

**CITY OF FISHERS  
BOARD OF ZONING APPEALS - FALL CREEK DIVISION  
CITY HALL AUDITORIUM  
MINUTES  
July 29, 2021**

**The Fall Creek Board of Zoning Appeals convened at 6:00 p.m.**

A roll call was taken. Members present: Steve Richards, Joel Fenske, Chris Huck and Rich Bassett. Others present: Rodney Retzner, Megan Schaefer, Robert Becker, James Dolan, Jeff Kucic, Erney Nickou, Alan Townsend.

**Mr. Richards confirmed quorum and called the meeting to order.**

**Public Hearings:**

**a. Case # VA-21-22 Geist Lake Forest CONTINUED FROM JUNE 24, 2021**

Consideration of a Development Standards Variance from Article 6.2. Accessory Structure Standards of the City's Unified Development Ordinance (UDO) to allow for the expansion of an accessory structure. The improvements exceed the scope of the initial variance, 19-V-09F, approved July 23, 2009.

Robert Becker who represents Taso's Toys, LLC and Erney Nikou, Petitioner, both spoke. Upon continuation of the matter, the Board requested additional testimony from various parties. Petitioner acknowledged that they would accept any reasonable condition to get approval of variance request, including demolition and re-building of the lean-to, stated that the adjacent owners knew the status of the Subject Property when they bought the lots next to it, and also reminded the Board of the ongoing litigation between Petitioner and RREF and eluded that opposition to this variance request was simply part of the larger litigation and being used toward settlement. Petitioner gave no additional facts with respect to the variance request. They were not successful in obtaining an agreement and will comply with whatever conditions/restrictions are imposed.

**Mr. Richards opened the meeting to Public Comment. No other residents came forward to speak. Mr. Richards closed the Public Hearing.**

Megan Schaefer, Director of Planning and Zoning, presented an engineering report it received from Matthew D. Holbrook, a structural engineer, that concluded the lean-to was "unsafe for any occupancy over the long term." With this new information, Staff recommended the variance be denied, resulting in the requirement that the lean-to be removed. Staff recommended that if the variance is allowed, it be allowed only with the condition that the lean-to be demolished and rebuilt to code and with proper permitting. RREF also presented the report by Matthew D. Holbrook and reported that it was based, admittedly, on viewing the lean-to from an adjacent property and was paid for by one of the adjacent landowners who, also admittedly, had financial interest in not having the variance allowed.

In Board discussion, it was discussed that the engineering report was initiated by the adjacent remonstrators. There was an expectation that the two parties would get together and mediate - that did not take place. The Attorney for the Petitioner referenced "other litigation". Mr. Richards stated that it is better to remove and rebuild. Mr. Nikou stated that he will comply with the tear down of the lean-to. Vehicles will not be blocked. He thought the City of Fishers would do an inspection. Mr. Bassett noted a missed opportunity. Rodney Retzner recalled that the structure built in 2007 was built prior to a Primary structure. If the vertical structure of the lean-to is torn down, the property will be in compliance.

**Mr. Richards made a Motion to Deny the request, which was seconded by Mr. Fenske. The Motion was denied, 4-0.**

- (1) Findings show that the lean-to portion of accessory structure has been in violation of the UDO for eight (8) years and there are significant concerns with the structural integrity of the structure.
- (2) The use and property value of the area adjacent to the property would be affected adversely if approved.
- (3) Strictly applying the UDO on this Subject Property would require the removal of the lean-to portion of the accessory structure but the main accessory structure would remain. The Petitioner, therefore, will continue to have enjoyment of the Subject Property as allowed under the prior variance and prior to the current violation.

Rodney Retzner confirmed that the lean-to will be removed and the timing will be up to the Building Commissioner, Todd Suchy. If another structure is designed, the petitioner can seek another variance request if significantly different.

As there was no other business, the meeting was adjourned at 6:25 p.m.

Respectfully Submitted by:

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Kay Prange, Recording Secretary