

RESOLUTION

GRANTING

APPEAL NO. 2013-04

WHEREAS, 9247 Cactus Lane, Loveland OH 45140, appellant, on January 10, 2013, filed Appeal No. 2013-04 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 346.1 and 346.2 of said Resolution as applied to the property at 9247 Cactus Lane, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on January 10, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a privacy fence exceeding the height and openness requirements in the side yard and exceeding the height requirements in the rear yard; and

WHEREAS, said Zoning Inspector, on January 10, 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 March 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 346.2 provides, in relevant part, that no fence or wall located in the rear yard shall be built to a height greater than six (6) feet above grade; and

WHEREAS, according to testimony offered at the public hearing, the request is to allow a four (4) foot high Kentucky board fence and an eight (8) foot high wooden privacy fence in the side yard of the home; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on a private drive on the south side of Cactus Lane, east of McKinney Road; and

WHEREAS, according to further testimony offered at the public hearing, the applicant constructed the fence without a zoning certificate; therefore, the request is to allow the fence to remain as built; and

WHEREAS, according to further testimony offered at the public hearing, the house was destroyed during a fire in 2012. During the demolition process, a portion of the fence was damaged and needed to be replaced. The applicant chose to install an entirely new fence to match the new home; and

WHEREAS, according to further testimony offered at the public hearing, prior to the house fire a ten (10) foot high privacy fence existing along a portion of the eastern property line and additional vegetation provided a buffer from the property immediately to the east. The applicant's intention was to keep the buffer the same between the two properties; and

WHEREAS, according to further testimony offered at the public hearing, the adjacent property to the east has junk and debris stored on the property. An eight (8) foot high privacy

fence is necessary to screen the neighbor's yard from view. Additional vegetation will be added in the future if required to recreate the buffer; and

WHEREAS, according to further testimony offered at the public hearing, the remainder of the side and rear yard area is enclosed with a four (4) foot Kentucky board fence that meets the requirements of the Zoning Resolution for the portion located in the rear yard area. However, a small portion of this fence that connects the privacy fence to the front corner of the homes does not meet the openness requirements for fences in the side yard area; and

WHEREAS, according to further testimony offered at the public hearing, the subject site is situated on a lot with the front door facing Cactus Lane and the side yard facing the neighboring property to the east. Access to the lot is provided by a private drive on the west side of the home and this side of the house is effectively treated as the front due to the driveway location; and

WHEREAS, according to further testimony offered at the public hearing, the side yard area to the east of the home appears to function more as a rear yard area, with a patio and building entrance facing this direction; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is requesting a variance to allow a four (4) foot Kentucky board fence and an eight (8) foot high privacy fence in the side; 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 346.2 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 346.2 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 346.2 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 MARCH 2013.

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

JOURNALIZED: MARCH 4, 2013

Brian E. Elliff
Township Zoning Inspector

Ralph Wolfe, Board Vice-Chairperson