
MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING
DECEMBER 4, 2017

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

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

PUBLIC HEARINGS

MR. WOLFE announced that only four Board members are in attendance tonight. As a result, three affirmative votes will be required for approval.

MR. WOLFE convened the public hearing for BZA 2017-18 for 10310 Richland Park Drive.

MR. SNYDER stated that the appellant is requesting approval for a variance to allow a chicken coop in the backyard 10 feet from the nearest property line. Chicken coops are considered an agricultural use in Symmes Township and are permitted on lots less than five acres provided the structure is located at least 60 feet from every property line. The chicken coop can easily be moved 10 feet closer to the house to comply with the 60 foot setback from the rear property line. However, there is no location on the 80 foot wide lot where a 60 foot setback can be achieved from both sides. Without a variance, the chicken coop would have to be removed from the property. The current location of the chicken coop is adjacent to a private driveway that provides access to two panhandle lots to the rear of the subject property. These two homes face towards the rear yard. Though the chicken coop is located in a row of pine trees, it can still be easily seen from the driveway and the front porch of one of these two homes. Granting a variance to allow the chicken coop to be located on the residential property may subject adjoining properties to increased noise and odor impacts. Additionally, the concern about the chickens being let out of the coop and running around the rear yard could create a barnyard type of environment that is not consistent with the character of the area. However, it has been demonstrated in other townships that these concerns can be addressed with proper restrictions. The Hamilton County Resolution includes standards limiting the number of chickens to 10, limiting the size of the enclosure to a maximum of 100 square feet per chicken, prohibiting roosters, confining the chickens to the enclosed area and requiring coops to be kept in a clean and sanitary condition. Symmes Township is in the process of revising their code to include these restrictions. The text amendment will be heard by the Zoning Commission in December and the Trustees will hold a public hearing in January. If approved the text amendment will become effective in March.

MR. HAVILL wanted to know what the Township was proposing for a setback.

MR. SNYDER stated that the Township considered a 10 foot setback but are initiating a 20 foot setback.

MR. HAVILL wanted to know how we can enforce the cleanliness.

MR. SNYDER stated that if we get a complaint and the Zoning Inspector goes out and can smell the coop from the other side of the property line it would be considered unclean and we can issue a citation if they don't comply.

MR. FOWLER wanted to know what happens if the Board grants a variance and then Symmes Township adopts Hamilton County's regulations.

MR. SNYDER stated that whatever the Board decides will stay with the property even if it is more restrictive; it cannot be preempted.

MR. FOWLER wanted to know if the Board should encourage the property owner to withdraw.

MR. SNYDER stated that it was up to the Board.

MR. WOLFE wanted to know what would happen to the coop if the Board continued the meeting.

MR. SNYDER stated that while the case is pending the coop could remain on the property.

MATT RAIH (10301 Richland Park Drive, 45140) passed out an aerial image and photo of the chicken coop from the private driveway. He stated that he is not looking for something out of the ordinary; Symmes Township does allow chicken coops but has a hardship due to his lot size. He would be happy with a 20 foot setback like Hamilton County zoning. In consideration of his neighbors he placed the coop by the row of pine trees. Keeping it in that location camouflages the coop and provides necessary shade in the summer for the health of the chickens. The reason for having chickens is to teach their children about urban farming and supports greener living, healthy food options and sustainability. Because of these benefits Hamilton County changed its standards several years ago. In addition, State Representative Tom Brinkman has introduced House Bill 175 which would allow property owners to keep small livestock on their property 10 feet from any property line. Even Symmes Township is considering amending their zoning code. Lastly, the chickens are therapeutic to a member of his family. They have supporting documentation but do not want to share the details due to HIPAA. In short, the benefits of having chickens far outway the negative.

MR. WOLFE wanted to know how he plans to keep the chickens warm in the winter and if he allows them to roam around.

MR. RAIH stated that you cannot put a heater in the coop. Chickens regulate their own body heat and huddle at night. The chickens are only allowed to roam for about a half an hour a day while he cleans the coop.

MR. HAVILL wanted to know if he has a split rail fence with wire mesh.

MR. RAIH stated that he does. The chickens have not gotten out and cannot fly.

MR. HAVILL wanted to know how the County got involved.

MR. RAIH stated that Hamilton County got a complaint from one of his neighbors. He is here tonight so he will let him speak for himself.

MR. FOWLER wanted to know if he would be willing to comply with the standards Symmes Township is proposing.

MR. RAIH stated that he would and could add on to the chicken coop if necessary.

JIM KELLEHER (10304 Richland Park, 45140) stated that he lives on the private drive located behind the Raih's property. He and his family are highly opposed to any changes to the current 60 foot setback requirement. Other residents in Richland Park agree that farm animals do not belong in a backyard setting. He would like to set the record straight--Mr. Raih intentionally withheld information and details to the Board of Trustees at their meeting on September 12, 2017 to sell his narrative. He has given the neighbors and the mail lady false information as well. I told Mr. Raih that he was in violation of the HOA covenants back in April. He said he did not have a copy and thought that chickens were not included as poultry anyway. He told me is is aware of Hamilton County's zoning requirements but did not check with Symmes Township zoning. He has not done his due diligence and

continues to mislead people for his own benefit. The amount of skunks has increased in our area since the chickens arrived. I told him my dog has health issues and cannot get vaccinations so we are very concerned about his safety around wild animals. Instead of getting rid of the chicken coop, Mr. Raih killed a skunk and left traps against our wishes. He has never shown concern for my dog or family even though he is clearly in violation and wants to play the victim. We believe the Township is more densely populated since the regulations were established and should not shorten the 60 foot setback area. The threat from predators will be exasperated by allowing farm animals in the backyard. It is a food source. I suggest that the Township rent greenspace areas for chicken coops to teach kids sustainability and greener living.

MR. WOLFE stated that while he understands Mr. Kelleher's concerns the Board can only vote on whether to grant a variance for a setback. He suggests that he attend the upcoming Zoning Commission meeting in December.

MR. KELLEHER stated that he understands and will try to attend the meeting.

MR. RAIH stated that Mr. Kelleher's comments were inaccurate. He is not responsible for all the wild animals in the area. Besides his yard is completely enclosed and won't be a food source.

MS. HARLOW stated that she would like to continue the case until the matter has been resolved by the Board of Trustees.

MR. HAVIL disagreed and stated that the zoning process could take up to six months to complete. He would like to make a decision tonight.

MR. FOWLER stated that while they normally take each case on its own merit he would like to hear testimony on the next case since they are so similar. He does not want to impose a different set of standards for each case.

MR. HAVILL agreed and noted that the Board should not feel obligated to follow Hamilton County's standards as well. He personally feels they are too lenient and the Board should set their own standards. Mainly, we should apply a 30-35 foot setback requirement. Also, no chicken coop should be against someone's property line. If the Board grants a 10 foot variance it may set a precedent.

MR. SNYDER stated that it was unusual but they could do it.

MS. HARLOW stated that she would like the Board to grant a continuance so there is uniformity in the Township.

MR. FOWLER made a motion to table BZA 2017-18 so they can hear the testimony of BZA 2017-19.

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

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

MR. WOLFE convened the public hearing for BZA 2017-19 for the property at 12051 Waters Edge Court.

MR. SNYDER stated that the size of the chicken coop in this case is 40 square feet and includes wheels that allow it to be moved around. It is located 39 feet from the northern side property line and 42 feet from the southern side property line so it does not meet the 60 foot setbacks. The findings in the Staff Report are the same as the other case. Even with landscaping and vegetation around the perimeter of the rear yard the chicken coop can still be seen by neighbors.

MR. FOWLER wanted to know if the yard is fenced in.

MR. SNYDER stated that there is a split rail fence with wire mesh.

REBECCA MOATES (12051 Waters Edge Court, 45140) stated that her family moved here about two years ago. They love the friendly, established neighborhood. They need a variance to keep the chicken coop. It will not compromise safety, aesthetics or the value of the suburban setting. The setback variance that is required will be less than Symmes' current standards but in the realm of Hamilton County's. The chickens help her kids be outside and teach them responsibility and healthy eating. The coop is not that visible because it is located behind the deck and there are trees up against the property lines. She has spoken with the neighbors and they do not have any issues.

MR. FOWLER wanted to know if they would have an issue if the Board granted a 30 foot setback and limited the hours when the chickens can be out of their cage.

MRS. MOATES stated that the chicken coop is on wheels so they can move it to meet the setback requirements. As for the chickens, they are in their coop by 6:00pm anyway so the hours won't be an issue.

MR. WOLFE stated that he has no issues with the chicken coop. They are fine with the 30 foot setback and agree to meet the requirements.

MR. HAVILL wanted to know what the wide lot requirements are for the different zoning districts.

MR. SNYDER stated that it is 100 feet for an "A" Residence District, 80 feet for a "B" Residence District and 60 feet for a "C" Residence District.

MR. HAVILL suggested that they come up with some conditions especially the hours the chickens need to be in their coop.

MR. FOWLER suggested that chickens not be permitted outside the designated fenced enclosure between the hours of 10 p.m. and 7 a.m. The Board should also consider limiting the height of the chicken coop to 6 feet and limiting the number of chickens to 10.

MR. HAVILL made a motion to approve a chicken coop in the rear yard of 12051 Waters Edge Court with the following conditions:

- a. The sole purpose of keeping suburban chickens is for the farming of their eggs for the private consumption of the property owner and not to sell the product.
- b. The number of chickens shall be limited to 10; roosters are prohibited.
- c. Any accessory building or enclosure (include fences) shall be located a minimum of 30 feet from all property lines, shall be located within the rear yard, shall provide a minimum of 10 square feet in area per chicken with a maximum size of 100 square feet for the total enclosure and shall be a maximum of 6 feet in height at the highest point.
- d. Chickens and their enclosures shall be kept in neat, clean and sanitary condition free from offensive odors, excessive noise or any other condition that would constitute a nuisance;
- e. Chickens shall not be permitted to be outside the designated fenced enclosure, which shall include the use of chicken wire mesh and shall be closed up in their coop between the hours of 10 p.m. and 7 a.m.
- f. No chickens shall be slaughtered on the property; however, those chickens that die through some other means or are slaughtered off site may be cleaned and dressed on the property for consumption or disposal.

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

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

MR. WOLFE reconvened the public hearing for BZA 2017-18. He asked Mr. Raih if a 30 foot setback would work for him.

MR. RAIH noted that a 30 foot setback will put the chicken coop in the middle of his backyard but he could make it work.

MR. HAVILL made a motion to approve a chicken coop in the rear yard of 10310 Richland Park Drive with the following conditions:

- a. The sole purpose of keeping suburban chickens is for the farming of their eggs for the private consumption of the property owner and not to sell the product.
- b. The number of chickens shall be limited to 10; roosters are prohibited.
- c. Any accessory building or enclosure (include fences) shall be located a minimum of 30 feet from all property lines, shall be located within the rear yard, shall provide a minimum of 10 square feet in area per chicken with a maximum size of 100 square feet for the total enclosure and shall be a maximum of 6 feet in height at the highest point.
- d. Chickens and their enclosures shall be kept in neat, clean and sanitary condition free from offensive odors, excessive noise or any other condition that would constitute a nuisance;
- e. Chickens shall not be permitted to be outside the designated fenced enclosure, which shall include the use of chicken wire mesh and shall be closed up in their coop between the hours of 10 p.m. and 7 a.m.
- f. No chickens shall be slaughtered on the property; however, those chickens that die through some other means or are slaughtered off site may be cleaned and dressed on the property for consumption or disposal.

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

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

MR. WOLFE convened the public hearing for BZA 2017-20 for the property at 10018 East Kemper Road.

MR. SNYDER stated that the appellant is requesting variance approval for the construction of a 798 square foot deck addition within the side yard area of the home. The home previously had a raised planting bed constructed of concrete block running along the length of the front of the home and extending into the side yard setback on the west side of the property. This planting bed was not considered to be part of the structure and was not required to maintain setbacks. However, the appellant removed and replaced this wall with a new concrete block wall and replaced the planting bed with a new deck on top of the wall without obtaining a zoning permit. Since the deck is attached to the front of the home it is now considered to be part of the structure and required to meet the building setbacks of the “H” Riverfront district. The minimum requirements for this district are for a 100 foot lot width and a 15 foot side yard setback. However, the Zoning Resolution allows for a reduction in this setback for noncomplying lots of record to a distance equal to 10% of the lot width. This allows the required side yard setback to be reduced to 6 feet for this 60 foot wide property. This property is located in an area of the township along the Little Miami River where homes were constructed prior to adoption of zoning and generally do not meet the required building setbacks. The area also has an array of different zoning districts which allow homes to be located less than 6 feet from the side property lines so the deck would not stand out and would not be out of character with the area.

MAURICE BOURASSA (10018 East Kemper Road, 45140) stated that they have been making improvements to their home for several years. His wife did not get a permit for the deck addition and

was issued a citation and had to appear in court. Subsequently, a bench warrant was issued when she didn't appear. They are now going through the process to rectify the situation.

KERI BOURASSA (10018 East Kemper Road, 45140) noted that the wall was not replaced with new concrete block due to the cost. They kept the original wall and built the deck on top. The deck had to be built larger than anticipated in order to make the stairs legal. They realized afterwards that the portion of property that the deck hangs over is not theirs even though they have been maintaining it for several years.

MR. BOURASSA stated that they were told that the variance shouldn't be a problem because they have mowed the property for over 10 years.

MS. HARLOW stated that if he is referring to adverse possession zoning doesn't work like that.

MR. FOWLER wanted to know how their house is situated on the aerial map.

MR. BOURASSA stated that the front of the home faces the river and the portion of the deck that encroaches the other property is adjacent to the new homes. The area has had some zoning changes throughout the years.

MR. FOWLER wanted to know if the neighbors were okay with the deck.

MR. BOURASSA stated that most of his neighbors do not have any issues with the deck and it only became a problem for one of his neighbors after they had a dispute over chickens, believe it or not. That is when they reported us to Hamilton County Zoning.

MR. HAVILL wanted to know the width of his lot.

MR. BOURASSA stated that it is 60 feet wide. He said that it is a horrible lot that is divided into four different sections with commercial and residential. It also has an easement and shared driveway. They need the variance in order to keep the deck and settle the issue with the court.

MR. HAVILL stated that he does not have an issue with the deck. He understands that there is a predicament with the lots down their just like in Camp Dennison.

MR. WOLFE stated that the variance request is not unreasonable.

MR. WOLFE made a motion to approve a 1.5 foot setback variance for a deck addition in the side yard of the home at 10018 East Kemper Road.

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

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

ADMINISTRATIVE MATTERS

MR. FOWLER made a motion to approve the minutes of the November 6, 2017 meeting.

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

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

MR. WOLFE made a motion to move the regularly scheduled meeting in July to July 9, 2018 due to the Fourth of July holiday.

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

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

ADJOURNMENT

MR. WOLFE adjourned the meeting at 9:05 p.m.

Approved:

Luanne Felter, Secretary