

RESOLUTION

GRANTING

APPEAL NO. 2013-22

WHEREAS, Steve Wethington, 8105 Camargo Road, Cincinnati , OH 45243, appellant, on October 7, 2013 , filed Appeal No. 2013-22 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 68.1-1 and 346.1 of said Resolution as applied to the property at 11370 Terwilligers Creek Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on October 7, 2013, applied to the Symmes Township Zoning Inspector for a Zoning Certificate to permit the construction of a six (6) foot high privacy fence in the front yard of a double frontage lot; and

WHEREAS, said Zoning Inspector, on October 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, public hearings were scheduled for said appeal on November 4, 2013 and February 3, 2014, notices of such hearings were 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 dates of said hearings 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 68.1-1 provides, in relevant part, that a front yard shall have a depth of not less than fifty (50) feet; however, no alignment or setback or front yard depth shall be required to exceed the average of the minimum depth of the existing front yards on the lots adjacent on each side if each of such lots are within the same block and within one hundred (100) feet;

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 for a variance to permit the construction of a six (6) foot high privacy fence in the front yard of a home located on a double frontage lot; and

WHEREAS, according to further testimony offered at the public hearing, the subject property is located on a private drive off of Terwilligers Creek Drive and abuts Enyart Road; and

WHEREAS, according to further testimony offered at the public hearing, the owner of the property replaced an old four (4) foot high privacy fence along the northern property line with a six (6) foot high privacy fence without obtaining a zoning permit. The fence runs along and partially into the right-of-way of Enyart Road; and

WHEREAS, according to further testimony offered at the public hearing, the remainder of the yard is enclosed with a four-foot high split rail fence which is permitted in the front yard; and

WHEREAS, according to further testimony offered at the public hearing, the purpose of the fence is to protect the property owner's young children from the busy roadway; and

WHEREAS, according to further testimony offered at the public hearing, during the installation process, significant vegetation was removed along the right-of-way line; and

WHEREAS, according to further testimony offered at the public hearing, due to the size of the fence and lack of vegetation the privacy fence does not look good aesthetically along the County roadway; and

WHEREAS, according to further testimony offered at the public hearing, the cost to install a split-rail fence or move the fence out of the right-of-way is too expensive for the property owner; and

WHEREAS, according to further testimony offered at the public hearing, it was determined by all parties that the best course of action is to reduce the privacy fence to a height of four (4) feet with six (6) inch scalloped arches; and

WHEREAS, according to further testimony offered at the public hearing, the property owner shall enter into a License Agreement with the Hamilton County Engineer for permission to use the right-of-way on Enyart 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 68.1-1, 68.1-2, 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 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 68.1-1, 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 privacy fence shall not exceed four (4) feet six (6) inches and shall include scalloped arches;
2. That, the property owner shall enter into a License Agreement with the Hamilton County Engineer within thirty (30) days of the date of this resolution for permission to use the right-of-way on Enyart Road;
3. That, the proposed privacy fence shall be located exactly as shown on the plats and plans submitted to this Board;

4. That, the proposed privacy fence not be relocated or enlarged without the approval of this Board;
5. That, the proposed privacy fence shall be maintained in a satisfactory condition at all times;
6. That, the proposed privacy fence comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;

BE IT FURTHER RESOLVED that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

Mr. Flagel – ‘absent; Ms. Harlow – ‘aye; Mr. Havill – ‘nay’; Mr. Misrach – ‘aye’;
Mr. Ruehlmann – ‘nay’; Mr. Wolfe – ‘aye’.

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 3rd day of February 2014.

JOURNALIZED: FEBRUARY 3, 2014

Brian E. Elliff
Township Zoning Inspector

Ralph Wolfe, Board Vice Chairperson