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

OCTOBER 6, 2014

The meeting was called to order at 7:00 p.m. Members of the Commission present were: Mr. Flagel, Ms. Harlow, 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 HEARING

MR. WOLFE convened the public hearing for BZA 2014-14 for the property located at 11354 Terwilligers Creek Drive.

MR. SNYDER stated that the request is for a variance to permit the construction of a five foot high roll top picket style fence with more height and less open face area than required in the side yard of the home that is located in an "A" Residence District. The fence would be constructed in two sections to screen the view of the adjacent property. The first section would begin at the front corner of the home and extend 21 feet along the driveway to the northern property line. There would be a 12 foot gap in the center with a second section extending along the remaining eight feet adjacent to the driveway. Apparently, mature pine trees located on the adjacent property were trimmed back too far and damaged the lower branches leaving the foundation of his neighbor's house exposed. The applicant claims there is not enough room in his side yard to plant landscaping for appropriate screening.

JOHN GALLAGHER (11354 Terwilligers Creek Drive, 45249) stated that he would like to withdraw his request for a zoning variance for the remaining eight feet of fencing along the driveway. He believes the 21 foot section should be sufficient and provided photos of the damaged trees for the Board. He was told by a landscaper that the trees are too damaged to recover. He would like a privacy fence to block the view when he and his wife are sitting in their screened in porch. When he talked to his neighbor about the situation he was told that landscaping would be planted around the trees to soften the view but, to date, it has not been completed.

MR. RUEHLMANN wanted to know why he wants that particular type of fence and not a split rail fence.

MR. GALLAGHER stated that the damage on the trees extends up to six feet. He would like a privacy fence to block the view of his neighbor's foundation and a split rail fence would not be adequate. He would have liked the fence to be even higher but thought that was unnecessary.

MR. MISRACH wanted to know if he considered adding pine trees or landscaping on either property instead of a fence.

MR. GALLAGHER stated that there is not enough room on his property to plant trees. He did plant some pine trees on his neighbor's property a few years ago near the northern property line with his neighbor's permission but was told recently that he may get rid of them. He does not want to spend any more money if the neighbor is not going to comply.

PAUL RADKA (11366 Terwilligers Creek Road, 45249) stated that he is the property owner in question. He hired a landscaper to trim the trees back but they used a chainsaw. An arborist came to look at the trees and told him the branches will grow back but it may take a few years. He prefers that his neighbor not put up a fence because it will devalue the homes. He admitted that he offered to spruce up the side yard but has some physical problems. He noted that the pine trees on the side of his home are 20-25 years old and should probably just come out. Essentially, he would like to take everything out and start over. In the meantime, he would be willing to work with his neighbor.

MR. MISRACH thought the issue between the two property owners could best be resolved through other means.

MR. WOLFE agreed and noted that the privacy fence would not block much of the neighbor's property from his porch anyway.

MR. RUEHLMANN stated that he does not have any issue with the height of the fence but does not like that it is not open. He suggested that the Board grant approval for a fence with 75% openness.

MR. FLAGEL stated that he is hesitant to approve something that is not before them. Besides the Board doesn't even know if the applicant wants it.

MR. RUEHLMANN suggested that they include a condition in the resolution.

MR. MISRACH stated he was also reluctant to support something that is not before the Board.

MS. HARLOW agreed and didn't think adding a condition would even resolve the issue between the neighbors.

MR. RUEHLMANN stated that he wants to help the residents. He made a motion to grant a variance for the construction of a 21-foot long, five-foot high fence with a 75% open area in the side yard of the home located at 11354 Terwilligers Creek Drive.

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

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

RESOLUTION
DENYING
APPEAL NO. 2014-14

WHEREAS, John Gallagher, 11354 Terwilligers Creek Drive, Cincinnati, OH 45249, appellant, on September 4, 2014, filed Appeal No. 2014-14 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Section 346.1 of said Resolution as applied to the property at 11354 Terwilligers Creek Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on September 4, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate to permit the construction of a five (5) foot high picket fence to be located in the side yard; and

WHEREAS, said Zoning Inspector, on September 4, 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 scheduled for said appeal on October 6, 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 519.15 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 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 five (5) foot high picket fence with more height and less open face area than required in the side yard of the home that is located in an "A" Residence District; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the east side of Terwilligers Creek Drive, south of Enyart Road; and

WHEREAS, according to further testimony offered at the public hearing, the applicant would like to construct a five (5) foot high roll top picket style fence in the side yard. The fence would begin at the front corner of the home and extend twenty one (21) feet along the driveway to the northern property line; and

WHEREAS, according to further testimony offered at the public hearing, a second section of fence was proposed in the side yard for the remaining eight (8) feet along the driveway but the request has been withdrawn; and

WHEREAS, according to further testimony offered at the public hearing, the purpose of the fence is to screen the view of the adjacent property; and

WHEREAS, according to further testimony offered at the public hearing, mature pine trees located on the adjacent property were trimmed back too far and damaged the lower branches leaving the foundation of the house exposed; and

WHEREAS, according to further testimony offered at the public hearing, there is not enough room in the applicant's side yard to plant landscaping for screening; and

WHEREAS, according to further testimony offered at the public hearing, the issue between the two property owners could best be resolved through other means than a fence variance; 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 346.1 of the Zoning Resolution will not result in unnecessary hardship to the appellant of the property in question; and

WHEREAS, a motion to approve a variance with the following conditions was offered; and

1. That, the proposed privacy fence shall not exceed five (5) feet in height and have an open face area of no less than seventy-five (75%) percent;

2. That, the proposed privacy fence shall be located exactly as shown on the plats and plans submitted to this Board;
3. That, the proposed privacy fence not be relocated or enlarged without the approval of this Board;
4. That, the proposed privacy fence shall be maintained in a satisfactory condition at all times;
5. That, the proposed privacy fence comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
6. That, the Zoning Certificate and Building permit (if required) for the proposed addition be obtained within sixty (60) days and all work be completed within six (6) months from the date of adoption of this Resolution;

WHEREAS, said motion failed by a vote of four against and one in favor; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby deny the requested variance due to the failure to attain a minimum of three favorable votes;

APPROVAL OF MINUTES

MR. RUEHLMANN made a motion to approve the minutes of the August 4, 2014 meeting with a spelling change. MS. HARLOW seconded the motion and the roll call vote was as follows:

Mr. Flagel – ‘abstain’; Ms. Harlow – ‘aye’; Mr. Misrach – ‘aye’; Mr. Ruehlmann – ‘abstain’; Mr. Wolfe – ‘aye’.

ADJOURNMENT

The meeting adjourned at 7:50 p.m.

Approved: _____

Luanne Felter
Secretary