extension;
- 7) applicant states that a permit was granted by the building department for the location of fence 25' off the right-of-way;

- 8) the Board finds that applicant has not presented a practical difficulty or unnecessary hardship that his lot is no more unique than other corner lots within the city of Westlake, the granting of the variance would not be beneficial to the city or neighborhood, the granting of the variance would not be in keeping with the spirit, letter and intent of the codes of the city of Westlake.

**Motion:** Mr. DesForges moved, seconded by Mr. Fatzinger to approve a variance as requested.

ROLL CALL:

Yeas: None

Nays: Neverman, Fatzinger, DesForges, Edmister, motion failed

### **Calendar 2006-08**

**Applicant: John Slater**

**Premises: 1525 Marview Drive, PP# 213 11 068**

**Requesting to construct an addition onto their home with a 5' setback off their property line, a 15' total side yard setback, and 15' between dwelling units. At variance with 1211.12(b)(3) which requires the total sum of the two sides yards to be a minimum of 25', the side yard setback to be a minimum of 15', and 25' between dwelling units; requesting the following variances: 10' total side yard, 10' side yard, and 10' between dwellings.**

Mr. Slater, duly sworn in by Chairman Edmister, explained he is creating an addition to his house and garage. The existing garage is located 3' off the property line (5' – according to the county tax map, the property is 75' wide, not 73' as Mr. Slater presented) and was constructed in 1961. He is planning to extend the garage an additional 7' to the rear, which will follow the same setback line as the existing garage. He expressed that it made more sense to follow the same building line rather than create an odd shaped building. Mr. Slater advised that currently his garage is a detached garage and he will be creating an addition to his home which will attach the garage to the house.

Members of the board expressed that this is an older lot where the setbacks are smaller than the setbacks of the current code. The addition to the garage follows the same setbacks line that has been in place for years and it does not change the character of the neighborhood. It was noted that since the garage will now be attached to living space, it should be fire rated according the building codes. Mr. Slater did not have a problem with that.

The Board made the following Findings of Facts:

- 1) applicant's property is located on Marview Drive;
- 2) applicant requests to construct an addition to their home that would have a 5' setback off the property line with a total setback of 15' and 15' between dwellings;
- 3) code requires the total sum of the two side yards to be a minimum of 25'; a side yard setback minimum of 15' and a 25' minimum setback between

- dwelling units;
- 4) applicant states that he is planning to place an addition to his home and garage, current garage is 5' off the property line; he is planning to extend the garage an additional 7' to the rear along the same setback line as the existing garage; the current garage and home were built in 1961;
  - 5) the applicant's lot is 73' wide;
  - 6) Board noted the addition to the garage follows the same setback line that have been in place for over 40 years;
  - 7) The Board finds that applicant has presented a practical difficulty or unnecessary hardship due to the narrowness of his lot; the variance would not create a situation any different than the current situation as far as setbacks are concerned; that the granting of the variance would not be detrimental to the neighborhood and would be in keeping with the spirit, letter and intent of the codes of the city of Westlake.

**Motion:** Mr. Neverman moved, seconded by Mr. Fatzinger to approve a variance as requested with the condition that fire code ratings for an attached garage are met.

ROLL CALL:

Yeas: Neverman, Fatzinger, DesForges, Edmister

Nays: None, motion carried

### **Calendar 2006-09**

**Applicant: Dr. Azmat Hussein**

**Premises: 28877 Hilliard Blvd., PP# 216 31 005**

**Requesting to construct an entrance feature which will be 68' wide and have four 8' high pillars that will be 3' wide with a gate which will be 11' at its finial top and an average height of 6'. The entrance feature will visually and physically enclose the front yard. At variance with 1211.33 which restricts entrance features to 10% of the lot width, average height of 30" inches except for posts, lampposts which may be 6' high and the total width of all columns not to exceed 4'; a 49' width variance, a 2' column height variance, an 8' column width variance; an 8'6" height variance on the gate, a variance to the entry feature to visually and physically enclose the front yard.**

Mr. Steve Schill, duly sworn in by Chairman Edmister, explained previously the applicant presented a request for an entry feature which had been denied. Since that time revisions have been made and Mr. Schill reviewed the drawings of the fence and entry feature proposed. He expressed that the code does not represent the scale of all homes. He showed a drawing of a 2,800 sq. ft. house with a 30" fence and Dr. Hussein's 28,000 sq. ft. house with a 30" fence. Since the original request the landscape features have been stepped back and the use of 30" wrought iron fence on a landscape mound. This provides an open and airy feel rather than the solid fence previously presented. There are columns with light posts to break up the wrought iron –all of which is permitted by code. The variance request is for the entry gate, which is 11' at its upper most point, and adjacent entry feature columns. As proposed the feature is in scale to the house and a 30" height limitation is too small for the house and looks out of place.

It was reiterated that only the entry feature requires variances and the surround fence and landscape mounds are permitted and will be installed. The members of the board expressed the entry feature is much larger than anything else that exists in Westlake and does not comply with the requirements of the code. This feature will not fit into the character of the community and surrounding neighborhood. Mr. Schill showed two photos: two (7') columns on Royal Forest, and a decorative gated fence on Balmoral Way (8') 50' off the right-of-way. Members expressed they did not favor the variance requests.

Mr. Kevin Covell of 2692 West Avalon expressed the following: if these variances are granted, what will the eventual owner's of the future home on the vacant lot to the east expect to be allowed to have –a similar feature; if other properties will be allowed to have such large structures; and what is proposed does not blend in to the surrounding area or other homes in Westlake.

Mr. Tony DiBenedetto property owner of the vacant lot to the east expressed the following: he was opposed to the previous request and assumed this request would be the same so he submitted a letter in opposition of the request –since that time he has reviewed the proposal and is now in favor of the request since it is a lower fence one can see through; the previous fence looked like a fortress.

Mr. Dan Owens of 29120 Hilliard Blvd. expressed the following: he is opposed to the request; the ordinances are in place for a reason and they should be followed.

Mrs. Florence Covell of 2692 West Avalon expressed the following: the house is not a nice looking house, its offensive and obtrusive; this type of house and entry feature do not belong on Hilliard Blvd.; the request is not in line with the character of the city; an 11' gate is huge and does not blend in with the community; the other features that Mr. Schill showed photos of are nothing like what is being proposed nor does what is being proposed compare to anything in Westlake; the proposal does not enhance the neighborhood.

Mr. Pete Kanepa of 28880 Hilliard Blvd. questioned how bright the light on the lamp posts will be because he is concerned with glare and brightness. Mr. Schill advised they are low wattage lights which are permitted; only the gate and entry feature are being considered tonight.

The Board made the following Findings of Facts:

- 1) applicant's property is located on Hilliard Blvd.;
- 2) applicant wishes to construct an entrance feature 68' long with four 8' high pillars each being 3' in width with a gate being 11' in height at its top with an average height of 6';
- 3) code restricts the entry feature to being within 10% of the lot width with an average height of 30" except for lamp posts which can be 6' in height and a total width of all columns not to exceed 4';

- 4) therefore applicant is requesting a 49' entry feature width variance, a 2' column height variance, an 8' column width variance; an 8'6" height variance on the gate;
- 5) applicant states that this is an estate sized lot with a house area of 28,000 sq. ft.;
- 6) applicant stated that the hardship is that the applicant is entitled to landscape and architectural features, that what is permitted by the code would be out of scale in comparison to the structure and that what it being requested would be appropriate for this house and lot;
- 7) Board finds that applicant has not presented a practical difficulty or unnecessary hardship, that there is nothing unique about this property as to other estate sized lots, the requested variances are far and excessive of what is permitted by code, the granting of the variance would be detrimental to the neighborhood and would not be in keeping with the spirit, letter and intent of the codes of the city of Westlake.

**Motion:** Mr. Neverman moved, seconded by Mr. Fatzinger to approve a variance as requested.

ROLL CALL:

Yeas: None

Nays: Neverman, Fatzinger, DesForges, Edmister, motion failed

### **Calendar 2006-10**

**Applicant: Phillip Cox**

**Premises: 2568 North Glenn Dr., PP# 216 32 060**

**Requesting to construct a new garage on their property 5'6" off their property line and 17' from the rear of their house at variance with 1211.04 (a) (2) which requires that garages shall be located in the rear yard and a minimum of 10' from the rear and side lot line and at variance with 1211.20 which requires a minimum of 20' distance from main buildings to garages; a 4'6" side yard variance and a 3' variance for garage to house distance.**

Mr. Cox, duly sworn in by Chairman Edmister, explained he wishes to construct a new garage 5'6" off the property line and 17' from the rear of the house. He explained that if he located the garage according to the codes, hardships would be created. First the aesthetics would not match the surrounding homes, which all have garages set 103' back and 5'6" off the side property line. This location allows more room for handicap accessibility because it is 3' close to the house than code permits. There is a pond in the yard next to the location of the garage which will not allow a side door entrance if located 10' from the side yard. If the garage were moved back 20' from the house the driveway path would cut into the existing rear deck and stairs and necessitate additional concrete for the pad. This location is in the same location as other garages on the street and will keep the same character of the neighborhood.

Members of the board discussed that the lot is an older lot (80' width) and proposed

location is similar to how all the other garages were built. Since that time the code has changed and variance have been granted for older lots. This garage will be consistent with all the other garages on the street.

The Board made the following Findings of Facts:

- 1) applicant's property is located on North Glen Drive;
- 2) applicant is requesting to construct a new garage on his property 5'6" off the property line and 17' from the rear of their home;
- 3) code requires a garage to be 10' from the rear and side lot line and 20' from the main building;
- 4) applicant states that his neighborhood is an older neighborhood with detached garages, that other garages in the neighborhood are already located 5' to 6' off the property line;
- 5) applicant stated that there is a pond in the yard next to the garage which would not allow a side door entrance to the garage if it were located 10' from the side yard;
- 6) applicant further stated that this location allows more room for handicapped accessibility because it is 3' closer to the house than the code permits;
- 7) applicant's property is a narrower width, being only 80' in width;
- 8) applicant states if the garage were moved back 20' from the house would require the reconfiguration of an existing deck would have to be made;
- 9) the Board finds that applicant has presented a practical difficulty or unnecessary hardship due to the width of applicant's yard, location of pond, that the granting of the variance would not be detrimental to the neighborhood and it would be in keeping with the spirit, letter and intent of the codes of the city of Westlake; and that the variance be granted with the condition that fire code ratings for the walls in the garage are met to the codes of the city of Westlake.

**Motion:** Mr. DesForges moved, seconded by Mr. Fatzinger to approve a variance as requested with the condition that fire code ratings for the walls are met.

ROLL CALL:

Yeas: Neverman, DesForges, Edmister

Nays: Fatzinger, motion carried

### **Calendar 2006-11**

#### **Applicant: McDonald's Corporation**

#### **Premises: 30100 Detroit Rd., PP# 211 19 021**

**Proposes to demolish the existing 3,927 sq. ft., 105 seat legal non-conforming drive-thru restaurant building and replace it with a new 4,188 sq. ft., 69 to 75 seat drive-thru restaurant building; an expansion of the building footprint by 261 sq. ft.**

**Existing and proposed lot is .93 acre. Existing front building setback is 54' from the planned 80' right-of-way, the proposed front building setback is 68' from the planned 80' right-of-way. The existing and proposed front parking setback is 4' from the 80' planned right-of-way. Variances from: Section 1225.02(d) which does not allow the restoration of a destroyed non-conforming building; 1225.02(b) which**

**does not allow an addition to a non-conforming building; Section 1216.03(i)(4) which requires as a condition for a conditional use for a drive-thru restaurant, not less than 2.5 acres, a variance of 1.57 acres; Section 1216.03(i)(10) which requires a 50' front parking setback, a variance of 46'; and Section 1216.06 which requires a 100' front building setback, a variance of 32' for front building setback.**

Mr. Dick Schultz, chairman of the Westlake Planning Commission spoke to the board regarding the history of the lot. He advised that when McDonald's was built it was built on appropriately zoned land (General Business) which at that time had not lot size requirements. Over time there were various changes to the code and zoning requirements. Currently the restaurant is a conforming use with a non-conforming building on a non-conforming sized lot. The current proposal by McDonald's is to demolish the existing building and rebuild a new modern facility with a larger footprint than what currently exists. Mr. Schultz advised he did not have an issue with the demolition of the existing facility and rebuilding a new facility, but with increasing the square footage of the building footprint on a non-conforming lot. He did not have an issue with a new facility at the same size as the existing facility. The code requires 2.5 acres for a drive-in facility and the lot is 0.93 acres – a 1.57 acre variance. The proposed plans call for the elimination of the basement storage in the new facility, which is why they are seeking to increase the building footprint. The matter before the board is to determine: if the existing building is demolished, if the restoration of a destroyed non-conforming building is allowed; if an addition to a non-conforming building is allowed; and various setbacks. The current lot cannot be expanded due to development on all sides.

Mr. Gus Mecera, duly sworn in by Chairman Edmister, reviewed the re-development proposal explaining they wish to eliminate the basement storage and reconstruct a new modern facility. Since the facility was constructed in the 1970s there have been many changes to the community's needs and the restaurant business. Having a basement for storage is a hazard to employees and not an efficient way to do business. The current basement is 900 sq. ft., which will be eliminated and the proposed expansion amount to the current square footage is 261 sq. ft. The current facility has 115 seats, which will be reduced to smaller dining area with 69 seats and the restrooms will be expanded to be ADA compliant. All storage will be on one floor. Mr. Mecera expressed it was important to understand how the interior is designed and used because it effects the exterior footprint.

Lengthy discussion ensued. It was noted the currently the existing building can be remodeled without any variance. Mr. Mecera expressed it was important to update the facility with a new facility which not only benefit their needs but the city but getting a nice new facility. Overall he felt it is a win-win situation for all. It was discussed the six parking spaces will be lost. Mr. Mecera advised that is due to the new layout of the ingress and egress and the reduction of one curb cut. Also with less interior dining, there is the need for fewer parking spaces. The parking space code is met but not the setbacks. It was questioned what comparative volume difference is between drive-thru business and dine-in business. Mr. Jason Flint, McDonald's Corporation, did not have

the specific figures for this site but a typical figure is 67%-70% drive-in business. It was not understood by some members of the board why if the dining area is being reduced by 46 seats that there was still the need to increase the overall building footprint. Mr. Mecera again reviewed the interior space and its use; the seats and tables are larger. Chairman Edmister advised that the planning commission reviews the building aesthetics and the matter before BZA is the footprint expansion. Mr. Mecera felt the interior layout played an important role in why there is the need to increase the footprint, such as loss of the basement and the reallocating of storage space.

Mr. Schultz expressed the variance request is complicated and did not think all of the variances were necessary. He did not see the need for the following variances: Section 1216.03(i)(4) which requires as a condition for a conditional use for a drive-thru restaurant, not less than 2.5 acres, a variance of 1.57 acres; Section 1216.03(i)(10) which requires a 50' front parking setback, a variance of 46'; and Section 1216.06 which requires a 100' front building setback, a variance of 32' for front building setback. His concern was that if variances were granted to the property, for a use that requires a conditional use permit, they would make a non-conforming lot conforming. Discussion ensued on what variances were necessary and it was noted that the planning department (Mr. Parry, director and Mr. Krause, assistant director) reviewed the proposal and determined what variances were necessary. It was suggested to vote on if the existing building is demolished, if the restoration of a destroyed non-conforming building is allowed; if an addition to a non-conforming building is allowed; and to table the various building and parking setbacks because planning commission can deal with the setbacks.

The general consensus of the board majority was that they were in favor of allowing the restoration of a destroyed non-conforming building. An item mentioned was that the lot is too small for the facility –it was compared to attempting to fit a square peg into a round hole. If this were a vacant lot, there is no way this use/building would be approved on a small lot. It was noted that McDonalds has been there for 30 years and the city changed the codes requiring the lot to be larger.

As for the expansion of the footprint, the board majority was not in favor. It was noted that the use has been on this site for 30 years and has been successful. An additional 261 sq. ft. seemed minimal as it would only create approximately a 9' expansion to the side of the building. The reconstruction of the facility will add value to the community and McDonald's has been on the site long enough to know what works.

The Board made the following Findings of Facts:

- 1) applicant's property is located on Detroit Road;
- 2) applicant wishes to demolish an existing 3,927 sq. ft. legal non-conforming drive-thru restaurant and replace it with a 4,188 sq. ft. drive-thru restaurant;
- 3) applicant requests variances from code §1225.02(d) which does not allow restoration of a destroyed non-conforming building, §1225.02(b) which does not allow an addition to a non-conforming building, §1216.03(i)(4) which requires as a condition for a conditional use for a drive-thru restaurant, not less than 2.5 acres, §1216.03(i)(10) which requires a 50' front parking

- setback, and §1216.06 which requires a 100' front building setback;
- 4) applicant's current lot is 0.93 acres;
  - 5) board noted that this building was built in accordance to the codes at the time;
  - 6) applicant stated that their hardship is that the codes changed in the interim;
  - 7) applicant states they wish to increase the size of the footprint by 261 sq. ft. due to the size of the basement space that is being eliminated in the new plans;
  - 8) applicant noted that the current facility is 115 seats and will be reduced to 69 seats, expand the restrooms to be ADA compliant;
  - 9) the Board finds that applicant has presented a practical difficulty or unnecessary hardship due the change of the codes since the time that the original building was constructed, that the granting of the variance to allow the restoration of a destroyed non-conforming building would not be detrimental to the neighborhood and would be in keeping with the spirit, letter and intent of the codes of the city of Westlake;
  - 10) the Board finds that applicant has not presented a practical difficulty or unnecessary hardship regarding the expansion of the building by 261 sq. ft., that the granting of the variance would be detrimental to the neighborhood and would not be in keeping with the spirit, letter and intent of the codes of the city of Westlake;
  - 11) the board also tabled the variance request to §1216.03(i)(4), §1216.03(i)(10) and §1216.06.

**Motion:** Mr. DesForges moved, seconded by Mr. Neverman to allow the restoration of a destroyed non-conforming building.

ROLL CALL:

Yeas: Neverman, DesForges, Edmister

Nays: Fatzinger, motion carried

**Motion:** Mr. DesForges moved, seconded by Mr. Neverman to allow a 261 sq. ft. addition to a non-conforming building.

ROLL CALL:

Yeas: Edmister

Nays: Neverman, DesForges, Fatzinger, motion failed

**Motion:** Mr. DesForges moved, seconded by Mr. Neverman to table variance requests to: Section 1216.03(i)(4) which requires as a condition for a conditional use for a drive-thru restaurant, not less than 2.5 acres, a variance of 1.57 acres; Section 1216.03(i)(10) which requires a 50' front parking setback, a variance of 46'; and Section 1216.06 which requires a 100' front building setback, a variance of 32' for front building setback.

ROLL CALL:

Yeas: Neverman, DesForges, Edmister, Fatzinger

Nays: None, motion carried

## **Calendar 2006-12**

**Applicant: Darren Barr**

**Premises: 2102 Marshfield Blvd. PP# 211 08 029**

**Requesting to construct a new utility building 6' from his property line at variance with 1211.06(4)(k) which requires the minimum side yard to be 15'; a 9' side yard variance.**

Mr. Darren Barr, duly sworn in by Chairman Edmister, explained his lot is 100' x 660', which is a narrow and long lot. There is an existing shed, which was there when he purchased his home, on the lot line. His neighbor's shed is adjacent to his shed. He wishes to remove the existing shed and construct a utility building 6' off the side lot line. If he were to place the utility building 15' off the property line he would have to construct the building along a grove of mature maple trees. Doing this would result in damage to the tree's root system. His building will be maybe 10' from his neighbor's shed.

Discussion ensued that the applicant's lot is narrow and deep. The proposed location is a better location due to not being visible.

The Board made the following Findings of Facts:

- 1) applicant's property is located on Marshfield Blvd.;
- 2) applicant is requesting a variance to build a utility building 6' from the property line;
- 3) code requires a minimum side yard of 15';
- 4) applicant stated his lot is 100' x 660';
- 5) applicant stated there is an existing shed which was present when he purchased the property; such existing shed is on the property line and is adjacent to his neighbor's shed;
- 6) applicant states that he wishes to move his existing shed and construct a new shed 6' off the property line;
- 7) applicant stated that his practical difficulty and unnecessary hardship would be if he built the shed 15' off the property line he would have to construct it along a grove of mature Maple trees, which would damage the trees' root system and could damage the trees themselves;
- 8) the applicant noted that the building would be approximately 10' from his neighbor's shed;
- 9) applicant stated that the proposed location would not be visible from the street;
- 10) the Board finds that applicant has presented a practical difficulty or unnecessary hardship due to the grove of trees in applicant's yard, that the granting of the variance would not be detrimental to the neighborhood, that the shed would not be seen from the street, granting of the variance would be in keeping with the spirit, letter and intent of the codes of the city of Westlake.

**Motion:** Mr. Fatzinger moved, seconded by Mr. DesForges to approve a variance as requested.

**ROLL CALL:**

Yeas: Neverman, Fatzinger, DesForges, Edmister

Nays: None, motion carried

**Calendar: 2006-13**

**Applicant: James Rader**

**Premises: 26367 Hilliard Blvd. PP# 213 13 023**

**Requesting to construct a fence in the front yard of her home that will be 72" high at variance with 1211.04(b)(1) which limits the height of fences in the front yard to 30"; a 42" height variance**

Mrs. Maggie Rader, duly sworn in by Chairman Edmister, explained that her neighbor's home to the east is located 20' from Hilliard Blvd. and her home is located 150' off Hilliard Blvd. She is seeking to construct a 6' fence 35' off Hilliard along her side property line. She had received a permit for the fence but during construction a different inspector came out and advised the fence is considered to be in her front yard so it was not permitted at the 6' height and only a height of 30" is permitted. Mrs. Rader advised that her neighbor to the west is in favor of the fence and advised she could put it on his property because it would be permitted there because the side property line is in his rear yard. The fence is a white vinyl solid post fence. Mrs. Rader advised the neighbor has two dogs which frequently rush them and their visitors, which can be frightening. There is an invisible fence, but occasionally the dogs have crossed the invisible fence.

Discussion ensued that if the neighbor were to install a fence on his property, it would be permitted at 6' because it would be the neighbor's rear yard. Members of the board questioned if the parked trailer (camper) in the neighbor's yard was allowed to be parked in the yard. Chairman Edmister noted that he did not think that trailers or boats are allowed to be parked in yards. He directed the clerk to contact the property maintenance officer regarding the issue. Review of the property lines and house placement was discussed. Mrs. Rader advised that her lot is deep and near the intersection of Hilliard Blvd. and Canterbury. The east her property abuts 26345 Hilliard Blvd., 1984 Canterbury Road and 2000 Canterbury Road –all of which are permitted 6' fences along her property line. The difference is that her house sits farther back on the lot than the neighbor so the fence in the proposed location is her front yard. Some of the board was in favor of the request since the neighbor can have a 6' fence on their side of the property line, while another member of the board felt the difference was that the neighbor could remove a fence in his yard if it were no longer desired while he could not remove this fence.

Mr. George Scherma 26393 Hilliard Blvd. expressed the following: that 6' fences are permitted in both the side yard and rear yard according to the city fence brochure; he is distressed that the city issues permits in error and/or revokes them after being issued; Mrs. Rader has made a large investment in a fence based on a permit being granted; there seem to be different opinions and standards in the city; those who make these permit errors should be disciplined; the fence proposed will be a nice addition; and he prefers to see the nice fence rather than the back of a neighbor's house and rear yard.

Mr. John Vergalla (address not stated, nor did he sign the attendance list) expressed the following: that it is interesting that the code allows a 6' fence on the neighbor's property

to the front of the Rader's home which sets further back on the lot than the neighbor; the codes were written to assure houses have similar setbacks, although it was probably anticipated that house would have similar front setbacks; at the opening of the meeting it was announced that the board is to deal with unique properties and due the layout of the Rader's home on their property and the layout of surrounding homes/properties this seems to be a very unique situation since the fence will be behind the neighbor's home.

Mr. Ed Ptacek of 26376 Hilliard Blvd. expressed the following: the code states that a 6' fence is not permitted in a front yard; there are similar lots in Westlake; a solution would be to put a 6' fence up to the end of the neighbor's house and then grade the fence down to code along the street; suggested that variances should be granted before permits are issued.

The Board made the following Findings of Facts:

- 1) applicant's property is located on Hilliard Blvd.;
- 2) applicant wishes to construct a fence in the front yard 72" high;
- 3) applicant states that her house is located on a very long and narrow lot and the house sits 150' back from Hilliard;
- 4) applicant states that the next door neighbor is located 20' from the Hilliard Blvd. right-of-way;
- 5) applicant wishes to construct a fence along the property line to 35' from Hilliard;
- 6) the fence would be in applicant's front yard but in the neighbor's rear yard;
- 7) board noted that the next door neighborhood could construct this fence in accordance with code and remove it, however if this applicant constructed the fence the neighborhood could not remove the fence because it is not on their property;
- 8) the Board finds that applicant has not presented a practical difficulty or unnecessary hardship, that this proposed fence would be in applicant's front yard, the granting of the variance would be detrimental to the code and would not be in keeping with the spirit, letter and intent of the codes of the city of Westlake.

**Motion:** Mr. Neverman moved, seconded by Mr. Fatzinger to approve a variance as requested.

ROLL CALL:

Yeas: Neverman, DesForges

Nays: Fatzinger, Edmister motion failed

## **APPROVAL OF MINUTES**

March 28, 2006

There not being a quorum of the members present this evening that attended the April 25, 2006 meeting, the minutes will be addressed at the next meeting.

## **FINDINGS OF FACTS**

Calendars: 2006-03 Dickey, 2006-04 Siegmund

Calendars: 2006-05 Martin, 2006-06 Rahman –There not being a quorum of the members present this evening that attended the April 25, 2006 meeting, the findings will be addressed at the next meeting.

**ADJOURNMENT**

Chairman Edmister adjourned the meeting at 10:20 P.M. The next regular meeting is scheduled for June 27, 2006.

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Richard Edmister, Chairman

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Nicolette A. Sackman, CMC  
Clerk of Commissions

Approved: \_\_\_\_\_