

July 16, 2018

Mr. Jim Eichmann – Chairman  
Mr. Ted Leugers – Vice-Chairman  
Mr. Tom Scheve – Member  
Mr. Jeff Heidel – Member  
Mr. Steve Scholtz – Secretary  
Ms. Julie Glassmeyer - Alternate

**Item 1. – Meeting called to Order**

Chairman Eichmann called the meeting of the Board of Zoning Appeals to order at 6:30 P.M. on Monday, July 16, 2018.

**Item 2. – Roll Call of the Board**

Mr. Eichmann called the roll.

Members Present: Mr. Scheve, Mr. Eichmann and Mr. Heidel

Members Absent: Mr. Leugers, Ms. Glassmeyer and Mr. Scholtz

Staff Present: Harry Holbert and Beth Gunderson

**Item 3. – Opening Ceremony**

Mr. Eichmann led the Pledge of Allegiance.

**Item 4. – Swearing in of Those Providing Testimony**

Mr. Eichmann explained that this is a public hearing in which testimony will be given by staff and members of the public. He then swore in all those providing testimony.

**Item 5. – Approval of Minutes**

Mr. Eichmann stated he would like to table approval of the July 2<sup>nd</sup> meeting minutes until more members of the Board who attended that meeting are present.

**Item 6. – Old Business**

Case: SYCB170014  
Applicant: Kathleen Ryan, Esq.  
Location: 7292 Kenwood Road  
Request: Appeal Notice of Zoning Violations

Mr. Holbert stated the case was being continued again due to pending litigation.

**Item 7. – New Business**

Mr. Eichmann explained what a variance is and the standards the Board of Zoning Appeals uses when making decisions as to whether to grant a variance. He then explained how the hearing would proceed.

Case: SYCB180018  
Applicant: Kimberly T. Louis  
Location: 4676 Largo Drive  
Request: Variance

Mr. Holbert presented the case and case history in a Power Point presentation. Mr. Holbert stated the applicant requests a variance to Section 10-7.1 of the Zoning Resolution to allow a four feet tall chain link fence to remain in the defined front yard. Mr. Holbert noted which areas of the yard are the front, rear and side. He pointed out the front yard along Dartmoor Ct. extends 30 feet back from the right of way. Mr. Holbert stated the owner applied for a Zoning Certificate and was denied. He then received notification from the Maintenance Department about a fence being installed without a zoning certificate. The owner was sent a violation letter and subsequently applied for a variance.

Mr. Holbert then showed photos of the existing conditions on the property. He noted he could not find survey pins nor did the applicant submit a survey of the property.

The Board asked questions of Mr. Holbert.

Mr. Scheve asked if the fence was installed after notice was given that the fence application had been denied.

Mr. Holbert answered yes.

Mr. Heidel asked if the old fence fell down.

Mr. Holbert said to his knowledge there was no fence there previously but deferred to the applicant.

Mr. Eichmann asked if the applicant was present and wished to speak.

Mr. Anthony Malley, of 4676 Largo Drive, addressed the Board. He said there was not a fence there before. He said there are two dogs there and Jessica Tomas, who also resides at 4676 Largo Drive, takes the bus downtown. He said their goal is to have a dog door so dogs can go out during the day. He also spoke about one of the dogs who was attacked by another dog in their yard.

Mr. Scheve asked how many dogs they have.

Mr. Malley answered two dogs.

Mr. Scheve asked if Mr. Malley works during the day.

Mr. Malley answered yes. He pointed out what they consider the front yard is on Largo and there is no fence there. He said if the fence was thirty feet back from Dartmoor it would really limit the usable area of the yard.

Mr. Eichmann asked if there was a reason why the fence had to cover such a large area.

Mr. Malley pointed out the location of the fence noting it runs along the driveway in the area they consider to be the rear yard,

Mr. Eichmann asked if they could survive with a smaller area.

Mr. Malley answered it would be difficult because the dogs need more area.

Mr. Scheve asked if they had spoken to the neighbors at 7710 Dartmoor Ct. noting they are most affected by the fence.

Ms. Tomas said the neighbors at 7710 Dartmoor Ct. are renters; she has spoken to them and they said they were ok with it.

Mr. Malley noted many of the other neighbors have chain link fences also.

Mr. Scheve noted because of the cul de sac, the fence is more obtrusive to the neighbors.

Mr. Malley stated there are other lots in the area with fences in the front yard.

Mr. Eichmann noted this is an older neighborhood many of those fences are probably grandfathered. He said the Board is trying to get this fence more in line with the Zoning Resolution.

Mr. Scheve asked Mr. Holbert if the fence is setback sufficiently from 7710 Dartmoor Ct.

Mr. Holbert answered yes.

Mr. Eichmann asked if a survey was obtained.

Mr. Malley said the fence company put flags down in the location for the fence but no survey was obtained.

Mr. Scheve asked why the fence was installed after the zoning application was denied.

Mr. Malley said the installation had already started when they found out they couldn't do it.

Mr. Holbert said he spoke to the property owner and she knew the fence was denied and did it anyway because she said it was cheaper to continue than to cancel her contract with the fence company.

Mr. Scheve said it is difficult to approve when the owner did something she was specifically told she not allowed to do.

Mr. Eichmann pointed out the Board has to pretend the fence is not there because the fact that the work was already completed may not influence the Board's decision.

Ms. Tomas said what put this in motion was when her dog was attacked. As far as installing the fence after being told it was not permitted, she said it could have been a miscommunication because they live in the house and her mother owns it.

Mr. Eichmann asked if there was anyone present from the public who wished to comment on the case. No response.

Mr. Eichmann closed the floor to comments from the public and the Board discussed the issues brought before them.

Mr. Heidel noted we are not sure if the fence is on the property line.

Mr. Eichmann said is this is an unusual circumstance and noted the Board has approved fences on corner lots previously.

There was discussion about requiring the owners to obtain a survey.

Mr. Eichmann agrees the applicants' need space for the dogs and agrees the back yard is too small but said he is not sure the fence should be permitted so close to the right of way. He thinks the fence should be commensurate with the patio further back from sidewalk.

Scheve asked Mr. Holbert for dimensions of the rear yard.

Mr. Holbert explained.

Mr. Scheve said he is likely to approve a fence but not in the current location.

There was discussion about how much of a variance to allow and whether to require landscaping.

Mr. Eichmann entertained a motion.

Mr. Eichmann made a motion to approve a variance for Case SYCB180018 subject to the condition that the fence begin at the southeast corner of the house running perpendicular to the existing rear fence.

Mr. Scheve suggested a different layout so that it is not so close to the sidewalk.

Mr. Holbert pointed out some of the fence Mr. Scheve suggested removing is permitted as of right.

Mr. Scheve seconded Mr. Eichmann's motion.

Mr. Holbert drew up what Mr. Eichmann stated in his motion so that all the Board members were clear about what they are voting on.

Mr. Eichmann called roll.

Mr. Scheve – AYE

Mr. Eichmann - AYE

Mr. Heidel – AYE

Mr. Eichmann said a resolution would be prepared for the next meeting on August 20<sup>th</sup> at 6:30 p.m.

Case: SYCB180019  
Applicant: Will Brooks  
Location: 11325 Marlette Drive  
Request: Variance

Mr. Holbert presented the case and case history in a Power Point presentation. Mr. Holbert explained the request is for a variance to Section 10-7.1 of the Zoning Resolution to allow a six feet fence installed in the side yard to remain in that location. He noted a fence in the side yard may not be taller than four feet tall and must be 75 percent open. Mr. Holbert explained it is

sometimes a challenge for staff based on the drawings submitted to determine where the fence is located.

Mr. Holbert then noted the locations of the front and side yards. He then showed a subsequent drawing submitted for the variance application which shows more clearly where the fence is located. He said the fence on the one side is permitted as of right because it is in the defined rear yard.

Mr. Scheve commented the fence on the right side when facing the house is compliant.

Mr. Holbert said that is correct. He pointed out only the fence on the left side is in need of a variance to remain in that location. He noted the finished side is facing out which is required by the Zoning Resolution.

Mr. Eichmann asked if the applicant was present and wished to speak.

Mr. Will Brooks, the applicant, of 11325 Marlette Drive, Sycamore Township, OH 45249, addressed the Board. Mr. Brooks noted the fence is in that location to allow the kids to come out of the side door and move the refuse area behind the fence so it is not visible from the street. He noted there was a fence there when they purchased the home which was in disrepair. He noted the neighbors are in support of the fence to have continuity of fence lines. Mr. Brooks pointed out the fence is also for security reasons.

Mr. Brooks stated there was a miscommunication as to if his property was in the Township or in the City of Montgomery. He said they were notified that the fence needed a permit from the Township when an inspector or maintenance person stopped by.

Mr. Scheve noted there are a lot of houses with the doors on the side like that and, while he understands why Mr. Brooks would like to enclose the door, he is troubled by what to tell the neighbor who did it right and got a permit and put their fence in a compliant location.

Mr. Brooks said he was trying to avoid a jugged angle when connecting to the neighbor's fence. He noted there are neighbors present in support of the variance request.

Mr. Scheve noted an approval would set a precedent for his neighbor.

Mr. Brooks stressed this small section is the only portion of the entire fence that needs a variance.

Mr. Scheve asked if the applicant would be amenable to adding more landscaping if the Board were to approve the variance request.

Mr. Brooks said he would be willing to put landscaping in.

Mr. Scheve noted one neighbor wrote in saying they were ok with the fence but didn't like the color.

Mr. Brooks noted this is the untreated fence and it has to weather before it can be treated.

Mr. Eichmann and Mr. Scheve discussed the applicant's fence and his neighbors as shown in the photos the applicant submitted.

Mr. Brooks noted as soon as he heard he needed a permit he submitted the application and paid the fee immediately.

Mr. Eichmann asked if there was anyone present from the public who wished to comment on the case.

Ms. Barbara Jurgeleit, of 11399 Marlette Drive, addressed the Board. Ms. Jurgeleit said she has lived next door to the subject property since 1984 and there has always been a fence in that location so they are not doing something new. She spoke in support of granting the variance.

Mr. David McGinnis, of 11331 Marlette drive, addressed the Board. He said his house is to the right and his fence is almost identical to the applicant's. He pointed out a four feet fence would allow direct line of sight to kids on the playground. He stated he is in favor of the variance stating it fits the neighborhood.

Mr. Eichmann closed the floor to comments from the public and the Board discussed the issues brought before them.

Mr. Heidel said he thinks the fence is ok with buffering.

Mr. Eichmann said he likes the way it looks as opposed to being a jagged line with the neighbors. He does not have trouble with the location but agrees with landscaping being added.

Mr. Eichmann entertained a motion.

Mr. Heidel made a motion to approve the variance request for Case SYCB180019 with the condition that shrubbery be required in front of the section of fence facing Marlette.

Mr. Eichmann asked about landscaping code requires.

Mr. Holbert said there is a sidewalk and we don't want to interfere with the gate so two to three shrubs should be adequate.

Mr. Eichmann seconded the motion.

Mr. Eichmann called roll.

Mr. Scheve – ABSTAIN

Mr. Eichmann - AYE

Mr. Heidel – AYE

Mr. Eichmann stated for the record the Board did review both of the documents received from neighbors.

Case: SYCB180020  
Applicant: Katie Werner  
Location: 8580 Concord Hills Circle  
Request: Variance

Mr. Holbert presented the case and case history in a Power Point presentation. Mr. Holbert stated the applicant requests a variance to section 10-12.1 of the Zoning Resolution to allow for

a detached garage with a 14'4.25" mean roof height to be constructed on the property. Mr. Holbert noted the property is a panhandle lot. He said he thinks there was a fire there in which the original garage burned down leaving only the slab. He deferred to the applicant to confirm this.

Mr. Holbert then showed photos of the existing conditions noting the dimensions of the existing concrete from grade. He noted the required setbacks for the proposed garage are met.

Mr. Holbert said a multi car garage is requested. The variance would be for a garage about two feet taller than permitted as of right. He showed the elevations of the proposed structure, roof plan, sections, floor plan etc.

The Board asked questions of Mr. Holbert.

Mr. Eichmann said one of the justifications is that the property is lower in the back.

Mr. Holbert said that is correct the lot slopes off dramatically in the rear.

Mr. Eichmann asked if it is correct to say the slab itself is lower than the house.

Mr. Holbert explained how the mean roof height would be measured.

Mr. Eichmann asked if the garage could be built in compliance.

Mr. Holbert said in order to drop the height by two feet it would be a pretty steep pitch which is more expensive and would require different material for the roof.

Mr. Eichmann commented the architect is probably trying to match the architecture of the house.

Mr. Eichmann asked if the applicant was present and wished to speak.

Mr. Kent Roush, the architect, of 4142 Airport Road #3, Cincinnati, OH 45226, addressed the Board. He confirmed there was a garage there that caught fire the day after its construction was finished.

Mr. Roush stated he kept the front of the garage 12.5 feet noting the eight feet door needs an 11 feet clearance. He said it is a 4/12 slope which is recommended for shingled roofs. He noted he tried to keep it as low as possible. He pointed out the 12.5 feet mean height limit in the Zoning Resolution is difficult to comply with because it requires such a steep pitch. He said as an architect, tries to match the roof on the house.

The Board asked questions of Mr. Roush.

Mr. Scheve asked if this house would stand out on the street with the garage roof that high.

Mr. Roush answered no it would not appear unusually tall from the street. He also noted the rear of the property is green space owned by Indian Hill.

Mr. Mark Werner, of 8580 Concord Hills Circle addressed the Board. He noted he is also the property owner of the adjacent five acre property where he demolished the house. He said he also owns 8560 Concord Hills Circle and owns some commercial properties on Redsky Drive. He

spoke about the steep drop off and creek behind the garage. He said the topography then goes up on the east side of the creek noting that property was gifted as green belt to Indian Hill and will never be developed. Mr. Werner said unfortunately the original garage burned down. In 2009 he applied to rebuild it and was denied but his frustration level was so high he never pursued it. Mr. Werner said now his son is moving in to the house and it is time to rebuild the garage.

Mr. Eichmann asked if there was anyone present from the public who wished to comment on the case. No response.

Mr. Eichmann closed the floor to comments from the public and the Board discussed the issues brought before them.

Mr. Heidel said he has no problem with it noting no one will be bothered by it.

Mr. Eichmann said his questions have been answered by Mr. Holbert and the applicant.

Mr. Scheve agreed it is a reasonable request pointing out it is no harm, no foul as no one around will be adversely affected by it.

Mr. Eichmann entertained a motion.

Mr. Scheve made a motion to approve Case SYCB180020 as submitted.

Mr. Heidel seconded the motion.

Mr. Eichmann called roll.

Mr. Scheve – AYE

Mr. Eichmann - AYE

Mr. Heidel – AYE

#### **Item 8. – Date of Next Meeting**

Mr. Eichmann noted the date of the next meeting – Monday, August 20, 2018 at 6:30 p.m.

#### **Item 9. – Communication and Miscellaneous Business**

No report.

#### **Item 10. – Adjournment**

Mr. Eichmann entertained a motion to adjourn.

Mr. Scheve moved to adjourn, seconded by Mr. Heidel. Vote: All Aye.

The meeting adjourned at 8:10 P.M.

Minutes recorded by: Beth Gunderson, Office Administrator