

RESOLUTION

GRANTING

APPEAL NO. 2013-13

WHEREAS, Kenneth J. Brickler, 9245 Gourmet Lane, Loveland, OH 45140, appellant, on July 1, 2013, filed Appeal No. 2013-13 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 9245 Gourmet Lane, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on July 1, 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 July 1, 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 August 5, 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-2" 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 six-foot high vinyl privacy fence with less open face area in the side yard of the home; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the west side of Gourmet Lane, north of Souffle Circle; and

WHEREAS, according to further testimony offered at the public hearing, the applicant has replaced an old picket fence with a new six-foot high vinyl privacy fence without obtaining a Zoning permit; and

WHEREAS, according to further testimony offered at the public hearing, the fence encloses the rear yard of the property and is constructed of solid vinyl panels with a decorative lattice extension on top; and

WHEREAS, according to further testimony offered at the public hearing, the purpose of the fence is to secure an existing in-ground swimming pool; and

WHEREAS, according to further testimony offered at the public hearing, a small porch area is located on the northwest corner of the home with a post at the edge. To secure the area the fence was extended past the post to an area considered to be the "side yard" where privacy fences are not permitted; and

WHEREAS, according to further testimony offered at the public hearing, in order to locate the privacy fence in the permitted location the applicant would have to fence off the open portion of the porch and eliminate the ability to exit the porch as intended from both sides of the corner post and also leave the pool area unsecure; and

WHEREAS, according to further testimony offered at the public hearing, the fence extends from the rear corner of the home on the south side as per regulations; 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 346.1 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 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 5th day of AUGUST 2013.

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

JOURNALIZED: AUGUST 6, 2013

Brian E. Elliff
Township Zoning Inspector

Ron Ruehlmann, Board Chairperson