

RESOLUTION

GRANTING

APPEALS NO. 2013-07 & 08

WHEREAS, Symmes Township, 9323 Union Cemetery Road, Loveland, OH 45140, appellant, on March 22, 2013, filed Appeals No. 2013-07 & 08 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 properties at 9927 and 9959 Humphrey Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on March 20, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the relocation and replacement of two (2) existing Kentucky board fences with less open face area in the front yards of the homes; and

WHEREAS, said Zoning Inspector, on March 20, 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 May 6, 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 to allow two (2) existing Kentucky board fences to be relocated outside of the existing right-of-way of Humphrey Road and reconstructed in the front yard areas to allow construction of a new sidewalk within the Humphrey Road right-of-way; and

WHEREAS, according to further testimony offered at the public hearing, the properties are located on the north side of Humphrey Road, opposite Huntersrun Court; and

WHEREAS, according to further testimony offered at the public hearing, Symmes Township is in the process of constructing a sidewalk within the right-of-way on the north side of Humphrey Road. As part of this construction process, numerous obstructions would have to be moved and/or removed to make way for the proposed sidewalk; and

WHEREAS, according to further testimony offered at the public hearing, the two (2) existing fences on the subject properties are Kentucky board style fences that do not meet the required seventy five percent (75%) open area in the front yard; and

WHEREAS, according to further testimony offered at the public hearing, it is unclear how these two (2) fences were constructed in violation of this requirement; and

WHEREAS, according to further testimony offered at the public hearing, the Township has proposed moving both of the fences back between five (5) and twenty (20) feet so that the fences will no longer be located within the public right-of-way; and

WHEREAS, according to further testimony offered at the public hearing, a variance is being requested to allow these fences to be reconstructed with a similar style to match the

remaining fence sections to minimize any hardship imposed on the property owners by the sidewalk construction project; and

WHEREAS, according to further testimony offered at the public hearing, the proposed reconstruction of existing fences in the front yard areas of the two (2) lots would not have a negative impact on the aesthetics of this portion of Humphrey Road since Kentucky board fences are common in this portion of the Township and in the adjacent subdivision located in the Village of Indian Hill; 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 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. 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 proposed Kentucky board fences be constructed exactly as shown on the plats and plans submitted to this Board;
2. That, the proposed Kentucky board fences not be relocated or enlarged without the approval of this Board;
3. That, the proposed Kentucky board fences be maintained in a satisfactory condition at all times;
4. That, the proposed Kentucky board fences 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 Kentucky board fences 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 6th day of MAY 2013.

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

JOURNALIZED: MAY 6, 2013

Brian E. Elliff
Township Zoning Inspector

Ralph Wolfe, Board Vice-Chairperson