
**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING
JUNE 4, 2018**

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

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

PUBLIC HEARING

MR. WOLFE convened the public hearing for BZA 2018-07 for the property at 12007 Rich Road.

MR. SNYDER stated the applicant is requesting a variance for the construction of a six foot high privacy fence in the front yard and the habitation and storage of an RV in the side yard.

The applicant is proposing to construct a privacy fence on the subject property in the front yard area of the home that is located on a corner lot with the required front yards facing both Rich Road and Willow Drive. The proposed fence would extend along the Willow Drive frontage from the back corner of the house to the western property line. However, the fence is complicated by a two factors: 1). The home was constructed in the 1970s, long before the subdivision was built off Willow Drive. 2). When they constructed the road, it placed the home approximately 15 feet from the right-of-way, making the home a noncomplying structure that does not meet the required 35 foot front yard setback in the "B" Residence District. Because the existing home does not provide the required setback along Willow Drive the proposed privacy fence is not permitted to extend from the rear line of the home like it would on a corner lot and would need to be located approximately half way up the rear wall of the existing home. If the request for a variance is granted, the proposed fence would be located closer to the street but would not be out of character of other homes on corner lots. Also, the fence would be screened from the road by several Pine trees. The Zoning Resolution allows a maximum height of six feet for fences located in the rear yard areas.

The second portion of the request includes the storage and habitation of an RV on the property. RVs are allowed to be stored on your property as long as it is parked behind the rear corner of the home. Currently the RV is parked in the side yard while the applicants are living inside while the home is being renovated. They have requested to remain until the renovations are completed, however, Zoning does not allow. The property has room to park the RV in the driveway as it extends beyond the house but it is not parked there now. There have been no known instances where the Board has approved the habitation of an RV on a single family residential property. Allowing an RV to be inhabited on the property as a variance would likely set a negative precedent for future residents to move into RVs to complete renovation work on their home. Lastly, this portion of the request would be a "use variance" because it would essentially allow a second housing unit on the property in addition to the existing single family home. "Use variances" are highly discouraged.

MR. HAVILL wanted to know how this situation came about.

MR. SNYDER stated that we got complaints from residents about a family living in an RV. The Zoning Inspector went out to investigate and issued a Notice of Violation.

MR. FOWLER wanted to know what standards would apply if this was a fully conforming corner lot.

MR. SNYDER stated that if the home met the required setback of 35 feet the proposed fence would be allowed to extend from the rear line of the home to the property line without a variance.

MR. FOWLER wanted to know what factors should be considered for "practical difficulties".

MR. SNYDER stated that they should consider that the homeowners are at a disadvantage because the developer constructed the road 15 feet from their home making it a noncomplying structure. They do not have the benefits that other property owners have with corner lots.

MR. FOWLER noted that they are not the original owners.

MR. SNYDER noted that the property owners should have known the zoning before purchasing the property but the standards for “practical difficulties” are less stringent and this does not substantially deviate from the Zoning Code.

ALEX WOELLERT (12007 Rich Road, 45140) stated that she and her husband, Dave, are the applicants. She showed the Board pictures of her home on her laptop. They are currently living in the RV while their home is being renovated. This is the most practical alternative because they have a nine month old baby and two dogs that do not get along with other dogs. She also works from home so being on site makes it convenient to meet with contractors. They do laundry off site and use disposable items. They originally thought the renovations would be completed on June 4th but they ran into some plumbing problems and need an extension.

MR. WOLFE wanted to know how much longer they need.

MRS. WOELLERT stated that they are looking for an extension until August 1st. They expect to be done way before this date but are asking for additional time in case they run into more problems. They don’t want to come back and ask for another extension.

MR. HORVATH wanted to know when they started the project.

MRS. WOELLERT stated that they bought the house on January 10th and closed mid-March. In between they were doing work and then ran into a lot of problems so they decided to take their time and do the renovations right. They had no plans to live in the RV but had to do so when they had no operating bathroom.

MR. HORVATH wanted to know what they have done to mitigate the circumstances so they would not be in violation of the code.

MRS. WOELLERT stated that after receiving a Notice of Violation they talked to several individuals in the Zoning Department and the Township Administrator and figured their best option was to file for a variance for the use of the RV with the fence variance so they would have more time to complete the renovations. However, plumbing issues significantly delayed them and they are not ready to move in.

MR. HAVILL wanted to know if the Pine trees are in the right-of-way or on their property.

MRS. WOELLERT stated that they are right on the 15 foot easement.

MR. HAVILL wanted to know if they ever considered using a Kentucky board fence along Willow Drive and a privacy fence along the rear property line.

MRS. WOELLERT stated that they have but the fence is not just for privacy. There is a lot of foot traffic along Willow Drive and they need the fence to contain their dogs especially since one of them is really aggressive.

MR. WOLFE wanted to know if their dogs could jump over a four foot fence.

DAVE WOELLERT (12007 Rich Road, 45140) stated that it is very possible because they have a three foot retaining wall on the property that one dog can easily jump over.

MS. HARLOW wanted to know why the RV was parked in the side yard.

MRS. WOELLERT stated that they cannot park it in the rear yard right now because they need to hook up to water and sewer. It will be moved back when they are done.

MS. HARLOW wanted to know where on the diagram the RV will be moved to.

MRS. WOELLERT showed the Board on a diagram that the RV will be parked behind the rear corner line of the home. It will not be that visible from the road due to the terrain of the property.

MS. HARLOW wanted to know if the if the RV is required to be parked in an accessory structure in the rear yard.

MR. SNYDER said that it did not.

CJ CARR (10403 Willow Drive, 45140) stated that he lives diagonal from this property. He noted that several months ago the Board approved a three foot setback variance for a six foot privacy fence located at the corner of Maple and Willow Drive. This homeowner should be allowed the same consideration since it is not her fault the road was constructed 15 feet from her property line. There seems to be two different interpretations of the Zoning Code.

MR. HORVATH was not familiar with the case and asked for clarification.

MR. CARR stated that when the home was built on Willow Drive it was setback 25 feet from the right of way rather than the 30 foot requirement. A Zoning certificate was then issued for the privacy fence to extend three feet into the required front yard. The Board granted a variance to allow the fence to remain.

MR. SNYDER stated that there were different circumstances for that case. The Zoning permit was issued in error. The property is not square and is located on the corner of a paper street. The applicant also agreed to remove a section of the fence.

MR. CARR didn't think the proposed fence would have any effect on the adjacent properties especially since there are several fences in the vicinity that don't meet the height requirements. He also noted that the previous owner never maintained the property. The new owners have come in and cleaned it up and are making improvements that will be beneficial to the neighborhood. The Board should approve their request.

SARAH MELVIN (10316 Willow Drive, 45140) stated she has no issues with the RV since it will be eventually moved back behind the rear corner of the house. She believes a six foot tall privacy fence is not necessary since dogs will still run and bark and the privacy fence will affect the aesthetics of the neighborhood. The Pine trees are closer to their house than they are saying and will not provide proper screening. Lastly, we have two dogs and we manage just fine without a privacy fence. A four foot tall fence should be sufficient.

PEGGY DISTASIO (10246 Willow Drive, 45140) stated that she and her neighbors are concerned about how a privacy fence will look at the entrance to their subdivision. The sidewalk is across the street and not in front of their property so there shouldn't be any issues with dogs. The Pine trees will not screen the fence from view because they are old and have large trunks. There are two homes nearby that have pools and they do not have a privacy fence. Finally, the homeowners should have considered the Zoning before they purchased the property.

MRS. WOELLERT stated that they have taken their dog to training classes but are still having issues.

MR. WOLFE noted that they have indicated on the plans that the rear yard fence may be a four foot tall split rail fence or a six foot tall privacy fence. What is the reason for the difference.

MRS. WOELLERT stated that they may regrade the property and add a berm in the rear yard. This would raise the fence higher and keep the dogs in.

MR. HORVATH stated that he is inclined to grant a variance for the RV until August 1st but would strongly encourage the homeowners to do everything in their power to get out as soon as possible since so much time has passed already. As for the fence, he does not see any compelling reason to justify a six foot tall privacy fence in the front yard. It will impact the neighbors too much. Besides, they have a couple of options available to them that do not require a variance.

MR. FOWLER stated that the standards to be considered in granting a variance cannot be met. He believes the applicants want the fence merely out of preference and not because of any hardship. Just because your dog can get out does not entitle you to a variance. Residents have an absolute responsibility to keep control of their dog. Someone brought up tonight how we are not consistent. That is untrue. We denied a request for a six foot tall privacy fence on Union Cemetery Road a few years ago and the applicant had a more valid reason since he lived next door to an apartment complex and dumpster. The three foot variance we granted on Willow Drive was for a privacy fence on the corner of a paper street. That is different. I do not have any issues with the RV.

MS. HARLOW stated that she does not want to grant a variance for the habitation. They can move the RV back and use a bigger hose to connect to the sewer and water if they are not ready to move in. She

does not want to set a precedent of letting people live in RVs because it is not a good look for the Township. As for the fence, we denied the six foot tall privacy fence on Union Cemetery Road and that one was a bit more visually unappealing than this. Under the code, they are allowed to install a split rail fence which should be sufficient.

MR. HAVILL stated that a Kentucky board fence that has a 62 percent open face area might be a good alternative. It is not six feet tall but would help with screening. As for the RV, although the habitation is only temporary I still have a problem with it. It very clearly states in the Staff Report that "use variances" are not the norm and should not be used. He suggested the Board continue the case for 30 days.

MR. SNYDER said the Board has the authority to do so but a reason needs to be provided.

MR. FOWLER suggested that instead of granting a continuance they give the applicants a 30 day extension in the Resolution.

MR. HAVILL noted that a continuance is better than the Board approving a "use variance" which may set a precedent. Hopefully, the applicants will be done with the renovations by July.

MR. WOLFE said that we still will have the issue of the fence. Maybe two separate motions are best.

MR. SNYDER advised the Board not to split up the issues.

MR. WOELLERT stated that he would like a continuance for the fence and RV for 30 days.

MR. HORVATH made a motion to continue BZA 2018-07 for 30 days for the habitation and storage of an RV in the side yard and the installation of a six foot tall privacy fence in the front yard at 12007 Rich Road.

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

Mr. Fowler - "nay", Ms. Harlow - "aye", Mr. Havill - "aye", Mr. Horvath - "aye" and Mr. Wolfe - "aye".

MR. WOLFE convened the public hearing for BZA 2018-08 for Cincinnati Hills Christian Academy at 11312 Snider Road.

MR. HORVATH stated that he has a connection with this school and will recuse himself from this case, if necessary.

MS. HARLOW wanted to know how he was connected.

MR. HORVATH said that he was a member of the Board of Trustees for Cincinnati Hills Christian Academy from 2008-2014.

MR. SNYDER stated that he only needs to recuse himself from this case if he will make a financial gain from the outcome of the ruling or cannot be impartial.

MR. FOWLER noted that he needs to make the decision on his own; the Board cannot decide for him.

MR. HORVATH stated that he has nothing to gain from the outcome and would like to stay and be part of the process. He will rule in accordance with the standards of the bylaws.

The Board did not object.

MR. SNYDER stated that this is a Conditional Use request from Cincinnati Hills Christian Academy for the installation of an artificial turf field play area with surrounding netting at the upper elementary school building. The Board granted Conditional Use approval to the school in 2016 and 2017 for a large campus construction project that included the expansion of the upper and lower school buildings, the construction of a new gymnasium and modified signage on the campus. As part of the site modification for the upper elementary school building the Board approved modifications to the parking lot that included a number of additional parking spaces, additional drop off/pick up lanes and a revised circulation pattern. The construction of the parking lot has been completed but there is no grass area for the children to play on. The applicant is now requesting approval to allow for the addition of a 4 foot by 120 foot turf field on top of one of the existing secondary vehicular drive lanes for a playground. The

proposed use and development shall not have an adverse effect upon adjacent property because students currently play at recess now and the field would not likely create any additional noise for nearby residents. This area is currently buffered by an existing tree line and berm which is located between the proposed play area and the residences along Snider Road. Lastly, no new lighting is proposed.

STEVE SIDERIS (11312 SNIDER ROAD, 45249) stated that he is the Principal for the building. Right now the students are playing basketball, football and soccer on the asphalt resulting in numerous injuries each week. They came up with the idea of installing an artificial turf field to reduce injuries. It will be professionally installed and add value to the property.

MR. FOWLER wanted to know if balls ever go onto Snider Road.

MR. SIDERIS stated that it happens occasionally. However, the netting around the field will reduce the risk.

MR. WOLFE stated that he had no problem granting a variance. It will not impact parking and will be safer for the students.

MR. HORVATH stated that it was a good project and will improve safety.

MR. HAVILL made a motion to approve the construction of an artificial turf field on a secondary vehicular drive lane in the existing parking lot for the upper elementary school building for Cincinnati Hills Christian Academy at 11312 Snider Road.

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

Mr. Fowler - "aye", Ms. Harlow - "aye", Mr. Havill - "aye", Mr. Horvath - "aye" and Mr. Wolfe - "aye".

OLD BUSINESS

MR. SNYDER noted that the Johnsons have not filed an appeal yet for the treehouse for BZA 2018-06.

MR. HORVATH wanted to know how the appeal process worked.

MR. SNYDER stated that after a request is denied the applicant receives a signed resolution in the mail signed by the Board Chairperson. The applicant then has 30 days to file an appeal with the Court of Common Pleas. The Township attorney or its representative represents the Board of Zoning Appeals in court.

ADMINISTRATIVE MATTERS

MR. FOWLER wanted to know how to interpret #5 for "practical difficulties" in the Factors to be Considered section of the Staff Report. It asks if the property owner purchased the property with knowledge of the zoning restrictions. However, a lot of times during testimony an applicant will state that they called the Township office and they were told they could do something or they did not know the Township had a zoning code.

MR. SNYDER stated that the standards we use for "practical difficulties" were created by a judge in a special case and are referred to as the "Duncan Factors". Most of these factors should be met in your decision process but not every one has to apply. Of course, the standards for "use" variances should be more stringent and granted only upon the finding of "unnecessary hardship".

MS. HARLOW made a motion to approve the minutes of the May 7, 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. Horvath - "abstain" and Mr. Wolfe - "aye".

MS. FELTER stated that the next meeting of the Board of Zoning Appeals is scheduled for July 9, 2018 due to the Independence Holiday.

MR. WOLFE indicated that he would not be available.

ADJOURNMENT

MR. WOLFE adjourned the meeting at 8:41 p.m.

Approved:

Ralph Wolfe, Vice-Chairperson

Luanne Felter, Zoning Secretary