

RESOLUTION  
DENYING  
APPEAL NO. 2014-14

WHEREAS, John Gallagher, 11354 Terwilligers Creek Drive, Cincinnati, OH 45249, appellant, on September 4, 2014, filed Appeal No. 2014-14 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 11354 Terwilligers Creek Drive, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on September 4, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate to permit the construction of a five (5) foot high picket fence to be located in the side yard; and

WHEREAS, said Zoning Inspector, on September 4, 2014, 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 October 6, 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 519.15 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 for a variance to permit the construction of a five (5) foot high picket fence with more height and less open face area than required in the side yard of the home that is located in an "A" Residence District; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the east side of Terwilligers Creek Drive, south of Enyart Road; and

WHEREAS, according to further testimony offered at the public hearing, the applicant would like to construct a five (5) foot high roll top picket style fence in the side yard. The fence would begin at the front corner of the home and extend twenty one (21) feet along the driveway to the northern property line; and

WHEREAS, according to further testimony offered at the public hearing, a second section of fence was proposed in the side yard for the remaining eight (8) feet along the driveway but the request has been withdrawn; and

WHEREAS, according to further testimony offered at the public hearing, the purpose of the fence is to screen the view of the adjacent property; and

WHEREAS, according to further testimony offered at the public hearing, mature pine trees located on the adjacent property were trimmed back too far and damaged the lower branches leaving the foundation of the house exposed; and

WHEREAS, according to further testimony offered at the public hearing, there is not enough room in the applicant's side yard to plant landscaping for screening; and

WHEREAS, according to further testimony offered at the public hearing, the issue between the two property owners could best be resolved through other means than a fence variance; 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 not result in unnecessary hardship to the appellant of the property in question; and

WHEREAS, a motion to approve a variance with the following conditions was offered; and

1. That, the proposed privacy fence shall not exceed five (5) feet in height and have an open face area of no less than seventy-five (75%) percent;
2. That, the proposed privacy fence shall be located exactly as shown on the plats and plans submitted to this Board;
3. That, the proposed privacy fence not be relocated or enlarged without the approval of this Board;
4. That, the proposed privacy fence shall be maintained in a satisfactory condition at all times;
5. That, the proposed privacy fence 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 addition be obtained within sixty (60) days and all work be completed within six (6) months from the date of adoption of this Resolution;

WHEREAS, said motion failed by a vote of four against and one in favor; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby deny the requested variance due to the failure to attain a minimum of three favorable votes;

Vote Record

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

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 6th day of October 2014.

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Brian E. Elliff  
Township Zoning Inspector

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Ralph Wolfe, Board Chairperson

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Date