

RESOLUTION

GRANTING

APPEAL NO. 2013-20

WHEREAS, Randal Moss, 10100 Humphrey Road, Cincinnati, OH 45242, appellant, on September 27, 2013, filed Appeal No. 2013-20 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 68-1.3 and 346.1 of said Resolution as applied to the property at 10100 Humphrey Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on September 27, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a Kentucky board fence and a detached accessory structure located in the front yard of the home; and

WHEREAS, said Zoning Inspector, on September 27, 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 November 4, 2013, notice of such hearing was given by first class mail to parties of 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 68.1-3 provides, in relevant part, that when a lot is located at the intersection of two (2) or more streets, there shall be a front yard on each street side of a corner lot and no accessory building shall project beyond the front yard line on either street; 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 applicant is requesting to construct a four (4) foot high white "cross buck" style Kentucky board fence along the Humphrey Road right-of-way portion of the property and to construct a new one hundred twelve (112) square foot shed at the end of the existing driveway; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the east side of Humphrey Road on the southeast corner of the Humphrey Road intersection with a private drive leading into the Lauren Ridge private development; and

WHEREAS, according to further testimony offered at the public hearing, the proposed shed would be located at the end of the turnaround area for the side-entry garage and would store bicycles and other outdoor toys that don't fit in the garage with an SUV; and

WHEREAS, according to further testimony offered at the public hearing, there are no other alternate locations to place the shed due to grading and swale issues in the backyard; and

WHEREAS, according to further testimony offered at the public hearing, the proposed shed would be clearly visible from the private drive and from certain angles to motorists on Humphrey Road; and

WHEREAS, according to further testimony offered at the public hearing, the proposed shed would resemble a doll house and be painted the same color of the home; and

WHEREAS, according to further testimony offered at the public hearing, the proposed fence is necessary in order to provide safety and privacy from pedestrians utilizing the sidewalk along Humphrey Road; and

WHEREAS, according to testimony offered at the public hearing, the applicant will have the area surveyed to determine the actual right-of-way lines and, if necessary, install the fence to the east of the existing landscaping to avoid the removal of any trees; and

WHEREAS, according to further testimony offered at the public hearing, the fence would be the same style and color as the fence directly located on the opposite side of Humphrey Road; 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 68-1.3 and 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 Sections 68-1.3 and 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 Sections 68-1.3 and 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 not be located within the public right-of-way and that the fence be installed to the east of the existing landscaping, if necessary, to avoid the removal of trees. The landscaping must be maintained at all times;
2. That, the proposed Kentucky board fence and shed be constructed exactly as shown on the plats and plans submitted to this Board;
3. That, the proposed Kentucky board fence and shed not be relocated or enlarged without the approval of this Board;
4. That, the proposed Kentucky board fence and shed be maintained in a satisfactory condition at all times;
5. That, the proposed Kentucky board fence and shed comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;

6. That, the Zoning Certificate and Building permit (if required) for the proposed Kentucky board fence and shed 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 NOVEMBER 2013.

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

JOURNALIZED: NOVEMBER 4, 2013

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Brian E. Elliff  
Township Zoning Inspector

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Ron Ruehlmann, Board Chairperson