

**Item 25-0537: 719 S. Memorial Dr The applicant proposes erect a fence that is six feet tall along the front yard property line. Section 23-44(a)(1)(a) of the Zoning Ordinance limits fences to three feet in the front yard setback**

**Board of Zoning Appeals**  
Mon, May 19, 2025 7:00PM

**Scott Engstrom (BOZ Member) 01:23**

And at this point we would take any public appearances. Now what we're going to do is we're going to have action items following the public appearances. That's where the applicant will have an opportunity to come up and state their case and provide evidence. Before that, if anyone wants to speak on the case who is not a member of the party, they have a chance to do so for public appearances. So that is this section. If we have anyone that was a member of the public who wishes to speak on any items, they can come up and speak now. Not—are you a non-party? Okay, sure. Come up. Okay. Sure. And if you could just state your name for us.

**Lance Shellman (Neighbor of Applicant) 02:02**

[The microphone was not turned on] My name is Lance [...]

**Scott Engstrom (BOZ Member) 02:03**

Okay.

[Somebody says something off microphone.]

**Scott Engstrom (BOZ Member) 02:09**

My apologies.

**Scott Engstrom (BOZ Member) 02:12**

You should be good now.

**Lance Shellman (Neighbor of Applicant) 02:13**

Okay, I'd like to say, in regards to the fence in question, I have lived in the neighborhood for 30 years, and I've lived next door to the house for 30 years. And prior to that—prior to Mike and Jenilee buying the house and fixing it up and tearing down a lot of the old shrubs and fencing that was there, and putting up brand new fencing—because, you know, they were my neighbors for 25 years, and that Dave and Ellen, and Dave kind of had a little bad health and the house kind of—

**Scott Engstrom (BOZ Member) 02:54**

Fell into disrepair, kind of.

**Lance Shellman (Neighbor of Applicant) 02:55**

Exactly, and the bank took it over. And for a while there you had a lot of street people. Their son was living there, and he had a drug habit, and it was like living next door to the Lost Boys. It was not a very good feeling. And, you know, I've had to chase people out of their—the garage, out of the yard. I had somebody breaking in once. Finally, the police came and escorted them all out.

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**Lance Shellman (Neighbor of Applicant) 03:22**

But the fence in question is Memorial is a busy street, and my neighbors have two dogs. They have children. And the fence in question, I think it's—it looks great. It's off the road, and I don't know why anybody would complain about it that saw it, everything before. With that, I'll say I'm all for that fence. It's a busy street, and it's not over six feet. I have a fence, so I don't—I I'm at the busiest intersection, one of them without a stop sign or traffic light, and my vision line is fine. It used to be a lot worse when there were shrubs and trees over hanging, but my sight line is fine. So, I mean, if that's a danger, it's not. I mean, what Appleton can do for zoning is probably the stop sign, put "no parking" where people are parking right up to that stop sign. That's your visibility. So, I don't want to keep you too late, but I'm all for that fence, and I'm I'm—they're great neighbors, and I don't know why anybody would complain about it. So.

**Scott Engstrom (BOZ Member) 04:48**

And having been in that neighborhood for about 30 years, would you say that the fence is consistent with the neighborhood standards in terms—

**Lance Shellman (Neighbor of Applicant) 04:56**

Very much.

**Scott Engstrom (BOZ Member) 04:57**

—of aesthetics and everything? Okay.

**Lance Shellman (Neighbor of Applicant) 04:58**

Yeah. I mean the house they've put a lot into it, and they've really, I mean, it's really a jewel in our neighborhood now. So, I don't want to see the—I don't want to see the fence go away, because I think that's, yeah, it's neat. It's the right size, and it's not even hugging the sidewalk at all. And there's a place right next to the bridge where that's right up against, but I know it's a cul de sac, but you know that's an example of, and that was an exception. So how—any questions you have?

**Scott Engstrom (BOZ Member) 05:42**

We may—if we do get to the action item, and we do have follow up questions we may ask you, but other than that, we should be good and we appreciate your input.

**Lance Shellman (Neighbor of Applicant) 05:50**

I appreciate it. Thank you.

**Scott Engstrom (BOZ Member) 05:51**

Thank you very much. Are there any other public comments at public hearing here? Not hearing any, then we will move to the action items. We only have one action item here. Kurt, would you please read the action item, 25-0537?

**Scott Engstrom (BOZ Member) 06:10**

And the applicant, you can come forward and stand at the podium as well. We'll have the microphone on for you. Okay, and would you please introduce yourself?

**Supervisor Kurt Craanen (Inspections) 06:10**

The applicant proposes to erect a fence that is six feet tall along the front property line, section 23-44a1(a) of the zoning orange limits fences to three feet in height in the front yard setback, which is 25 feet.

**Michael Ehlenbeck (Variance Applicant) 06:47**

I'm Michael Ehlenbeck. I'm the owner. Me and my wife own 719 Memorial Drive.

**Scott Engstrom (BOZ Member) 06:54**

Okay. And we've received your application for a variance, and so this will require for aye votes for an approval. But before we get to that, just want to tell you what we need to establish in order to approve variances, we have—there has to be some sort of hardship. And basically, the applicant can't have created the hardship themselves. And basically, you can't come to that hardship. And it also can't just be financial. So those are just kind of some baselines that we like to give ahead of time so that people understand. But again, it's about proving a hardship. So, with that context, can you tell me a little bit about, you know, the history of you coming to this property, a little bit about the pre-existing fence, and then a little bit about what you're applying for here?

**Michael Ehlenbeck (Variance Applicant) 07:36**

Sure, I guess I do have a written response, but if you want me to just cover those topics first.

**Scott Engstrom (BOZ Member) 07:43**

Sure. Yep.

**Michael Ehlenbeck (Variance Applicant) 07:45**

So, we bought the property after it was in foreclosure. It was in kind of a rundown shape, so we did have a lot of repairs to do. And it's been since '22 that we've owned it.

**Scott Engstrom (BOZ Member) 08:10**

Okay. And when you purchased the home, did it have that prior fence that was referenced?

**Michael Ehlenbeck (Variance Applicant) 08:17**

Yes.

**Scott Engstrom (BOZ Member) 08:17**

Okay. And can you describe that prior fence, kind of the condition and location on the property.

**Michael Ehlenbeck (Variance Applicant) 08:22**

Sure. The fence was made of wood, wood posts. It was rotted in many of the places and falling down in some of the places. There was kind of wire holding it together in some places. And then, yeah, it just encapsulated the whole kind of backyard there.

**Scott Engstrom (BOZ Member) 08:49**

Okay.

**Kelly Sperl (BOZ Member) 08:51**

Was the location of the fence exactly the same?

**Michael Ehlenbeck (Variance Applicant) 08:54**

Very close.

**Kelly Sperl (BOZ Member) 08:56**

And the height of the fence?

**Michael Ehlenbeck (Variance Applicant) 08:58**

Yes.

**Kelly Sperl (BOZ Member) 08:59**

What is the height of it?

**Michael Ehlenbeck (Variance Applicant) 09:01**

Six feet.

**Kelly Sperl (BOZ Member) 09:02**

It is six feet? Okay.

**Scott Engstrom (BOZ Member) 09:07**

And Kurt did this come to us through a complaint or just through general inspections?

**Supervisor Kurt Craanen (Inspections) 09:14**

We actually noticed it—one of our staff persons noticed it months ago—

**Scott Engstrom (BOZ Member) 09:17**

Sure.

**Supervisor Kurt Craanen (Inspections) 09:18**

—and I think, [unclear] called. But then a complaint did come in.

**Scott Engstrom (BOZ Member) 09:21**

Okay.

**Kelly Sperl (BOZ Member) 09:26**

The complaint—can we get some details? Was it a neighbor, direct neighbor? Was it—the reason for the complaint?

**Supervisor Kurt Craanen (Inspections) 09:34**

I think it was a vision obstruction complaint.

**Kelly Sperl (BOZ Member) 09:37**

Okay,

**Supervisor Kurt Craanen (Inspections) 09:39**

I don't think it was a neighbor.

**Scott Engstrom (BOZ Member) 09:40**

Okay.

**Scott Engstrom (BOZ Member) 10:19**

Can you describe a little bit of this foliage and what it looks like. I know that there was the picture that was provided, kind of showing the before and after, but you know that takes a snapshot in time. Can you maybe explain what your experience was with it?

**Michael Ehlenbeck (Variance Applicant) 10:32**

Sure, the overgrown foliage that was on the sidewalk side of the fence took over probably a good quarter to half of the sidewalk when it was fully grown, kind of pushed people out towards the road when walking. You can see it there. As it gets taller, goes closer to the road. And actually the tree that was hanging over the road, it was an ash tree that was kind of dying, and it was—had a semi cut out in it from every time that the semi hit the branches. So it was very close to the road.

**Scott Engstrom (BOZ Member) 11:15**

Sure.

**Kelly Sperl (BOZ Member) 11:19**

And the fence is actually in that overgrown foliage, in that?

**Michael Ehlenbeck (Variance Applicant) 11:24**

Yes.

**Kelly Sperl (BOZ Member) 11:31**

Hey, Kurt, would it be crazy to try and understand if and when that fence was ever permitted?

**Scott Engstrom (BOZ Member) 11:37**

Yeah.

**Kelly Sperl (BOZ Member) 11:41**

I don't know how long it would have been there prior. How far to the north is your—on the north end of the fence line, is that on your property line?

**Michael Ehlenbeck (Variance Applicant) 11:56**

Yes.

**Kelly Sperl (BOZ Member) 11:57**

So, it goes all the way to the north end of your property.

**Michael Ehlenbeck (Variance Applicant) 11:59**

Yes.

**Kelly Sperl (BOZ Member) 12:00**

Okay.

**Scott Engstrom (BOZ Member) 12:17**

When you purchased the house, do you remember any description of the fence or, like, how long it had been there or any background on it?

**Michael Ehlenbeck (Variance Applicant) 12:27**

No.

**Scott Engstrom (BOZ Member) 12:27**

Okay.

**Michael Ehlenbeck (Variance Applicant) 12:30**

Like I said, we did purchase it from a bank, which allowed us very little.

**Scott Engstrom (BOZ Member) 12:36**

That's what I figured.

**Michael Ehlenbeck (Variance Applicant) 12:37**

Yeah.

**Supervisor Kurt Craanen (Inspections) 12:42**

Chair. The fence permit was issued in 1991. I can look up more details. Like this doesn't say whole lot, and I don't know if I'll get an image of the permit, the actual permit.

**Scott Engstrom (BOZ Member) 12:55**

Okay. Is there...?

**Karen Cain (BOZ Member) 13:01**

Kurt, no variance was required at that time?

**Supervisor Kurt Craanen (Inspections) 13:06**

I don't think so. Could have been a different code.

**Scott Engstrom (BOZ Member) 13:40**

And we're really concerned about extending an existing non conformity here.

**Supervisor Kurt Craanen (Inspections) 13:51**

Chair?

**Scott Engstrom (BOZ Member) 13:52**

Yep.

**Supervisor Kurt Craanen (Inspections) 13:52**

I have up here the screen of the permit that was issued in 1991, and it does say three feet in the setback, front yard set back of the house.

**Scott Engstrom (BOZ Member) 14:03**

Okay.

**Supervisor Kurt Craanen (Inspections) 14:03**

So, it would have been the same standards. Either it was just not built according to the permit, or a different fence was put in at one time. I don't think setbacks would have changed.

**Scott Engstrom (BOZ Member) 14:15**

Okay. So, the height was just different than what was granted in the permit?

**Supervisor Kurt Craanen (Inspections) 14:21**

That's what I'm looking at. Three feet in the front yard setback is the exact same thing that's the code today.

**Kelly Sperl (BOZ Member) 14:26**

Three feet in height. I drove around the area this afternoon, and in reference to the comment about the, um, vision, the only thing in my mind that would be possible would be the north end, which is why I asked where that fence was located on the north property line, or in relationship to the north property line. And I did not pull in that driveway, but I could see that that, you know, might be, you know, a possibility to where the complaint came from. I—do you have a relationship with those neighbors or?

**Michael Ehlenbeck (Variance Applicant) 15:28**

Yes. We actually talked with them when replacing the fence. We also did request the records of the complaint, and it was not that neighbor.

**Kelly Sperl (BOZ Member) 15:41**

Okay. Because I don't know how far—it's difficult to tell how far off the property line their driveway is, but I think—what is the vision corner? 10 feet or 15 feet?

**Supervisor Kurt Craanen (Inspections) 16:03**

I think it's 15.

**Kelly Sperl (BOZ Member) 16:08**

That's what I thought too, but I wasn't sure.

**Karen Cain (BOZ Member) 16:19**

How far would you say the north side of the fence is from their driveway?

**Kelly Sperl (BOZ Member) 16:27**

10 feet.

**Scott Engstrom (BOZ Member) 16:29**

That's what the vision corner is?

**Kelly Sperl (BOZ Member) 16:30**

Yeah, 20—a vision corner on a private drive is 10 feet.

**Karen Cain (BOZ Member) 16:33**

Oh, thank you.

**Kelly Sperl (BOZ Member) 16:35**

On a street corner, it's 25.

**Scott Engstrom (BOZ Member) 17:02**

Can you tell us a little bit about the existing yard? I know that you had referenced losing about 30% of your yard space. So, can you tell me a little bit—tell us a little bit about some of the limitations of the property itself in terms of just available space and use?

**Michael Ehlenbeck (Variance Applicant) 17:15**

Sure. So, with the way the property is laid out, we have a driveway going up the west side of the property to the garage in the back side of the property. The usable yard space consists of from where the garage ends to the fence, and then north and south from the fence to a little bit before where the house starts.

**Karen Cain (BOZ Member) 18:17**

Is that the elm tree you were talking about—er that ash tree?

**Michael Ehlenbeck (Variance Applicant) 18:21**

Yes, you can see the ash tree there hanging over the road.

**Michael Babbitts (BOZ Member) 18:40**

Think we asked, Kurt, do we know is that 20 feet from the driveway to the north to the...?

**Supervisor Kurt Craanen (Inspections) 18:48**

Property line.

**Michael Babbitts (BOZ Member) 18:49**

Okay.

**Kelly Sperl (BOZ Member) 18:53**

From the property line to the driveway?

**Supervisor Kurt Craanen (Inspections) 18:55**

Yes.

**Scott Engstrom (BOZ Member) 19:25**

It was all that brush and all those trees, everything was removed?

**Michael Ehlenbeck (Variance Applicant) 19:29**

Yes.

**Scott Engstrom (BOZ Member) 19:30**

Okay. You just look at the vision on the before and after. It looks a lot better on the after picture.

**Kelly Sperl (BOZ Member) 19:42**

I agree. My only area concern is that driveway backing out because you don't—you don't meet the vision corner. Although if that's 24 feet from the fence to that driveway, it's not gra—it doesn't appear that. I mean, it appears to be a lot less than that. But, yeah, I mean, if that's what it is, but if somebody's backing a car out there, the tail end of that car has got to get quite a ways out before a driver can see.

**Scott Engstrom (BOZ Member) 20:15**

And I assume you're another property owner, could you just state your name?

**Jenilee Ehlenbeck (Variance Applicant) 20:18**

No, I'm his wife.



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**Scott Engstrom (BOZ Member)** 20:19

Okay.

**Jenilee Ehlenbeck (Variance Applicant)** 20:20

Yeah, my name is Jenilee Ehlenbeck. So just to interject what you're saying, we do have that relationship with those neighbors. And they actually never back out of their driveway. As you can see their driveway—they always back into that spot and then come out forward.

**Scott Engstrom (BOZ Member)** 20:39

So, what our concern is, as is that whatever we grant here runs with the land. So, in 85 years, you—if and when you guys have sold it and the neighbors have sold it, even if they don't back out, we have to be concerned about what the next property owner. So again, not discounting what you're saying. Just explaining that what we grant here would have to run with the land, so we have to be concerned about future properties and uses.

**Jenilee Ehlenbeck (Variance Applicant)** 21:07

Okay.

**Kelly Sperl (BOZ Member)** 21:10

Is that about five feet from the back sidewalk to the fence?

**Supervisor Kurt Craanen (Inspections)** 21:17

This distance here?

**Kelly Sperl (BOZ Member)** 21:18

Yeah.

**Michael Ehlenbeck (Variance Applicant)** 21:20

About three feet.

**Kelly Sperl (BOZ Member)** 21:24

That's it?

**Michael Ehlenbeck (Variance Applicant)** 21:26

Yeah, from the sidewalk to the fence?

**Kelly Sperl (BOZ Member)** 21:29

Yes.

**Michael Babbitts (BOZ Member)** 21:33

I'm less worried, Kelly, about people not seeing back up, just direction of traffic. Everyone would have clear vision coming from the direction. You got two lanes of traffic before you're in oncoming right? If you—if you were to back out of that driveway and go, what was that? South?

**Karen Cain (BOZ Member)** 21:51

On the other side of the street?

**Kelly Sperl (BOZ Member)** 21:57

You're concerned about cars coming from the north?

**Michael Babbitts (BOZ Member)** 21:59

No, I'm saying I'm not.

**Kelly Sperl (BOZ Member)** 22:00

Oh.

**Michael Babbitts (BOZ Member)** 22:01

You were saying, with the there's a vision triangle concern if you're backing out, but in truth, the fence is on the right side of the driveway—

**Kelly Sperl (BOZ Member)** 22:07

Yeah.

**Michael Babbitts (BOZ Member)** 22:08

—where it wouldn't impede that.

**Kelly Sperl (BOZ Member)** 22:11

And really, they more than meet the vision triangle, because it's from the driveway, not from the property line.

**Michael Babbitts (BOZ Member)** 22:17

Yeah. That's more than a driver could be moved.

**Kelly Sperl (BOZ Member)** 22:22

Right, but at that point in time, they'd have to have a permit to do that, and right now is what we're looking at it's—vision triangle wise, it appears to more than meet the 23-50.

**Michael Babbitts (BOZ Member)** 22:55

Could you could you talk a little more about why a three-foot fence wouldn't work there?

**Michael Ehlenbeck (Variance Applicant)** 23:00

Sure. It is mainly to do with safety. Given the surrounding area, a three-foot fence wouldn't appropriately, I guess, provide safety for anybody using the backyard from, I guess, we reference the not only crime rate in the area but also, like, sex offenders in the area's more than a typical neighborhood.

**Kelly Sperl (BOZ Member)** 23:48

That area is a busy street too.

**Michael Babbitts (BOZ Member)** 23:51

Yes, that's where mine goes. If the fence were lower, would you have any other concerns, perhaps due to traffic, like headlights at night or anything like that?

**Michael Ehlenbeck (Variance Applicant)** 25:19

I haven't consi—just for safety reasons, I guess, I didn't consider it three-foot fence. I haven't thought about the headlight issue, but it would allow for lights, especially from trucks, to enter.

**Scott Engstrom (BOZ Member)** 25:41

Have you noticed more noise since taking down the brush and the trees and stuff?

**Michael Ehlenbeck (Variance Applicant)** 25:45

More noise?

**Scott Engstrom (BOZ Member)** 25:46

Yeah.

**Michael Ehlenbeck (Variance Applicant)** 25:47

It's a very noisy road. The noise level is high to begin with, so I can't say that it's gotten better or worse.

**Scott Engstrom (BOZ Member)** 26:01

Would it get louder with a lower fence you went to think?

**Michael Ehlenbeck (Variance Applicant)** 26:05

Yeah, yeah.

**Kelly Sperl (BOZ Member)** 26:09

I would think so too.

**Michael Babbitts (BOZ Member)** 26:14

How—do you have bedrooms situated kind of where they're facing Memorial or facing towards where the camera is. The bedrooms face the backyard, or face the face the street?

**Michael Ehlenbeck (Variance Applicant)** 26:29

We have two bedrooms that face the backyard. One bedroom that faces the other side of the house.

**Scott Engstrom (BOZ Member)** 27:01

Well, one thing I keep going back to is that this is that this is not self-created in the sense that there was a pre-existing fence, a permit that was granted, and then a fence that was built not consistent with that permit, and then there was a transaction where they subsequently purchased it.

**Kelly Sperl (BOZ Member)** 27:29

And for 30 plus years, there wasn't any complaints or issues. And I think some of the overgrowth in the trees and the shrubs probably caused more of a scenario than the projection of the fence. But.

**Scott Engstrom (BOZ Member)** 27:43

Yeah, I mean, I think you just look at that picture and it shows that.

**Karen Cain (BOZ Member)** 27:50

I would also agree that it's not self-induced necessarily, and I know that in the application it was addressed that the crime has affected the family, and that—I don't feel that's a self-induced situation.

**Kelly Sperl (BOZ Member)** 28:08

Only do have—you know, we have some unusual conditions, even though the property is—meets the minimum requirements for the zoning. You know you do have two street frontages and a driveway and a and a garage that have been there for a long time that chew up with that other western portion of the property.

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**Scott Engstrom (BOZ Member)** 28:29

Well, so this is—we're having a good discussion here. Do we have any more questions for the applicant at this point, or do we want to move this to discussion?

**Michael Babbitts (BOZ Member)** 28:38

Is there anything more you'd like to say? I think you said you had a written statement. I don't know if you read that or not.

**Michael Ehlenbeck (Variance Applicant)** 28:42

I do. It just kind of addresses the letter from the staff. A lot of what we've discussed already is in here, but if you want, I can read it.

**Scott Engstrom (BOZ Member)** 28:59

Sure. Go ahead.

**Michael Ehlenbeck (Variance Applicant)** 29:00

Okay. Regarding the general nature of hardship, while we understand that the general neighborhood conditions are not by themselves a basis for variance, we respectfully submit that safety concerns when directly impacting the use of the property do contribute to a legitimate hardship. Our lot is directly adjacent to a high traffic area and located in a part of the city with documented crime and registered sex offenders. This creates a unique security need compared to other nearby residential lots not bordering a main traffic way. Our goal was not simply to shield ourselves from general crime, but to create a secure private space for our family and children, especially given the sidewalk's direct adjacency to the home's only usable yard space.

**Michael Ehlenbeck (Variance Applicant)** 29:54

Regarding personal preference versus hardship, the impact on our usable yard is not a minor inconvenience, not a minor convenience issue. It is a material loss of function. Our home was built in the mid-1800s and is situated in such a way that only one corner of our lot is truly usable for outdoor family space. Losing 30% of that space effectively means losing the ability to use our yard safely and privately. That goes beyond personal preference and directly impacts reasonable use of the property. We are not requesting an increase in property use, only the ability to continue using our yard as it has been used for decades. This is not a request for enhanced value or luxury but for continuity and safety.

**Michael Ehlenbeck (Variance Applicant)** 30:44

Regarding self-created hardship, we acknowledge that a permit was not obtained for this project; however, we would like to clarify a crucial fact, the existing fence was replaced in the same location where it had stood for many decades. At the time, we believe we're performing maintenance and safety repairs, not constructing a new structure. The original fence was deteriorated with rotting posts and collapsed sections. Our intent was to improve safety, visibility, and appearance of the neighborhood, not to evade code. Now we find ourselves penalized for not moving the fence or enlarging it, but preserving what already existed and in doing so, made it more visible by clearing overgrown foliage. The irony is that only after making the area safer and more attractive that it became visible enough for a complaint to be raised.

**Michael Ehlenbeck (Variance Applicant)** 31:36

Regarding lack of unique dimensional limitations, we acknowledge that the lot meets the technical size standards; however, the functional layout of the home and structure, due to its age and positioning, result in constraints not shared by modern lots. The home's placement limits usable yard space to a single corner, which is directly affected by this setback rule. A 20-foot set back effectively renders a significant portion of that usable

space non-viable, especially for a family with children. In this sense, while the property is not topographically unique, its historic layout creates practical and functional limitations not present in neighboring properties.

**Scott Engstrom (BOZ Member)** 32:25

Were you still going?

**Michael Ehlenbeck (Variance Applicant)** 32:27

I guess, in closing, we—I understand the respect—I understand and respect the need for consistency in applying the variance process however, we hope the board can recognize that this is not a case of a property owner seeking to exploit zoning codes or maximize economic gain. Rather, we are longtime residents who improved a deteriorating fence, removed foliage to increase community safety, and now find ourselves unintentionally in conflict with the code.

**Scott Engstrom (BOZ Member)** 32:58

Does the home have any historical designations or anything like that, just given the age?

**Michael Ehlenbeck (Variance Applicant)** 33:03

It is not on the historical list.

**Scott Engstrom (BOZ Member)** 33:08

Sure.

**Michael Ehlenbeck (Variance Applicant)** 33:09

But the history of it is, I guess, somewhat historical to Appleton.

**Scott Engstrom (BOZ Member)** 33:14

That's why I asked, because the age, I mean, that would...

**Michael Ehlenbeck (Variance Applicant)** 33:16

Yeah.

**Michael Babbitts (BOZ Member)** 33:21

Kurt, do you know was Memorial Drive ever widened? I'm guessing yes.

**Supervisor Kurt Craanen (Inspections)** 33:28

At some point, yes.

**Scott Engstrom (BOZ Member)** 33:29

Yeah, it was.

**Michael Babbitts (BOZ Member)** 33:31

Would that have taken some of the yard that did exist? The eminent domain?

**Supervisor Kurt Craanen (Inspections)** 33:37

Possibly.

**Michael Babbitts (BOZ Member)** 33:38

Okay.

**Lance Shellman (Neighbor of Applicant)** 33:47

It was widened. It was widened about 15 years ago. What extent I don't know, but [...]

**Scott Engstrom (BOZ Member)** 33:59

Any other questions? Then I'll entertain a motion for purpose of moving this to discussion.

**Michael Babbitts (BOZ Member)** 34:05

I'll move to approve for the purpose of discussion.

**Kelly Sperl (BOZ Member)** 34:09

I'll second.

**Scott Engstrom (BOZ Member)** 34:10

Moved and seconded. Then we'll move this to discussion. Mr. Babbitts, I know that you made the motion. Did you have any specific comment or thoughts?

**Michael Babbitts (BOZ Member)** 34:20

I think there—there's kind of a myriad of hardship that we're seeing here that taken alone does not constitute hardship, but taken together starts to tell a story. It's telling to me that this fence existed as constructed today or reconstructed today for 30 years without complaint, and it is only after becoming visible that it's cause complaint. I suspect that this was maybe more conforming before Memorial Drive was widened. That widening of the road increases traffic, increases noise, and increases the need for privacy in their backyard, which is technically also a front yard, but that is a hardship of the site that they only have—they only have front yards, essentially.

**Kelly Sperl (BOZ Member)** 35:10

And I think, too, to add to that—I think that's very well stated, and to add to that, the two frontage street frontages, it eliminates or causes a certain area, and the fact that that garage is on the west side and the driveway, and I think creates unique conditions. Like I said, I realize it still meets the minimum as far as area, but...

**Michael Babbitts (BOZ Member)** 35:33

Not by much.

**Kelly Sperl (BOZ Member)** 35:34

Yeah, not by much. And you know, as time evolves, with the street widening and whatnot. You know, that doesn't help the scenario.

**Michael Babbitts (BOZ Member)** 35:47

I would have concern if this were mirrored, and we're creating a blind corner for people to back out to the neighbors that we see adjacent to the fence. But this this does not cause any visibility constraint for the two lanes of traffic on coming that driveway. So, I don't see a unnecessary harm in this fence to that extent.

**Scott Engstrom (BOZ Member)** 36:16

What I consider, like the legal analysis on this, you know, I think Mr. Babbitts' point about maybe one individual hardship not being enough to get over the threshold, but kind of that death by a thousand paper cuts situation where in succession or in tandem, taken together, that they do in whole, constitute a hardship. And I would

agree with that. But I also look at the language of 23-67 A, looking at the purpose of this section, and the general purpose does offer the board, you know, avenue of relief where the strict application just doesn't make sense. The purpose of the variance—quoting from 23-67 A: "the purpose of the variance is to allow relief from the strict application of this zoning ordinance, ordinance as will not be contra—contrary to the public interest, and where owing to special characteristics of the property or use the literal enforcement of this ordinance would result in unnecessary hardship or in a practical difficulty for the property owner." I think we've heard information here from the applicant, where this would be in the public interest. I do think that there are some unique characteristics, even though it is maybe not strictly limited from a dimensional standpoint. But when you look at the age, orientation, and location, as the applicant put it, I think that also constitutes a unique characteristic here to the property.

**Karen Cain (BOZ Member)** 37:45

Chair, if I may, I think it also is meaningful that Mr. Shellman was here to support the neighbors, and also that the complainant—in a way, it's unfortunate that the complainant is not here so that we can't address or hear their concerns as well.

**Scott Engstrom (BOZ Member)** 37:57

Sure. Absolutely. Is there any further discussion at this point? Okay, then I'll take a take a vote again. We need four aye votes. Mr. Babbitts?

**Michael Babbitts (BOZ Member)** 38:11

Aye.

**Scott Engstrom (BOZ Member)** 38:11

Mr. Sperl?

**Kelly Sperl (BOZ Member)** 38:12

Aye.

**Scott Engstrom (BOZ Member)** 38:13

Ms. Cain?

**Karen Cain (BOZ Member)** 38:13

Aye.

**Scott Engstrom (BOZ Member)** 38:14

And I will vote aye as well. So, your variance is granted.

**Michael Ehlenbeck (Variance Applicant)** 38:18

Awesome.

**Scott Engstrom (BOZ Member)** 38:18

Sure.

**Michael Ehlenbeck (Variance Applicant)** 38:18

Thank you for your time.

**Scott Engstrom (BOZ Member)** 38:20

Yeah, you're very welcome and good luck.

**Michael Ehlenbeck (Variance Applicant)** 38:22

Thank you.