

RESOLUTION

GRANTING

APPEAL NO. 2013-02

WHEREAS, James O'Dea, 8335 Vicksburg Drive, OH 45249, appellant, on January 7, 2013, filed Appeal No. 2013-02 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 346.1 and 31.3-243 of said Resolution as applied to the property at 8335 Vicksburg Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on January 7, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a privacy fence to be located in the side yards of the subject property; and

WHEREAS, said Zoning Inspector, on January 7, 2013, 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 February 4, 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, Section 31.3-243 provides, in relevant part, that a yard extending across the area of a lot between the side lot lines and being the minimum horizontal distance between the rear lot line and the main building or any projection thereof other than steps, unenclosed balconies or unenclosed porches; and

WHEREAS, according to testimony offered at the public hearing, the request is for approval to construct a six (6) foot high privacy fence in the side yards of the existing home; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the south side of Vicksburg Drive, east of Snider Road and contains approximately zero point fifty eight (0.58) acres; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is requesting approval to construct a six (6) foot high vinyl privacy fence that would extend into the side yards on both sides of the home and connect to existing fencing on neighboring properties to the east and west of the subject property; and

WHEREAS, according to further testimony offered at the public hearing, the existing home has a sunroom addition onto the rear of the structure that extends the rear line of the structure out from the back of the home. Due to the extension of this sunroom, the privacy fences would technically be considered to be in the side yard areas; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is requesting a variance for the fences to exceed four (4) feet in height and contain less than seventy five (75) percent open area; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is also proposing to locate a five (5) foot high split rail fence to the rear of the property to enclose the entire rear yard. This fence is permitted in the rear yard and is not part of the variance request; and

WHEREAS, according to further testimony offered at the public hearing, the proposed privacy fence location to the west of the home would connect to an existing privacy fence on the neighbor's property to the west. The home on this adjoining lot is configured in such a way that the rear line of this home is closer to the street than the rear line of the home on the subject site. This adjoining property has an existing privacy fence extending out from the rear line of the home to the property line and then extending south along the side property line. The proposed fence on the subject property would intersect this existing fence approximately twenty (20) feet back from the front of the neighbor's fence; and

WHEREAS, according to further testimony offered at the public hearing, the proposed privacy fence to the east of the home would also connect to an existing privacy fence on the adjoining property. The privacy fence on this adjoining lot also extends from the rear line of the home. The proposed fence would intersect this existing fence slightly behind the front line of the fence; and

WHEREAS, according to further testimony offered at the public hearing, the proposed privacy fence will not have any impact on the aesthetics of the neighborhood; and

WHEREAS, according to further testimony offered at the public hearing, the purpose of the six (6) foot high privacy fence is to keep the applicant's dog inside the yard; and

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 Sections 346.1 and 31.3-243 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 Sections 346.1 and 31.3-243 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 Sections 346.1 and 31.3-243 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 proposed privacy fence be constructed exactly as shown on the plats and plans submitted to this Board;
2. That, the proposed privacy fence not be relocated or enlarged without the approval of this Board;
3. That, the proposed privacy fence be maintained in a satisfactory condition at all times;
4. That, the proposed privacy fence comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
5. That, the Zoning Certificate and Building permit (if required) for the proposed privacy 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;

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 4th day of FEBRUARY 2013.

Mr. Flagel – “aye, Ms. Harlow – “aye”, Mr. Havill – “absent”, Mr. Misrach – “aye”, Mr. Ruehlmann – “aye”, Mr. Wolfe – “aye”.

JOURNALIZED: FEBRUARY 4, 2013

Brian E. Elliff
Township Zoning Inspector

Ronald Ruehlmann, Board Chairperson