

RESOLUTION

GRANTING

APPEAL NO. 2013-05

WHEREAS, 11714 Darbyshire Court, Loveland OH 45140, appellant, on February 20, 2013, filed Appeal No. 2013-05 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 11714 Darbyshire Court, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on February 6, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of privacy fence with less open face area in the side yard; and

WHEREAS, said Zoning Inspector, on February 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 April 1, 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 "B" 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; and

WHEREAS, according to testimony offered at the public hearing, the request is to allow a four (4) foot high Kentucky board fence to be located in the side and a portion of the rear yard areas of the home; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the southeast side of the Darbyshire Court cul-de-sac and contains approximately zero point sixty nine (0.69) acres; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is requesting approval to allow a four (4) foot plus or minus three (3) inch Kentucky board fence with brown vinyl coated wire mesh to be located in the side and a portion of the rear yard areas of the home; and

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

WHEREAS, according to further testimony offered at the public hearing, a three (3) season room and deck were added to the rear of the residence in 2000 moving the effective side yard from the rear corners of the main residence to the rear corners of the addition;

WHEREAS, according to further testimony offered at the public hearing, the fence is more functional and aesthetically pleasing if attached to the rear most part of the main building rather than from the rear of the three (3) season room; and

WHEREAS, according to further testimony offered at the public hearing, the fence would extend approximately forty five (45) feet into the northern side yard from the main building to the property line, sixteen and one half (16 ½) feet into the southern side yard from the rear corner of the main building to a storm sewer easement and one hundred three (103) feet down the southern property line into the rear yard to an existing fence of the same construction; and

WHEREAS, according to further testimony offered at the public hearing, the site's rear yard abuts the rear yards of seven (7) other properties; and

WHEREAS, according to further testimony offered at the public hearing, there are currently five (5) other fences surrounding the property and the fence is of the same construction as the two (2) newest fences constructed on abutting properties; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is requesting the three (3) inch height variation to allow for settling after construction; 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 1st day of APRIL 2013.

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

JOURNALIZED: APRIL 1, 2013

Brian E. Elliff
Township Zoning Inspector

Ronald Ruehlmann, Board Chairperson