

RESOLUTION

GRANTING

APPEAL NO. 2013-11

WHEREAS, Michael Tingley, 7881 Daniel Street, Camp Dennison, OH 45111, appellant, on May 20, 2013, filed Appeal No. 2013-11 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 7881 Daniel Street, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on May 20, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a fence with less open face area in the front and side yards of the home; and

WHEREAS, said Zoning Inspector, on May 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 July 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 "C" 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 the construction of a four-foot high Kentucky board fence with less open face area than required in the front and side yard areas of the home; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the southwest corner of the Daniel Street and Jackson Street intersection, west of Camp Road, and contains 0.54 acres; and

WHEREAS, according to further testimony offered at the public hearing, the applicant has replaced a four-foot split rail fence with a new four-foot high, three board Kentucky board fence on the property without obtaining a zoning permit; and

WHEREAS, according to further testimony offered at the public hearing, the fence extends from the rear corners of the home and encloses the rear yard. An existing wire fence remains at the back of the property; and

WHEREAS, according to further testimony offered at the public hearing, the purpose of the fence is to contain the family pets and to keep out wildlife; and

WHEREAS, according to further testimony offered at the public hearing, the property line along Jackson Street is heavily wooded and the fence cannot easily be seen from the road; and

WHEREAS, according to further testimony offered at the public hearing, Jackson Street is very limited in width and only serves as access to one more home located in the Village of Indian Hill; and

WHEREAS, according to further testimony offered at the public hearing, the fence would have a limited impact on the view from the road and any impact would be limited to winter months; and

WHEREAS, according to further testimony offered at the public hearing, several variances have been approved for Kentucky board fences in this area and the fences do not appear to have a negative impact on the aesthetics of the area;

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 proposed Kentucky board fence be constructed exactly as shown on the plats and plans submitted to this Board;
2. That, the proposed Kentucky board fence not be relocated or enlarged without the approval of this Board;
3. That, the proposed Kentucky board fence be maintained in a satisfactory condition at all times;
4. That, the proposed Kentucky board 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 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;

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 JULY 2013.

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

JOURNALIZED: JULY 1, 2013

Brian E. Elliff
Township Zoning Inspector

Ron Ruehlmann, Board Chairperson