

RESOLUTION
DENYING
APPEAL NO. 2016-10

WHEREAS, Victor Kapitula, 5991 Meijer Drive, Suite 14, Milford, OH 45150, appellant, on September 8, 2016, filed Appeal No. 2016-10 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 9428 Union Cemetery Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on September 8, 2016, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a fence and gate in the front yard that exceeds the height permitted and a privacy fence in the side yard that exceeds the height and openness permitted; and

WHEREAS, said Zoning Inspector, on September 8, 2016, 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 3, 2016, 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 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 proposing to construct a six (6) foot high aluminum fence and gate along the right-of-way of Union Cemetery Road and a six (6) foot high vinyl privacy fence along the western property line; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the north side of Union Cemetery, east of Carrington Place; and

WHEREAS, according to further testimony offered at the public hearing, the property is currently vacant. An old home on the property was recently demolished to make room for a new house in the future; and

WHEREAS, according to further testimony offered at the public hearing, the front yard fence would be supported by two (2) foot wide square pillars spaced every twelve (12) feet along the street frontage and include a seven (7) foot eight (8) inch gate with a decorative wrought-iron style centerpiece located across the driveway and; and

WHEREAS, according to further testimony offered at the public hearing, the proposed aluminum fence would comply with the openness requirement for fences in front yard areas but exceeds the maximum height requirements; and

WHEREAS, according to further testimony offered at the public hearing, the vinyl privacy fence would extend from the aluminum fence back along the western property line to connect to an existing privacy fence on the property; and

WHEREAS, according to further testimony offered at the public hearing, the privacy fence would not meet the maximum height or minimum openness requirements for fences in front and side yard areas; and

WHEREAS, according to further testimony offered at the public hearing, there is an existing white privacy fence that used to be located in the rear yard area of the former home. Extending the existing privacy fence to the right-of-way line would provide a solid buffer from the adjacent condominiums while existing vegetation would provide screening of the proposed privacy fence; and

WHEREAS, according to further testimony offered at the public hearing, the purpose of the front and side yard fences are to provide safety from the busy roadway; and

WHEREAS, according to further testimony offered at the public hearing, the portion of Union Cemetery Road where the property is located has transformed from a mostly residential street to an industrial and multi-family corridor; and

WHEREAS, according to further testimony offered at the public hearing, none of the single family homes, industrial uses or multi-family developments in this area have fences in the front yard. Therefore, the applicant's proposal to locate a six (6) foot high aluminum fence and a portion of a six (6) foot high vinyl privacy fence along the right of way and portion of the western property line would not fit in with the character of the adjacent and nearby properties; and

WHEREAS, according to further testimony offered at the public hearing, the nearest front yard fence to the subject site is a four (4) foot split rail fence that complies with the Zoning Resolution on a property just to the east; and

WHEREAS, according to further testimony offered at the public hearing, the proposed gate would be installed within twenty (20) feet from the edge of roadway which would only allow one car at a time to access the property. A second vehicle will have to remain on the road blocking traffic waiting to enter the property. This setback could also be reduced if this portion of Union Cemetery was ever widened; 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 seriously affect any adjoining property and 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 or practical difficulty to the appellant of the property in question; and

WHEREAS, the variation will seriously affect the adjoining property owners and the general welfare; 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 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; and

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 3rd day of OCTOBER 2016.

Mr. Fowler – 'aye', Ms. Harlow – 'aye', Mr. Misrach – 'aye'.

DENIED: OCTOBER 3, 2016

Luanne C. Felter
Zoning Secretary

Donald Misrach, Board Chairperson