

## RESOLUTION

### GRANTING

#### APPEAL NO. 2013-01

WHEREAS, Eads Fence Company, 131 Broadway Street, Loveland, OH 45140, appellant, on December 3, 2012, filed Appeal No. 2013-01 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 10207 Humphrey Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on December 3, 2012, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a four (4) foot Kentucky Board fence located in the front and side yards of the residential property; and

WHEREAS, said Zoning Inspector, on December 3, 2012, 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 January 7, 2013, notice of such hearing was given by first class mail to parties in interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the date of said hearing in accordance with Section 303.15 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 variance approval for a fence with less open face area in the front and side yards of the residential property; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the west side of Humphrey Road, north of Broken Sound Lane and south of Hopewell Road and contains approximately three point thirty-four (3.34) acres; and

WHEREAS, according to further testimony offered at the public hearing, the applicant has constructed a four (4) foot high, Kentucky board fence around the entire perimeter of the property without obtaining a zoning certificate; and

WHEREAS, according to further testimony offered at the public hearing, the fence is constructed of wood that is painted black and is located one (1) foot from the rear and side property lines and fifteen (15) feet from the right-of-way line; and

WHEREAS, according to further testimony offered at the public hearing, the fence is necessary for safety reasons as the home is located on a busy roadway and there is an existing pool in the backyard and a small pond in the front of the home; and

WHEREAS, according to further testimony offered at the public hearing, the fence is screened by existing landscaping and mounding making the visibility of the fence limited from Humphrey Road; and

WHEREAS, according to further testimony offered at the public hearing, the subject site was created as part of the adjacent Broken Sound subdivision. Kentucky board fences are found on numerous lots in the subdivision in the rear, front and side yard areas;

WHEREAS, according to further testimony offered at the public hearing, the request for the variance should be reviewed using the standards of "practical difficulties" and not based on a "use variance," "unnecessary hardship" or "undue hardship;" 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 result in unnecessary hardship to the appellant of the property in question; and

WHEREAS, the variation, in accordance with the following conditions, will not seriously affect any adjoining property owners or the general welfare; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby grant a variance from the requirement of Section 346.1 of the Zoning Resolution in accordance with the authority granted in Section 184.6. Furthermore, the decision of the Zoning Inspector to deny the issuance of a zoning certificate for the reason that the application failed to comply with Section 346.1 of the Zoning Resolution is affirmed, but in accordance with the authority of Section 185, the Board of Zoning Appeals, having granted a variance as stated above, hereby determines that a zoning certificate may be issued to the applicant consistent with the terms set forth in this Resolution; and

**SUBJECT TO THE FOLLOWING CONDITIONS:**

1. That, the Kentucky board fence be constructed not more than four (4) feet above grade and have an open face area of no less than sixty two point five (62.5) percent;
2. That, the Kentucky board fence comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
3. That, the Zoning Certificate and Building permit (if required) for the Kentucky board fence be obtained within six months (6) months and all work be completed within one (1) year from the date of adoption of this Resolution;
4. That, the Kentucky board fence not be relocated or enlarged without the approval of this Board;
5. That, the Kentucky board fence be maintained in a satisfactory condition at all times;

BE IT FURTHER RESOLVED that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 7th day of JANUARY 2013.

Mr. Havill \_\_\_\_aye \_\_\_\_, Mr. Flagel \_\_\_\_aye \_\_\_\_, Mr. Misrach \_\_\_\_absent \_\_\_\_,  
Mr. Ruehlmann \_\_\_\_aye\_\_\_\_, Mr. Wolfe \_\_\_\_aye\_\_\_\_.

JOURNALIZED: JANUARY 7, 2013

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Brian E. Elliff  
Township Zoning Inspector

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Ronald Ruehlmann, Board Chairperson