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**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS  
REGULAR MEETING  
MAY 7, 2018**

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

Also present were: Bryan Snyder, Hamilton County Zoning Inspector and Luanne Felter, Zoning Secretary.

**PUBLIC HEARING**

MR. RUEHLMANN convened the public hearing for BZA 2018-04 for the property at 11251 Montgomery Road.

MR. WOLFE noted that he has worked with the applicant (Rob Painter) in the past. However, he believes that it would not affect his judgement in regards to this case. The Board had no issues and told him he could stay.

MR. SNYDER stated that this is a Conditional Use request from Montgomery Community Church to permit the construction of a 123 space parking lot expansion on the subject property which is in an "A" Residence district. The expansion would include two new parking rows extending west from the parking lot located behind the existing main church building and four new parking rows extending southwest from the northernmost parking lot. No new structures will be built. The detention basin will be relocated to make room for the parking lot expansion and two new retaining walls will be built for grading purposes. The existing vegetation located along the existing creek and west of the creek to the western property line will be preserved. He does not believe the proposed expansion will have any adverse effect on the surrounding properties. The applicant has submitted a landscape plan and lighting plan that meets the requirements of the zoning code. However, we need to determine the height of the light poles because they are not indicated on the plan. Finally, the proposed use and development would be consistent with the adopted Land Use Plan.

MR. RUEHLMANN wanted to know if the proposed expansion meets the occupancy requirements and if the extra parking spaces will create any traffic issues.

MR. SNYDER stated that there are no occupancy requirements. He does not believe traffic will be an issue since the church property has direct access to Montgomery Road and cross-access to East Kemper and Snider Roads for motorists to make a connection. Also, the church usually hires an off duty officer to direct traffic.

MR. PAINTER stated he is the site engineer for the project and has prepared the plans. He read the report and is in agreement with all the findings. The lighting is designed with 15 foot high light poles with down fixtures but for some reason is not indicated on the plans. He will make the necessary changes.

MR. WOLFE wanted to know if the detention basin will be able to handle the additional water runoff now that the parking lot will be increased.

MR. PAINTER stated that they will be making the detention basin bigger with impervious surfaces to make more water routes to help with the runoff volumes. They will also comply with the EPA's Storm Water Management Practices.

MR. WOLFE stated that he has no issues with the request since they are following all the guidelines. Also, the additional parking will allow the church to use its own property instead of using Harpers Station.

MR. WOLFE made a motion to grant the Conditional Use to allow the construction of a parking lot expansion as submitted on the plans with a condition that the 15 foot light poles and down fixtures be designated on the plans.

MS. HARLOW seconded the motion and the roll call vote was as follows:

Mr. Fowler – ‘aye’, Ms. Harlow – ‘aye’, Mr. Havill – ‘aye’, Mr. Ruehlmann – ‘aye’ and Mr. Wolfe – ‘aye’.

MR. RUEHLMANN convened the public hearing for BZA 2018-05 for the property at 9595 Creekside Drive.

MR. SNYDER stated that this is a variance request for the replacement of a six foot high wooden privacy fence in the side yard of the home. The applicant is also replacing a six foot high privacy fence along the rear property line and a four foot high picket fence with one walk gate on the eastern side yard area of the home but it is permitted. The home is “L” shaped and was constructed in a manner that the back patio and second door exist on the side of the home rather than the rear. This area faces the rear of the home directly to the west and requires screening. It is unclear if the fence was constructed without a permit or was constructed prior to the adoption of Symmes Township zoning or may have been considered a rear yard at the time. The neighbor located on the west side could construct a privacy fence along their back property line as of right but several large trees would need to be removed. The fence will not impact any surrounding properties.

MR. RUEHLMANN wanted to know exactly where the fence will run.

MR. SNYDER pointed out on the display board that the fence will extend from the northwest corner of the home to the western property line and extend south along the western property line to the southern property line.

MR. FOWLER wanted to know if the fencing located along the rear property line and eastern property line are an issue.

MR. SNYDER stated that they are permitted in the Zoning Resolution. Only the six foot high privacy fence located in the western side yard requires variance approval.

GREG MEFFORD (9595 Creekside Drive, 45140) stated that he is the homeowner. The fence was built about 30 years ago according to his neighbor and is now rotting and dilapidated. Their side yard is used as their back yard and they can see into their neighbor’s dining room window so they need privacy.

MR. HAVILL wanted to know why they need the section of fence in the northwest corner of the house.

MR. MEFFORD stated that it is for privacy for their children playing in the back yard.

MS. HARLOW wanted to know how far the fence is from the trees on the neighbor’s property.

MR. MEFFORD did not know but stated that it is pretty close and runs the full length of the property line with the trees being all different sizes.

LOUISE BRUEGGING (9581 Creekside Drive, 45140) stated that she is the neighbor that abuts their property on the west side. They have very little privacy between the two homes and need

screening so they can't see into each other's windows. The trees located on the property line will not be in the way of the fence.

BRENT LUDWICK (11667 Thistlehill Drive, 45140) stated that he lives on the east side of the applicant. The fence has been there for as long as he can remember. He believes that it looks nice and provides privacy between the homes and fully supports it.

KATHRYN WALTERS (9596 Creekside Drive, 45140) stated that she lives across the street from the homeowners. She believes the fence will provide a safe area for their children to play and provide privacy.

AVERY MEFFORD (9595 Creekside Drive, 45140) stated that she is the homeowner. They have three small children under the age of 10 that are very active and like to run around. The fence will provide privacy and safety for the children.

MR. RUEHLMANN thanked the neighbors for coming and speaking in support of the fence. It will help in the Board's decision process.

MR. WOLFE stated that he has no issue with the fence but would like to see the good side of the fence face towards the neighbor's property.

MR. FOWLER made a motion to approve the six foot tall privacy fence in the west side yard of the home at 9595 Creekside Drive as indicated on the plans submitted to the Board.

MR. HAVILL seconded the motion.

MR. WOLFE amended the motion to add a condition that the finished side of the fence will face toward the neighbor's property.

The roll call vote to amend the motion was as follows:

Mr. Fowler – 'aye', Ms. Harlow – 'aye', Mr. Havill – 'aye', Mr. Ruehlmann – 'aye' and Mr. Wolfe – 'aye'.

The roll call vote was then as follows:

Mr. Fowler – 'aye', Ms. Harlow – 'aye', Mr. Havill – 'aye', Mr. Ruehlmann – 'aye' and Mr. Wolfe – 'aye'.

MR. RUEHLMANN convened the public hearing for BZA 2018-06 for the property at 10251 Fawncrest Court.

MR. SNYDER stated that this is a variance request for approval of a detached accessory structure with less rear yard setback than required and greater height than permitted on the lot which is located in a "B" Residence district. The applicant is requesting approval to complete the construction of a treehouse that was started in the backyard without obtaining a zoning certificate. A building permit is also required due to the size of the structure. All construction has stopped pending the outcome of these requirements. The treehouse is located less than five feet from the property line and extends into the adjacent property to the west which is Loveland City School property. The applicant is in the process of obtaining approval from them. However, the Board only needs to be concerned about the portion that is in Symmes Township. The adjacent property is densely wooded and abuts an athletic field. Therefore, the requested variance for both the height and setback would not likely have a significant impact on the school property. As for the neighbors, it will be highly visible and can be seen from the cul-de-sac where the house is located. It is larger in scale than typical accessory structures in the area. Additionally, there appears to be other mature trees on the property where a treehouse could be constructed that would meet the setback requirement.

MR. HAVILL wanted to know what the definitions of a treehouse and shed were.

MR. SNYDER stated that it does not matter. Both are detached accessory structures.

MR. FOWLER wanted to know if it technically considered a treehouse because all he can see is a branch sticking out from one side with posts in the ground; he thinks it is freestanding.

MR. SNYDER stated that the applicant refers to it as a treehouse. As for zoning, it does not matter if it is attached to the ground or a tree it is considered an accessory structure and the setback requirements are the same.

MR. RUEHLMANN wanted to know if the size is legal for an accessory structure.

MR. SNYDER stated that it is because it is less than 1,032 square feet.

MR. WOLFE wanted to know if permission is required from the school.

MR. SNYDER stated that the Loveland City School district will need to grant an easement to let it stay on the property.

MR. HAVILL wanted to know the difference in height.

MR. SNYDER stated that from looking at the plan it appears to be approximately 11 ½ feet but it is not to scale. They have also not submitted a survey site plan to determine how far the tree house extends across the property line.

KRISTIN JOHNSON (10251 Fawncrest Court, 45140) stated that her husband built the treehouse for her kids to play in. It started out small but turned out bigger than they originally planned. They are involved in local sports organizations and invite families back to the house to play in it as well as neighborhood children. The kids love it and will be hurt if it has to come down. Their intent was not to take away the beauty of the area.

MR. WOLFE wanted to know if they have an agreement with the Loveland City School District.

MRS. JOHNSON stated that they have a letter from the City of Loveland stating they do not need anything additional from them. They also attended a Loveland School Board meeting in April and they are trying to work on getting an easement and insurance. They are not asking to keep the land just permission to use it while their children are students in Loveland City School District.

MR. RUEHLMANN wanted to know if the letter should be forwarded to the Township.

MR. SNYDER stated that we do not need it but can keep a copy for our records. He reminded the Board that they only need to act upon the portion of the treehouse that is located in Symmes.

MR. WOLFE stated that if the situation was reversed we would want to know the property owner has permission.

MRS. JOHNSON stated that the school district is waiting for the Township's approval first before taking action. They need the Board to approve the variances. They have stopped work on the treehouse. They still need to put the roof on and will add swings on the bottom. It was mentioned tonight that there were other mature trees on the property that could accommodate the treehouse; that is not the case. There are only small trees less than 6" in diameter on the property.

MR. WOLFE wanted to know if they have plans to install electricity, plumbing or heating basically making it a livable space or keep it as a true treehouse.

MRS. JOHNSON stated that they do have electricity up there for a TV. There is also a couch, bunk beds and a fireplace unit but they do not have any plans to make it into a livable space. It will only be used for the children.

JOE JOHNSON (10251 Fawncrest Court, 45140) stated that he is the one building the treehouse. Before he started he contacted the Building and Zoning departments to see what was required. He was told that he needed a three foot setback for a play structure; however, he neglected to indicate the size. He realizes that a 220 foot structure is considered an accessory structure not a play structure. The treehouse is partially freestanding and not supported by the tree because he did not want to damage it.

It does not look nice in the pictures but he plans to use cedar tone wood for the balcony and cedar siding and plans to use a rubber asphalt corrugated roof. His intent was to make a safe place for children to play. He has been in contact with the Building Dept. and is following the building code.

MR. RUEHLMANN wanted to know if he reviewed our Zoning Code.

MR. JOHNSON said he did review it but was looking for a play structure not a detached accessory structure. He noted that he invested \$10,000 on the treehouse and does not want to take it down.

MR. HAVILL wanted to know if he had his plans reviewed by an engineer.

MR. JOHNSON stated that he has a family member that is an engineer and he reviewed it.

MR. HAVILL wanted to know if he is in attendance tonight so he could ask him about the integrity of the structure.

MR. JOHNSON said he is not but he has been working with the Building Dept. to make sure it is up to code and they have already asked him to change a few things.

MR. SNYDER stated that he was just handed the letter by Mrs. Johnson from the City of Loveland dated May 4, 2018. It states in part that "since your property is not within the Corporation Limits of the City of Loveland, you are not required to go through any permit processes or variance hearings with the City of Loveland for the treehouse in your backyard." I believe it is a badly worded letter. Since a portion of the treehouse is in Loveland it would have been better if they said "we know a portion of the treehouse is in Loveland and you still are not required to go through any permit processes or variance hearings with the City of Loveland."

MR. JOHNSON stated that they spoke with the City on the phone and told them what they needed but this is what they submitted.

MR. RUEHLMANN stated that the Board will need to include a condition that documentation is required from the City of Loveland and the Loveland City School Board for our records.

MR. HAVILL wanted to know why they selected that particular tree.

MR. JOHNSON stated that he contacted an arborist and he believed the Walnut tree was the strongest.

MR. HAVILL noted that he doesn't see where the structure is attached; all he sees is a tree branch coming out of the side.

MRS. JOHNSON explained that the Walnut tree goes through the treehouse and out the side and showed pictures to the Board.

JOHANNA KREMER (10252 Fawncrest Court, 45140) stated that she lives next door. She believes the treehouse is very cool; unfortunately, she is here on behalf of the Turnbury Homeowners Association. Turnbury restricts structures, sheds and other outbuildings in yards as outlined in #11 of the Residential Restrictions. This has always been a highly contentious issue with residents and we cannot allow the structure to remain on the property unless we get 75% approval from the residents in the subdivision. There will be a homeowner's meeting in July and we can add it to the agenda for discussion. She wished she knew about this issue sooner so they could have avoided this situation.

MR. RUEHLMANN noted that the Township is not responsible for enforcing HOA rules.

MS. KREMER wanted to know how the process works.

MR. SNYDER stated that HOA rules that are established by residents are not enforceable by Hamilton County; they have to take action on their own. The County does not even want a copy of the rules and regulations because that would give a false impression that they have some ability to enforce the rules which they do not. They can only enforce what is in the Zoning Resolution.

MARIUS POP (10250 Fawncrest Court, 45140) stated that he lives next door. He and his wife are concerned about the noise coming from the treehouse when the neighbors have parties because they have small children and a baby.

AMANDA POP (10250 Fawncrest Court, 45140) stated that they have lost privacy due to the treehouse. When the kids are standing on the balcony they can see straight through into their master bath. Also, there have been issues with some of the parties they have had with noise and blocking driveways.

MR. RUEHLMANN noted that during deliberations they should only consider the height and setback requirements.

MR. WOLFE disagreed. He said they need to consider other factors. The treehouse overhangs approximately 4 feet onto Loveland School Board property which is a concern. It also has electricity. They could add heat and plumbing after the fact and make it into a livable space. Additionally, the treehouse is as tall as the house.

MR. HAVILL wanted to know how tall the treehouse is and what the total height restriction for a house is.

MR. SNYDER stated that the treehouse is 24 feet tall. The house restriction is 35 feet tall.

MR. FOWLER stated that he cannot support the treehouse and highly doubts the Board would have ever approved a detached accessory structure with a zero foot setback and 24' height if it was in the planning stages. This would be especially true if there were no other structures exceeding the height requirement in the neighborhood and in the general vicinity. The Board shouldn't approve it now. He feels we need to protect the community.

MR. JOHNSON wanted to know if the treehouse was less than 220 square feet would it be considered a play structure. He can take 20 square feet off and apply for a setback.

MR. SNYDER stated that there is a height restriction of 12 ½ feet for a play structure. He explained that in order for it to be considered a play structure it not only has to be less than 220 square feet it must meet the three foot setback requirement. No permit is required as long as it meets the setback. Since the treehouse is 220 square feet it is considered a detached accessory structure. It requires a zoning permit and a building permit. Since it also has a 0 foot setback and exceeds the height requirement it requires a variance.

MR. JOHNSON stated that this is how they got to this point. He called the office and asked about a play structure and they told him he did not need a permit but then got a letter in the mail saying he needed a permit and a variance and was confused because he already called the office. He wouldn't have started this process if he was aware of the requirements.

MR. HAVILL wanted to know if the Zoning Resolution was available online.

MR. SNYDER stated that it is.

MR. RUEHLMANN wanted to know if he built a tree fort with no roof and had a railing would 12 ½ feet be ok.

MR. SNYDER stated that it would if it met the setback requirements.

MR. JOHNSON stated that he wanted to make something safe and that would last.

MR. HAVILL stated for the record that this is an illegal structure. He is not sure how it got this far whether the HOA didn't see it when it started but it is definitely illegal in many ways. One of the factors to be considered in #2 of the Staff Report is if the structure will be a substantial deviation from the Zoning Code. The answer is yes. There is too much discrepancy in the height requirement and it is not fitting in the neighborhood. The HOA even has rules against it. In #7 we need to determine if the spirit and intent behind the zoning requirement can be observed and substantial justice done by granting the variance. The answer is absolutely not.

MR. RUEHLMANN said he wanted to talk the other side. He is not concerned about the setback requirement because the applicant will need to get permission from the City of Loveland and the Loveland School Board. The height difference is at 11 ½ feet which I understand is too much. But effectively our Zoning Code eliminates the potential for any treehouse in anybody's yard. If you build an accessory structure in the air you're going to exceed 12 ½ feet especially if you put a roof on it.

MR. FOWLER stated that it is not this Board's job to amend the Zoning Code.

MR. RUEHLMANN stated that he is just looking at the two considerations before us. The applicant will have to deal with the HOA. The question is can you effectively put a treehouse in Symmes Township.

MS. HARLOW stated that a woman testified that the kids can see right into her bathroom window. The houses are too close together to have a treehouse of this size.

MR. WOLFE stated that if he had a flat roof or pitched the roof that would reduce the height. He could then add swings and mulch and that would bring height down even more. But what he has now I have concerns that it can be a livable space down the road.

MR. RUEHLMANN stated that we can put restrictions on it. The only illegal part is that it is not built with the height requirement. We can make it 17-18 feet and then he has a choice to flatten the roof or tear it down. I struggle with the 24 foot height like the rest of you but I am trying to see the other side of this as well. We need to decide on a height that will work for a treehouse for the kids.

MR. HAVILL stated that it is not the Board's job to design the treehouse.

MR. RUEHLMANN stated we are not designing the treehouse just giving an option.

MR. FOWLER reminded the Board that he is in violation with the HOA rules and encroaches on another parcel. He believes it would be best if he cleared all hurdles and came back to us.

MR. SNYDER stated that a violation notice was sent to the applicants. If there is a final action by the Board that rejects the approval or they withdraw, they will be subject to fines for being in violation until the structure is removed or they apply again. Please consider this before you think about continuing the case.

MR. FOWLER wanted to know if it was mandatory or discretionary.

MR. SNYDER stated that it is mandatory. It will be discretionary on how many fines they receive and how many they get. They are at the end of the line here.

MRS. JOHNSON stated that she is due in court tomorrow. She noted that her husband built the treehouse but her name is on the ticket.

MR. JOHNSON stated that he can drop the roof; the pitch was designed for more headroom.

MR. HAVILL stated that they are not respecting the Zoning Code. You cannot negotiate a speeding ticket and should not negotiate zoning.

MR. RUEHLMANN noted that we spent enough time on this matter and need to make a motion.

MR. HAVILL made a motion to deny the request for approval for 0 foot setback and greater height than permitted for a detached accessory structure at 10251 Fawncrest Court.

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

Mr. Fowler – 'aye', Ms. Harlow – 'aye', Mr. Havill – 'aye', Mr. Ruehlmann – 'nay', and Mr. Wolfe – 'aye'.

MR. RUEHLMANN told the applicants that they can appeal the decision or redesign the structure. He suggested that they check with their HOA first and have the design approved with Zoning to make sure it is legal.

NEW BUSINESS

Jack Horvath introduced himself as the new alternate to the Board of Zoning Appeals.

ADMINISTRATIVE MATTERS

MR. WOLFE made a motion to approve the minutes of the April 6, 2018 meeting.

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

Mr. Fowler – ‘aye’, Ms. Harlow – ‘aye’, Mr. Havill – ‘aye’, Mr. Ruehlmann – ‘aye’, and Mr. Wolfe – ‘aye’.

ADJOURNMENT

MR. RUEHLMANN adjourned the meeting at 8:40 p.m.

Approved:

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Ralph Wolfe, Vice-Chairperson

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Luanne Felter, Zoning Secretary