
**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING**

FEBRUARY 3, 2014

The meeting was called to order at 7:00 p.m. Members of the Commission present were: Ms. Harlow, Mr. Havill, Mr. Misrach, Mr. Ruehlmann and Mr. Wolfe.

Also present were: Bryan Snyder - Hamilton County Rural Zoning and Luanne Felter - Symmes Township.

All persons wishing to testify before the Board were sworn.

PUBLIC HEARINGS

MR. WOLFE convened the public hearing for BZA 2013-22 for the property located at 11370 Terwilligers Creek Drive.

MR. SNYDER stated that BZA 2013-22 was continued from the November 2013 meeting. The property owner replaced an old four-foot high privacy fence with a six-foot high privacy fence in the front yard of the home that is located on a double frontage lot without obtaining a zoning permit. The fence runs along and partially into the right-of-way on Enyart Road. During the installation process, significant vegetation was removed along the right-of-way line leaving the fence exposed. The remainder of the yard is enclosed with a four-foot high split rail fence which is permitted in the front yard. The case was continued so the property owner could consider other options. However, as of this date, the homeowner has not submitted any new plans.

MR. RUEHLMANN wanted to know what would happen if the Board does not grant the variance.

MR. SNYDER stated that the homeowner would be required to take down the fence or move it back approximately one foot out of the County right-of-way.

JOSPEH LOUDON (11370 Terwilligers Creek Drive, Cincinnati 45249) reiterated that that the purpose of the fence is to protect his young children from the busy roadway. He is in the process of entering into a License Agreement with the Hamilton County Engineer for permission to use the right-of-way on Enyart Road. He noticed a home down the road is located on a corner lot and has a six foot high privacy fence in their yard with a split rail fence attached to it. Therefore, he would like the same consideration and asked the Board to consider the variance as submitted. He also pointed out that the cost to move the fence out of the right-of-way will be expensive. The only other option he can see is to cut the fence down to four feet and add scalloped edges.

MR. RUEHLMANN wanted to know if he considered installing a split rail fence with screening to protect his kids.

MR. LOUDON stated that he would lose privacy because his yard backs up to a busy roadway. Also, it will be too costly to install a new fence.

MR. MISRACH stated that the scalloped arches would look nice aesthetically.

MR. HAVILL stated that he does not want to set a precedent. Due to the size of the fence and lack of vegetation the privacy fence does not look good along the County roadway. The best option is for the property owner to install a split rail fence with screening and to install landscaping in front of it.

MR. WOLFE stated that the precedent has already been set with the house down the road. He noted that the County has agreed to enter into a License Agreement with the property owner and suggested that vines be planted at the base of the fence so it will soften the view.

MS. HARLOW stated that she has mixed feelings. The fence does not look good aesthetically but it is already in place.

MR. MISRACH wanted to know how the property owner would go about cutting the fence.

MR. LOUDON stated that the fence company would utilize a template.

MR. MISRACH made a motion to consider the following:

RESOLUTION
GRANTING
APPEAL NO. 2013-22

WHEREAS, Steve Wethington, 8105 Camargo Road, Cincinnati , OH 45243, appellant, on October 7, 2013 , filed Appeal No. 2013-22 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 68.1-1 and 346.1 of said Resolution as applied to the property at 11370 Terwilligers Creek Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on October 7, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate to permit the construction of a six (6) foot high privacy fence in the front yard of a double frontage lot; and

WHEREAS, said Zoning Inspector, on October 7, 2013, acting upon said application and the plats and plans submitted, refused to issue said Certificate, his reasons being based upon the maps and regulations of the Zoning Resolution; and

WHEREAS, public hearings were scheduled for said appeal on November 4, 2013 and February 3, 2014, notices of such hearings were given by first class mail to parties of interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the dates of said hearings in accordance with Section 303.15 of the Ohio Revised Code; and

WHEREAS, Section 41 et seq. of the Zoning Resolution and the Symmes Township District Maps designate said premises to be in the "A" Residence District; and

WHEREAS, Section 68.1-1 provides, in relevant part, that a front yard shall have a depth of not less than fifty (50) feet; however, no alignment or setback or front yard depth shall be required to exceed the average of the minimum depth of the existing front yards on the lots adjacent on each side if each of such lots are within the same block and within one hundred (100) feet;

WHEREAS, Section 346.1 provides, in relevant part, that no fence or wall located in the front or side yard shall be built to a height greater than three (3) feet and shall have an open face area of no less than fifty (50%) percent or when constructed to a height of not more than four (4) feet above grade, shall have an open face area of no less than seventy-five (75%) percent; and

WHEREAS, according to testimony offered at the public hearing, the request is for a variance to permit the construction of a six (6) foot high privacy fence in the front yard of a home located on a double frontage lot; and

WHEREAS, according to further testimony offered at the public hearing, the subject property is located on a private drive off of Terwilligers Creek Drive and abuts Enyart Road; and

WHEREAS, according to further testimony offered at the public hearing, the owner of the property replaced an old four (4) foot high privacy fence along the northern property line with a six (6) foot high privacy fence without obtaining a zoning permit. The fence runs along and partially into the right-of-way of Enyart Road; and

WHEREAS, according to further testimony offered at the public hearing, the remainder of the yard is enclosed with a four-foot high split rail fence which is permitted in the front yard; and

WHEREAS, according to further testimony offered at the public hearing, the purpose of the fence is to protect the property owner's young children from the busy roadway; and

WHEREAS, according to further testimony offered at the public hearing, during the installation process, significant vegetation was removed along the right-of-way line; and

WHEREAS, according to further testimony offered at the public hearing, due to the size of the fence and lack of vegetation the privacy fence does not look good aesthetically along the County roadway; and

WHEREAS, according to further testimony offered at the public hearing, the cost to install a split-rail fence or move the fence out of the right-of-way is too expensive for the property owner; and

WHEREAS, according to further testimony offered at the public hearing, it was determined by all parties that the best course of action is to reduce the privacy fence to a height of four (4) feet with six (6) inch scalloped arches; and

WHEREAS, according to further testimony offered at the public hearing, the property owner shall enter into a License Agreement with the Hamilton County Engineer for permission to use the right-of-way on Enyart Road; and

WHEREAS, 184.6 empowers this Board to permit a variation in the yard requirements of any District where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to irregular shape of the lot, topographic or other conditions, provided such variation will not seriously affect any adjoining property or the general welfare; and

WHEREAS Section 185 provides, in exercising the above mentioned powers, the Board may reverse or affirm, wholly, or partly, or may modify the order requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the Officer from whom the appeal is taken; and

WHEREAS, it is the consensus of this Board, after careful consideration of all the facts, testimony, and evidence submitted, that the literal enforcement of the strict application of Sections 68.1-1, 68.1-2, and 346.1 of the Zoning Resolution will result in unnecessary hardship to the appellant of the property in question; and

WHEREAS, the variation, in accordance with the following conditions, will not seriously affect any adjoining property owners or the general welfare; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby grant a variance from the requirement of Sections of the Zoning Resolution in accordance with the authority granted in Section 184.6. Furthermore, the decision of the Zoning Inspector to deny the issuance of a zoning certificate for the reason that the application failed to comply with Sections 68.1-1, and 346.1 of the Zoning Resolution is affirmed, but in accordance with the authority of Section 185, the Board of Zoning Appeals, having granted a variance as stated above, hereby determines that a zoning certificate may be issued to the applicant consistent with the terms set forth in this Resolution; and

SUBJECT TO THE FOLLOWING CONDITIONS:

1. That, the proposed privacy fence shall not exceed four (4) feet six (6) inches and shall include scalloped arches;
2. That, the property owner shall enter into a License Agreement with the Hamilton County Engineer within thirty (30) days of the date of this resolution for permission to use the right-of-way on Enyart Road;

3. That, the proposed privacy fence shall be located exactly as shown on the plats and plans submitted to this Board;
4. That, the proposed privacy fence not be relocated or enlarged without the approval of this Board;
5. That, the proposed privacy fence shall be maintained in a satisfactory condition at all times;
6. That, the proposed privacy fence comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;

BE IT FURTHER RESOLVED that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

MR. WOLFE seconded the motion and the roll call vote was as follows:

Mr. Flagel – ‘absent; Ms. Harlow – ‘aye; Mr. Havill – ‘nay’; Mr. Misrach – ‘aye’;
Mr. Ruehlmann – ‘nay’; Mr. Wolfe – ‘aye’.

MR. WOLFE convened the public hearing for 2014-02 for the property located at 9207 Gourmet Lane.

MR. SNYDER stated that the request is for variance approval to allow a detached accessory shed in the side yard area of a home in an “A-2” Residence District. Apparently, the applicant placed a prefabricated plastic shed in the side yard area without obtaining a zoning permit. The shed is approximately 30 square feet in size and is located behind a split rail fence with bushes planted in front to screen it from view. The property is also located in a cul-de-sac placing the house at an angle so the shed is only noticeable from certain views. Mr. Snyder further explained that the shed is located on a concrete pad and is accessed by a concrete sidewalk leading to the swimming pool and deck area. The shed meets all the requirements for the back yard but not the side yard. If the variance is not approved, the applicant will be required to move the shed to the back yard; however, he will lose his ability to use the concrete apron.

MR. RUEHLMANN wanted to know if the Township has received any complaints about the shed and asked Mr. Snyder to provide more details about the landscaping in the front yard.

MR. SNYDER stated that he was not aware of any complaints. Apparently, the Zoning Inspector found it while he was inspecting another property. As for the landscaping, there are bushes in front of the fence but since it is winter it is hard to tell how much the shed is screened from view.

DAVID BLUMBERG (9207 Gourmet Lane, Loveland) stated that it would be a financial hardship to move the shed. Also, it would not make sense to move it since the shed is utilized for pool accessories and equipment. In addition, the pathway connects the pool and shed together. If he has to move it, the pathway will not connect to anything. Another issue is that the backyard is raised and grated at an angle for drainage so he will be limited on where he can place it. Since his home is located on a pie shaped lot he believes the shed is sufficiently screened from view of the front yard. He submitted a letter signed by neighbors supporting the shed.

MR. RUEHLMANN noted that he would prefer to see more landscaping around the shed.

MR. WOLFE stated that he understands that the shed in its current location provides connection and function ability; however, he would also like to see additional landscaping planted to soften the view.

MR. HAVILL stated that, in his opinion, the shed becomes a magnet for other yard items making it unappealing. He would like to see it moved to the back yard. However, he would not object to the shed staying in the side yard if additional landscaping was provided.

MR. WOLFE stated that the Board's role is to consider the request for variance as submitted.

MR. MISRACH stated that the property owner has done the best that he can with the circumstances. He pointed out that the shed matches the house nicely. If the Board prefers additional landscaping in the front yard, they should stipulate that he plant Pine or Arborvitae trees so it will be screened year round.

MR. SNYDER advised the Board to either continue the case so the property owner can submit a revised site plan or specify the number and types of trees they want in the resolution. Otherwise, Hamilton County Zoning will not be able to enforce it.

MR. BLUMBERG requested a continuance so he could come up with a landscape plan.

MR. RUEHLMANN made a motion to continue BZA 2014-02 to the April 7, 2014 meeting.

MR. WOLFE seconded the motion and the roll call vote was as follows:

Mr. Flagel – 'absent'; Ms. Harlow – 'aye'; Mr. Havill – 'aye'; Mr. Misrach – 'aye';
Mr. Ruehlmann – 'aye'; Mr. Wolfe – 'aye'.

MR. WOLFE convened BZA 2014-03 for the property located at 10477 Willow Drive.

MR. SNYDER stated that the request is for variance approval to construct a 12- foot by 12- foot screened in covered porch to the rear of an approved single family home located in a "C" Residence District. The site includes four small parcels platted as part of the Loveland Park subdivision that would be consolidated into one parcel as part of the home construction process. The building permit for the home included an uncovered deck on the back of the home that is permitted per the Zoning regulations. However, the future homeowners have requested that a screened-in covered porch be built on the back of the home instead of the deck for shelter and shade. The rear yard of the property abuts the rear yard of existing homes on Riveroaks Drive. These homes are located in a "B" Residence District but were constructed on lots that are generally one half acre in size. The home directly adjacent to the south of the subject site has a number of evergreen trees planted along the property that would screen the proposed porch from view.

MR. HAVILL wanted to know if the home could be placed differently on the plot of land.

MR. SNYDER stated that the proposed home cannot be placed on the parcel any differently as it would change the streetscape.

C.J. CARR (P.O. Box 54, Loveland 45140) stated the homeowners prefer to construct a screened-in covered porch on the back of the home so they can enjoy the outdoors. The lot does not have any trees so they will be exposed to a lot of sun. He has made modifications to the floor plan so the porch will not extend as much into the rear yard setback. There are no other options to consider due to the lot configuration. He pointed out that the homes on Riveroaks Drive have covered screened-in porches. He also noted that he has consolidated four parcels, more than is required by Hamilton County.

MARTIN O'KEEFE (8685 Harpers Point Drive, Cincinnati 45249) stated that due to their age they would prefer a covered screened-in porch on the back of the home. It will allow him and his wife to enjoy the outdoors without worrying about the sun and insects. He respectively requests that the Board consider the variance request.

RUSS MASON (11952 Riveroaks Drive, Cincinnati 45249) stated that he backs up to the lot. The development in Loveland Park has been going on for far too long and he is anxious for there to be some closure. Zoning should provide some continuity of the properties. He is afraid that the homes in Riveroaks will lose their value with different types of homes being built in that subdivision. He is against the variance as it will encroach upon his property.

MR. WOLFE noted that he had some valid issues but the Board could only rule on the case brought before them. He suggested that he contact either the Symmes Township Board of Trustees or Hamilton County Zoning regarding his concerns.

SCOTT CONE (11950 Riveroaks Drive, Loveland 45140) stated that he lives next door to the subject property. He thinks the covered porch will be more noticeable than a deck. He is afraid that if the variance is approved it will set a precedent for every home Mr. Carr builds in the future. There also is a potential loss of value to the homes in the Riveroaks Subdivision.

MR. MISRACH stated that he understands how the neighbors feel but the lots do not conform to anything but single family homes. Mr. Carr is trying to fix up the neighborhood. The home cannot be moved up because the road will lose its streetscape. He is glad that the porch is being constructed now so the ridge and gable lines will match the home.

MR. HAVILL noted that the Board will be setting a serious precedent if the variance is approved. He has dealt with similar issues in the Camp Dennison area.

MR. RUEHLMANN stated that every variance request is unique. The Board always looks at the facts of each case before granting a variance.

MR. MISRACH agreed. He believes Mr. Carr has presented a good plan and it should be approved.

MR. RUEHLMANN made a motion to approve the following:

RESOLUTION
GRANTING
APPEAL NO. 2014-03

WHEREAS, C.J. Carr, P.O. Box 54, Loveland, OH 45140, appellant, on January 6, 2014, filed Appeal No. 2014-03 with the Symmes Township Board of Zoning Appeals under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Section 84.3 of said Resolution as applied to the property at 10477 Willow Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on January 6, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a covered screened porch with less rear yard setback than required for the property at 10477 Willow Drive; and

WHEREAS, said Zoning Inspector, on January 6, 2014, acting upon said application and the plats and plans submitted, refused to issue said Certificate, his reasons being based upon the maps and regulations of the Zoning Resolution; and

WHEREAS, a public hearing was held on said appeal on February 3, 2014, notice of such hearing was given by first class mail to parties in interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the date of said hearing in accordance with Section 303.15 of the Ohio Revised Code; and

WHEREAS, Section 41 et seq. of the Zoning Resolution and the Symmes Township District Maps designate said premises to be in the "C" Residence District; and

WHEREAS, Section 84.3 states, in relevant part, that within the "C" Residence district there shall be a rear yard having a depth not less than thirty (30) feet; and

WHEREAS, according to testimony offered at the public hearing, the request is for variance approval to construct a twelve (12) foot by twelve (12) foot screened in covered porch to the rear of an approved single family home; and

WHEREAS, according to further testimony offered at the public hearing, the site includes four small parcels platted as part of the Loveland Park subdivision that would be consolidated into one parcel as part of the home construction process; and

WHEREAS, according to further testimony offered at the public hearing, a building permit for the home included an uncovered deck on the back of the home that is permitted per the Zoning regulations; and

WHEREAS, according to further testimony offered at the public hearing, the future homeowners have requested that a screened-in covered porch be built on the back of the home instead of the deck for shelter and shade; and

WHEREAS, according to further testimony offered at the public hearing, the proposed covered screened-in porch would extend six (6) feet nine (9) inches into the required thirty (30) foot rear yard setback; and

WHEREAS, according to further testimony offered at the public hearing, the rear yard of the property abuts the rear yard of existing homes on Riveroaks Drive. These homes are located in a "B" Residence District but were constructed on lots that are generally one half acre in size; and

WHEREAS, according to further testimony offered at the public hearing, the home directly adjacent to the south of the subject site has a number of evergreen trees planted along the property that would screen the proposed porch from view; and

WHEREAS, according to further testimony offered at the public hearing, the applicant has made modifications to the floor plan so the covered porch will not extend as much into the rear yard setback; and

WHEREAS, according to further testimony offered at the public hearing, the proposed home cannot be placed on the parcel any differently as it would change the streetscape; and

WHEREAS, 184.6 empowers this Board to permit a variation in the yard requirements of any District where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to irregular shape of the lot, topographic or other conditions, provided such variation will not seriously affect any adjoining property or the general welfare; and

WHEREAS Section 185 provides, in exercising the above mentioned powers, the Board may reverse or affirm, wholly, or partly, or may modify the order requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the Officer from whom the appeal is taken; and

WHEREAS, it is the consensus of this Board, after careful consideration of all the facts, testimony, and evidence submitted, that the literal enforcement of the strict application of Section 84.3 of the Zoning Resolution will result in unnecessary hardship to the owners of the property in question; and

WHEREAS, the variation, in accordance with the following conditions, will not seriously affect any adjoining property owners or the general welfare; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby grant a variance from the requirement of Section 84.3 of the Zoning Resolution in accordance with the authority granted in Section 184.6. Furthermore, the decision of the Zoning Inspector to deny the issuance of a zoning certificate for the reason that the application failed to comply with Section 84.3 of the Zoning Resolution is affirmed, but in accordance with the authority of Section 185, the Board of Zoning Appeals, having granted a variance as stated above, hereby determines that a zoning certificate may be issued to the applicant consistent with the terms set forth in this Resolution; and

SUBJECT TO THE FOLLOWING CONDITIONS:

1. That, the proposed covered screened-in porch remain exactly as shown on the plats and plans submitted to this Board;
2. That, the proposed covered screened-in porch not be relocated or enlarged without the approval of this Board;
3. That, the Zoning Certificate and Building permit (if required) for the proposed covered screened-in porch be obtained within sixty (90) days and all work be completed within one (1) year from the date of adoption of this Resolution;
4. That, the proposed covered screened-in porch, once constructed, be maintained in a satisfactory condition at all times;
5. That, the proposed covered screened-in porch comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;

BE IT FURTHER RESOLVED that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

MR. MISRACH seconded the motion and the roll call vote was as follows:

Mr. Flagel - 'absent', Ms. Harlow - 'nay'; Mr. Havill - 'nay', Mr. Misrach - 'aye';
Mr. Ruehlmann - 'aye', Mr. Wolfe - 'aye'.

MR. WOLFE noted that BZA case 2014-04 has been withdrawn. There will be no testimony.

APPROVAL OF MINUTES

MR. RUELMANN made a motion to approve the minutes of the January 6, 2014 meeting as written.

MR. WOLFE seconded the motion and the roll call vote was as follows:

Mr. Flagel - 'absent'; Ms. Harlow - 'aye'; Mr. Havill - 'aye'; Mr. Misrach - 'abstain';
Mr. Ruehlmann - 'aye'; Mr. Wolfe - 'aye'.

ADJOURNMENT

The meeting adjourned at 9:12 p.m.

Approved: _____

Luanne Felter
Secretary