
**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING
JULY 9, 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. Ruehlmann.

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

PUBLIC HEARINGS

MR. RUEHLMANN convened the public hearing for BZA 2018-07 which was continued at the last meeting. He noted that he was absent from that meeting and while he read the minutes he will abstain from voting. The Board will be deliberating and making a decision on this appeal.

MR. SNYDER stated this request is for the construction of a privacy fence in the front yard area of the home which is located on a corner lot and the habitation and storage of an RV in the side yard. At the last meeting there were discussions on whether the fence is actually located in the front yard. The Staff Report was written with the understanding that a variance is required since the house did not meet the setback requirements. However, when CJ Carr pointed out that a variance was granted for a similar fence on Willow Drive, I went back and researched it and found that he was right. Once a house is constructed the yard is set. The refusal was written in error and the fence is permitted. In this case, the fact that the front yard is non-conforming doesn't matter. The fence is permitted to begin at the back of the house and extend to the rear yard. The fence does not require a variance. Therefore, a permit will be issued and the fence will not be part of this case any longer. The remainder of the case will be the consideration of the habitation and storage of the RV in the side yard.

MR. HORVATH wanted to know if anything would be done to prevent this situation from happening again.

MR. SNYDER stated that he has discussed this issue with the office staff so they are aware.

MS. HARLOW wanted to know if the Board needed to do anything procedurally.

MR. SNYDER stated that the Board did not have to do anything.

DAVE WOELLERT (12007 Rich Road, 45140) stated that they have contractors scheduled to complete the work within the next couple of weeks but still would like permission to live in the RV until August 1st just to be safe.

MR. HAVILL stated that this is unacceptable. The Board continued the case so they would have time to get the job done. It has been five weeks now since the meeting and they still are not done. I think they can move into the home without some of the amenities.

ALEX WOELLERT (12007 Rich Road, 45140) stated that they still don't have any operating bathrooms.

MR. HAVILL stated that they should have done that first so they could be living in the house.

MR. WOELLERT noted that they have a large floor plan and had some flooring issues. Also, his dad recently fell and he had to help his mom and could not focus on the house for a while. He is trying his best to get the job done and is even taking on some of the work himself.

MR. HAVILL wanted to know when they started the renovations.

MR. WOELLERT stated that they began on March 15th.

MR. FOWLER noted that it has been over 90 days.

MR. HAVILL stated that is why he is concerned. What if the Board grants an extension until August and they come back again and want an extension until September. There are no guarantees that it won't happen again.

GLEN BLADH (11978 Foxgate Way, 45140) wanted to know what will happen to the RV once the renovations have been completed. Is he allowed to store it on the property? The law seems vague.

MS. HARLOW stated that this was addressed at the last meeting. The RV will be moved back into the rear yard.

MR. SNYDER explained that under the Zoning resolution residents are allowed to store one boat, trailer or RV in the rear yard in a Residence District.

MS. HARLOW stated that her position on this matter has not changed. The Board should not allow the habitation of an RV as it is not a good look for the Township and may set a precedent. Also, I believe the RV only needs to be moved back six to eight feet to be in compliance and I have not heard any good reason why it can't be done.

MR. HORVATH stated that this issue has been going on since mid-March. At the last meeting they gave us our assurance that they would rectify the situation and make it right. Here we are one month later and the renovations are still not done. I am not sympathetic at this point.

MR. FOWLER wanted to know what would happen if the Board rejected the appeal.

MR. SNYDER stated that they would receive a citation and would need to appear in housing court.

MR. HAVILL wanted to know how long the process would take.

MR. SNYDER stated that it could take about three to five months.

MR. HAVILL noted that this is a "use variance" and cannot be allowed. There are other alternatives for the family like staying at an RV park. Since they claim the renovations will be done in a couple of weeks the cost should not be overwhelming.

MR. HAVILL made a motion to deny the habitation and storage of an RV in the side yard of the home located at 12007 Rich Road.

MR. HORVATH 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. Ruehlmann – 'abstain'.

MR. RUEHLMANN convened the public hearing for BZA 2018-09 for the property at 11793 Enyart Road.

MR. SNYDER stated that the request is for approval of a seven foot high wooden privacy fence within the rear yard area on the north side of the existing single family home that was constructed without a permit. The fence extends from the rear corner of the home to the rear property line. The property is a standard rectangular shaped lot and is not located on a corner lot. The maximum height allowed for a privacy fence in Symmes Township is six feet high so a variance is required for the additional one foot along the property line. The applicant states that the variance is needed because the neighbor's pool sits two feet above grade. However, as

I indicated in the Staff Report, the grade change between the two properties is very gradual. Lastly, the majority of the properties in the Township are similar in size and shape and granting a variance may set a negative precedent.

MR. HORVATH wanted to know if a variance has ever been granted for a seven foot high fence.

MR. SNYDER stated that he does not recall a variance being granted for a fence this size in the rear yard but there have been variances approved for the side yard and corner lots.

MR. FOWLER wanted to know if he noticed the two foot grade elevation when he inspected the site.

MR. SNYDER stated that if you look at the bottom right photo included in the Staff Report the change in elevation is not significant.

MR. RUEHLMANN was confused and wanted to know if the fence has already been built.

MR. SNYDER stated that they started construction but did not finish. They still need to add the one foot decorative top to the portion of the fence in the back.

MR. FOWLER wanted to know if the neighbor's pool was fenced in.

MR. SNYDER stated that it has a four foot fence per the Building Code.

JONATHAN FREEMAN (11793 Enyart Road, 45140) stated that the pool is not the only issue. The neighbor has other structures located in his back yard that include a shed, pool house, playset, basketball court and a large oversized detached two car garage and provided photos. As you can see from one of the photos, the four foot white picket fence around our neighbor's pool is visible over the fence. We went above and beyond trying to make the fence aesthetically pleasing. We applied for a permit for a six foot high wooden privacy fence with the intent of leaving a one inch gap underneath. When the Zoning Inspector realized what we were planning to do, she called to tell us it is not permitted. We decided to lower it according to code and obtained the required zoning certificate. We then applied for a variance for the additional foot. We only added the decorative top to the front portion of the fence so you can see what we are trying to do. The fence is actually six feet ten inches high.

MR. RUEHLMANN wanted to know if they considered landscaping.

MISTY FREEMAN (11793 Enyart Road 45140) stated that they did consider it but it takes a long time to grow in and it would never screen the detached two car garage from view.

MR. FREEMAN said the amount of landscaping required to screen the neighbor's property would have to be significant. He noted that the decorative top covers the right amount to block the adjacent property. In the photos you can see the difference from the parts that are finished vs. unfinished.

MRS. FREEMAN stated that there is another reason for the privacy fence. They have three young girls that are age 6, 7 and 10 and need to protect them from a sexual offender who visits next door. They have documentation if the Board wants to see it. They also plan to get an in-ground pool next summer so their privacy is important.

MR. FREEMAN stated that the extra ten inches of privacy is priceless and is not a substantial deviation from the Zoning code.

MR. FOWLER wanted to know if the fence will run across the back line of the property.

MR. FREEMAN stated that they have installed a split rail fence there. The privacy fence is only on the north side of the property.

MR. FOWLER noted that the trellis appears to be well above seven feet high and wanted to know if it is permitted.

MR. SNYDER stated that it is also in violation because it is attached to the fence and needs to be part of the variance. If it was a standalone structure it would be allowed.

MS. HARLOW wanted to know if decorative caps are included in the height requirements.

MR. SNYDER stated that the height requirement for a fence is measured from the ground to the highest point which includes the caps. However, if there is only a small difference in height we may allow them to stay but it is really at the discretion of the Zoning Inspector.

MR. FOWLER noted that the property is highly visible because it is located on a busy roadway with Symmes Elementary and the library located across the street. If we grant a variance for a seven foot high privacy fence it will certainly set a precedent for similar fences in the future.

MR. HAVILL agreed. He stated that other alternatives are available to rectify this situation. Landscaping can be planted or a mound can be built to raise the fence higher like Slim Chickens did on their property.

MRS. FREEMAN stated that the fence has already been constructed in the ground.

MR. HORVATH stated that he understands their dilemma and is sympathetic. However, he is afraid that if the Board grants the variance the next family will come along and request a variance for a seven foot two inch high fence or a seven foot nine inch high fence. The Board has to draw the line.

MR. RUEHLMANN noted that he is sympathetic to their situation also but Symmes Township zoning is clear that only six foot high privacy fences are allowed in the rear yard. We did not hear a compelling reason for it to be higher. Other methods are available for screening. Finally, the structures on the neighbor's property were there when they purchased their home.

MRS. FREEMAN stated that the Board is denying her right to privacy.

MR. RUEHLMANN told her she can appeal her decision with the Court of Common Pleas.

MR. SNYDER noted that there is no limit on the amount of structures you are permitted to have in your back yard in the Zoning Code.

MR. FOWLER noted that a desire to screen your property from your neighbor is not a good enough reason to be granted a variance from the Zoning Code. Maybe a seven foot high section by the pool would be sufficient.

MR. HAVILL made a motion to deny BZA 2018-09 for the construction of a seven foot high privacy fence and trellis in the rear yard area at 11793 Enyart Road.

MRS. HARLOW seconded the motion.

MR. RUEHLMANN wanted to know if any of the Board members wanted to discuss the motion.

MR. HORVATH stated that he is struggling with his decision. The variance request is for only ten inches above the height requirement and the situation is unique and compelling.

MS. HARLOW reminded him that other alternatives are available for screening.

MR. RUEHLMANN requested the roll call vote which went as follows: Mr. Fowler – 'aye', Ms. Harlow - 'aye', Mr. Havill – 'aye', Mr. Horvath – 'aye', and Mr. Ruehlmann – 'aye'.

ADMINISTRATIVE MATTERS

MR. HORVATH made a motion to approve the minutes of the June 4, 2018 meeting.

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. Ruehlmann – ‘abstain’.

MR. SNYDER stated that the Board has received a request from the applicants of BZA 2018-06 to reconsider their appeal for the construction of a treehouse with less rear yard setback than required at 10251 Fawncrest Court. The Board heard this case and denied the requested variance on May 7, 2018. The applicant has now submitted a letter stating that they lowered the height of the treehouse from 24 feet to 18 feet by increasing the grading underneath. In the bylaws under Article III, Appeals, the Board has the ability to reconsider an appeal. This section provides, in part, that “No appeal shall be entertained where, within two years, an appeal has been previously determined by the Board involving the same premises and zoning regulations, except in appeals where a revised plan or a change of facts and circumstances pertaining to said regulations are presented showing changed conditions which, in the opinion of the Board, warrant the reconsideration of such an appeal.” If the Board grants the reconsideration, the applicants will need to apply for a variance again just as if it was a new appeal.

MR. HAVILL wanted to know if they made any other changes to the structure.

MR. SNYDER said that he didn’t believe so. He reminded the Board that the variance is only for the portion of the treehouse that is located in Symmes Township. The treehouse is partially constructed along the rear property line that extends into the adjacent property to the west which is Loveland High School property in the City of Loveland. The Township was recently copied on a letter from the school’s attorney stating that the Johnsons have 45 days to remove the structure from their property.

MR. HORVATH wanted to know what the maximum height requirement is for Symmes Township.

MR. SNYDER stated that it is 14 ½ feet measured from the gable roof. The difference in the height requirement in this case is approximately four feet from the tallest portion. As you may recall, we had a discussion at the hearing of what the actual height of the treehouse was because we were not sure of the midpoint section and a scale drawing was not provided.

MR. HAVILL wanted to know if they regraded the whole yard or just underneath the structure.

MR. SNYDER stated that he is not sure since no photos were presented.

KRISTEN JOHNSON (10251 Fawncrest Court, 45140) stated that she wants the Board to reconsider the variance for the treehouse play device. She did some research online and found some of the playsets sold are 13-15 feet high. The treehouse is a play device and is located in our rear yard. There is a slide attached to it and we plan to add swings. There is no definition in the Symmes Township Zoning Code on what an accessory structure is. According to FEMA the definition of an accessory structure is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For example, a residential structure may have a detached garage or storage shed for garden tools as accessory structures. I need a clarification of what is considered an accessory structure.

MS. HARLOW noted that FEMA’s definition of an accessory structure does not apply here.

MR. SNYDER stated these issues were already discussed with the Board previously and are not relevant.

MRS. JOHNSON stated that there are probably many playsets in the Township that are above 14 1/2 feet.

JOE JOHNSON (10251 Fawncrest Court, 45140) stated that no regulations say what the height requirements are for play structures. They only state that an accessory structure cannot exceed 14 ½ feet. I feel the regulations are very vague and left up to individual interpretation. You may consider the treehouse as an accessory structure but it was built and is used as a play structure.

MR. RUEHLMANN stated that he understands his point and can file an appeal with the Court of Common Pleas if he wants. However, the Board can only determine if sufficient changes have been made to the treehouse to warrant the reconsideration of the appeal.

MR. JOHNSON stated that he is confused. When he spoke with Bryan Snyder he was told he could file an appeal with Zoning or submit a request for a new variance. He was not allowed to make any changes since the variance was denied.

MR. SNYDER stated that he told him that Zoning cannot take an appeal to the Court of Common Pleas. If he wanted to appeal the decision, he should get a lawyer and file with the Court himself. He also could file for a new variance with the Board if he made substantial changes to the treehouse.

MS. HARLOW wanted to know what the height of the treehouse is now.

MR. JOHNSON said that it is at 18 feet.

MR. RUEHLMANN wanted to know what changes he has made to the structure.

MR. JOHNSON stated that he changed the grade in his backyard. He had some drainage issues and the property needed to be regraded anyway.

MR. FOWLER wanted to know if he was looking for a variance for 4 ½ feet.

MR. JOHNSON said he was.

MR. SNYDER stated that there is a section in the Zoning Resolution for Accessory Uses and Structures.

MR. RUEHLMANN reiterated that the Board is only here to consider if sufficient changes have been made to warrant the reconsideration of the appeal.

MR. HORVATH thought that in the hearing the height requirement was 12 ½ feet.

MR. SNYDER said that is the correct height requirement for their lot size.

MRS. JOHNSON noted that in their original request they also asked for a zero foot setback. They can't move the structure because it is attached to the tree and the structure requires the tree for support. They don't know what else they can do.

MR. RUEHLMANN thought the Board heard enough and requested a roll call vote for the reconsideration of the appeal.

The vote was as follows: Mr. Fowler – 'nay', Ms. Harlow - 'nay', Mr. Havill – 'nay', Mr. Horvath – 'nay', and Mr. Ruehlmann – 'aye'.

MR. RUEHLMANN stated that he noticed that in the bylaws under Article VI, Section 2, Order of Business, that the appellant is to be heard first then the Township. The Board does the opposite.

MR. HORVATH wanted to know if the order of business has always been done that way or if it was changed recently.

MR. RUEHLMANN noted that he has been on the Board for over 20 years and it has always been done that way.

MR. SNYDER believes that his predecessor changed it to match the County's procedures.

MR. RUEHLMANN noted that he likes it that way and the Board should amend it.

MR. SNYDER stated that there is a procedure they need to follow. In the bylaws under Article VIII Amendments it states that "These rules and regulations may be amended or modified by a majority vote of members of the Board with a minimum of three affirmative votes required, provided that such amendments be presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting."

MR. RUEHLMANN asked the Zoning Secretary to prepare the letter for approval at their next meeting.

MR. FOWLER stated that he likes the way the Board does the order of business. Zoning provides a detailed summary of the case before there are arguments for or against it.

MR. SNYDER noted that he has been at meetings where the order of business was reversed and, in his opinion, it did not go well. Determinations were made before the facts of the case were even presented.

ADJOURNMENT

MR. RUEHLMANN adjourned the meeting at 8:32 p.m.

Approved:

Ronald Ruehlmann, Chairperson

Luanne Felter, Zoning Secretary