

Meeting Minutes

**Sycamore Township Board of Zoning Appeals
8540 Kenwood Road
Sycamore Township, Ohio 45236
Thursday, February 29, 2024, at 6:00 p.m.**

Mr. Ted Leugers – Chairman
Mr. Michael Schwartz – Vice Chairman
Mr. Steve Scholtz – Secretary
Mr. Anthony Ramicone -Member
Mr. George Ten Eyck – Member
Mr. Karl Hoalst - Alternate

Item 1.-Meeting Called to Order

Mr. Leugers called the meeting of the Board of Zoning Appeals to order on Thursday, February 29, 2024, at 6:00 p.m.

Item 2.-Roll Call of the Board

Mr. Scholtz called the roll.

Members Present: Mr. Schwartz, Mr. Leugers, Mr. Scholtz, Mr. Ramicone, Mr. Ten Eyck

Alternate Present: Mr. Karl Hoalst

Members Absent:

Staff Present: Jeff Uckotter, Kevin Clark, Jon Ragan

Item 3.-Pledge of the Allegiance / Opening Ceremony

Mr. Leugers led the Pledge of Allegiance.

Item 4.- Organization of the Board

Mr. Leugers noted that the board needed to elect members for positions.

Mr. Scholtz made a motion to keep the board as it was in 2023.

Mr. Ten Eyck seconded the motion.

All voted aye- none opposed.

Item 5.-Approval of Minutes

Mr. Leugers entertained a motion to approve the November 20, 2023, meeting minutes.

Mr. Schwartz made a motion to approve the minutes. Mr. Scholtz seconded the motion.

Mr. Scholtz called the roll:

Mr. Ramicone- YES
 Mr. Leugers- YES
 Mr. Scholtz- YES
 Ms. Ten Eyck- YES
 Mr. Schwartz- YES

Item 6. Swearing in of Those Providing Testimony

Mr. Leugers swore in all those providing testimony. He then explained variances, reviewed the meeting procedures, and discussed the process by which the Board of Zoning Appeals makes decisions on such requests.

Item 7.-New Business

Case: SYCB240001
 Applicant: Eric Fiehler
 Subject property: 8096 Buckland Drive
 Request: Variance request for six-foot-tall privacy fence in the defined front yard of a corner lot.

Mr. Clark presented the case stating that the applicant seeks to maintain a six-foot-tall privacy fence in the front yard of a corner lot. A six-foot-tall privacy fence was installed in the front yard of 8096 Buckland Drive, in the direction of School Road, 34 feet from the house into the front yard and 66 feet along School Road. A Courtesy Violation Letter was sent to the resident on December 7, 2023.

Mr. Clark noted that the Zoning District of the subject property is "B" – Single Family. Mr. Clark noted the STZR 10-7.2 states that no fence or wall shall be located in any defined front yard. Recently, in the past few years, Mr. Uckotter noted that the front yard fence rule was reviewed by the Board of Trustees was changed to not allow front yard fences of any kind.

On a PowerPoint presentation, at the intersection of Buckland Drive and School Road Mr. Clark noted that the subject property is .29 acres or 12,632 square. Mr. Clark noted that the applicant voluntarily removed an old dilapidated split rail fence and replaced it with the six-foot-tall privacy fence. Mr. Clark asserted that because the split rail fence was voluntarily removed, it does not present a legal non-conformance to rebuild a fence of any kind in its place. In review of the previous split-rail fence, it was placed approximately one foot into the School Road right-of-way. As the new fence was placed in the exact location of the former fence, Mr. Clark asserted that it is likely that the new six-foot-tall privacy fence was sited approximately one foot into the School Road right-of-way. Mr. Uckotter noted that Mr. Clark did measure the privacy fence and found that it extends out away from the house 34 linear feet. Further, in review of CAGIS GIS, Mr. Uckotter noted that if one measures the distance from the house to the

split-rail fence, the distance is approximately 34 linear feet; so the presumption is the fence was erected in School Road right-of-way.

Next, Mr. Clark went through the Board of Zoning Appeals Variance Standards as set forth in MTZR 21-6.1-6.7. He reported the following:

21-6.1 - General Standard

No variance shall be granted pursuant to this Chapter that is greater than the minimum variation necessary to relieve the unnecessary hardship or practical difficulty demonstrated by the applicant. Such a showing shall require proof that the variance being sought satisfies each of the standards set forth in this Section 21-6.

An unnecessary hardship or practical difficulty is not present in this case, nor does the applicant satisfy each of the standards set forth in Section 21-6, therefore the variance request that seeks the six-foot-tall privacy fence in the front yard should be denied.

21-6.2 - Unique Physical Condition

The property in question is similar in size and topography to surrounding properties. The fact that the property is a corner lot is not a practical difficulty.

21-6.3 - Not Self-Created

The alleged hardship is self-created because the six-foot-tall privacy fence was installed in the front yard, without a zoning certificate, not in accordance with the Zoning Resolution.

21-6.4 - Denied Substantial Rights

The applicant would be permitted to construct a fence as of right in the side and rear yards provided it met the requirements of Chapter 10 of the Zoning Resolution. A corner lot is not a hardship. If the fence were to be proposed in accordance with the Zoning Resolution, a substantial rear yard area could still be fenced in.

21-6.5 - Not Merely Special Privilege

The applicant seeks a special privilege to allow a front yard six-foot-tall privacy fence. The Zoning Resolution is clear: Section 10-7.1: *No fence or wall shall be located in any defined front yard.*

21-6.6 - Resolution Purpose

The variance would result in a use of the subject property that would not be in harmony with the general and specific purposes for which the Resolution and the provision from a variance is sought and were enacted. The Zoning Resolution is clear: Section 10-7.1: *No fence or wall shall be located in any defined front yard.*

21-6.7- Essential Character of the area

(A) *Variance would result in use that would be materially detrimental to the public welfare.* Yes.
The zoning resolution expressly prohibits fences in the front yard. The six-foot-tall front yard privacy fence is substantial, and it substantially alters the character and aesthetics of the neighborhood.

(B) *Would materially impair an adequate supply of light?*

A privacy fence, so close to the road, likely sited in right-of-way creates a tunnelling effect for motorists on School Road. What if other lots on School Road were allowed to have front yard privacy fences which furthered this tunneling effect?

(C) Would substantially increase hazardous conditions in public streets due to traffic / parking?
The fence extends 34' from the house. In review of CAGIS, the house is sited approximately 33' from the property line that fronts School Road. Above is the site plan provided by the applicant. It appears the six-foot-tall privacy fence replaces (the location of) a non-conforming split-rail fence that was sited in the front yard of the property. As such, it appears that the current six-foot-tall fence is located in the County right-of-way.

(D) Would increase the danger of flood or fire?

No

(E) Would unduly tax public utilities and facilities in the area?

No

(F) Would endanger the public health or safety?

In light of (C), if the fence is sited in right-of-way, it could endanger the public health or safety. Mr. Clark then presented the Staff Recommendation. He noted that:

Staff recommends the denial of the variance to allow the six-foot-tall privacy fence in the front yard as shown.

Alternative site arrangement: **Staff recommends** an alternative site arrangement which would require the fence to not be sited in the front yard, but to allow relief from the 25% side setback rule (10-7.1C – see page 4), to allow the fence to run parallel to the house front-corner lot (School Road) elevation. See proposed site arrangement to the right.

Proposed fence location in red, not to cross the threshold of the house that faces the School Road elevation.

Mr. Uckotter spoke about the alternative site arrangement proposal which would present a variance in the relaxation of STZR 10-7.1C. Mr. Uckotter noted this proposed alternative site arrangement would keep the fence out of the front yard and that this site arrangement would still present a rear yard, enclosed with a fence of 4,300 square feet.



Mr. Uckotter asked the Board if there were any questions for staff.

Mr. Ramicone asked Mr. Uckotter to expand upon the "tunneling effect" that was mentioned prior.

Mr. Uckotter stated that with the zoning code prohibiting fencing in the front yard, he feels that the code intends to push fences back from the road noting this is a case in point example of what the zoning resolution does not allow.

Mr. Leugers asked the applicant to come forward.

The applicant Eric Fiehler (8096 Buckland Dr.) introduced himself from the podium. Mr. Fiehler stated that he has had issues with semi-trucks traveling at a high rate of speed up and down School Road. Mr. Fiehler stated that the neighbors directly behind him party all through the night, leaving trash and garbage in the yard, butchering chickens and pigs, and parking cars in the grass and right of way. Mr. Fiehler stated that he has dogs and a child that plays in the rear yard. Mr. Fiehler stated that these factors are the hardship of the case.

Mr. Scholtz asked Mr. Fiehler if there was any objection to the proposed alternate site arrangement. Mr. Fiehler stated that there is an objection because he feels that he should not be subjected to fencing in half of his yard when everyone else on the street can have a fully fenced in yard.

Mr. Schwartz asked Mr. Fiehler why he removed the previous split-rail fence. Mr. Fiehler stated that the previous fence was dangerous. Mr. Schwartz asked Mr. Fiehler if he had a survey done to see where the property lines are located. Mr. Fiehler stated that no survey was done.

Mr. Ten Eyck asked Mr. Fiehler why he did not get a permit for the six-foot privacy fence. Mr. Fiehler stated that he knew that he needed a permit, however, was told he could not get one due to the fence being located in the front yard.

Chris Thurston (2069 Antoinette Way, Union, KY 41091) introduced himself from the podium. (Fence contractor). Mr. Thurston stated that the new fence is in the same location as the old fence. Mr. Thurston stated that the previous split-rail fence was in disrepair. Mr. Scholtz asked Mr. Thurston why he did not inquire about a survey. Mr. Thurston stated that the previous fence had been present for years and the location did not change.

Mr. Thurston asked what defines a front yard in Sycamore Township. Using the arial view from Cagis, Mr. Uckotter explained where the front, rear, and side yard elevations are located for the subject property – on a corner lot, yard areas fronting roads are front yards.

Mr. Ten Eyck asked Mr. Fiehler if the realtor disclosed having two front yards when he bought the house. Mr. Fiehler stated no that it was not disclosed.

John Kellner (12113 Cedarbreaks Ln, 45249) introduced himself from the podium. Mr. Kellner stated he sees no issue with the approval of the variance due to the safety of the applicant's children and dogs. Mr. Kellner stated that he also likes the fence because it helps with the noise from the trucks on School Road.

Cheryl Bench (8095 Buckland Dr, 45249) introduced herself from the podium. Ms. Bench stated that she feels the new six-foot privacy fence is an asset to the neighborhood. Ms. Bench stated that she is aggravated with the semi-trucks that drive at an excessive rate of speed up and

down school road. Ms. Bench stated that the new fence helps with the sound that is generated by the semi-trucks.

Lauren Dupont (8092 Buckland Dr, 45249) introduced herself from the podium. Ms. Dupont stated that she sees no problem with the fence at all. Ms. Dupont stated that there are no site line issues and that the fence is for the applicant's safety. Ms. Dupont stated that the neighbors behind the applicant party all night and leave trash in the yard.

James L. Salmon (18W 9th Street, Cincinnati OH 45202) introduced himself at the podium as the applicant's attorney. Mr. Salmon stated that he would like to echo the applicants concerns over safety for his daughter and dogs. Mr. Salmon reviewed the memorandum in support that he submitted to the Board. Mr. Salmon stated that he feels that the variance is well supported.

Mr. Scholtz stated that the issue present is the size and placement of the fence. Noting that the fence can be present in an alternate location and still protect the children and dogs.

Mr. Schwartz asked Mr. Salmon if he believes that the Ohio Revised Code referring to legal non-conformities permits the replacement of a larger and different type of structure in place of the previous non-conformity. Mr. Salmon stated that there have been circumstances where an upgrade over the existing non-conforming use has been approved on appeal.

Mr. Ramicone asked Mr. Salmon if he agreed that the proposed alternate site arrangement would still provide the protections that Mr. Salmon is requesting the hardship for. Mr. Salmon stated that the extra space outside of the fence that would be created by the alternate site arrangement would allow the neighbors to continually cause issues such as parking in the applicant's yard.

Mr. Uckotter stated that the Township disagrees with the counselor's assertion that there is a legal non-conformance for the fence. Mr. Uckotter noted that the fence was voluntarily removed by the applicant and therefore the non-conformance is gone.

Mr. Fiehler stated that according to the Ohio Revised Code the non-conformance was not lost when he tore the old fence down.

Mr. Uckotter presented supporting correspondence from neighboring residences.

Mr. Leugers closed discussion from the public.

Mr. Schwartz stated that visual appeal is not the issue. Mr. Schwartz stated that he does not believe that Ohio law was written to allow for an increase of a non-conformance.

Mr. Leugers stated that this is exactly what the township does not want - fencing in the front yard. Mr. Leugers stated that his recommendation is to approve the alternate site arrangement that was proposed by staff.

Mr. Schwartz moved to deny the request as submitted on the basis that the applicant has not met the hardship of the findings necessary under the standards of 21-6. Additionally, noting

that the applicant and fence contractor should have known that a permit was required and put up the fence regardless.

Mr. Ten Eyck seconded the motion.

Mr. Scholtz Called roll:

Mr. Ramicone- YES
Mr. Ten Eyck - YES
Mr. Leugers- YES
Mr. Schwartz- YES
Mr. Scholtz- YES

Mr. Ten Eyck moved that the Board approves the staff recommended alternate site arrangement which would allow relief from the 25 percent front of house-face setback rule, to allow the fence to run parallel to the house front-corner lot elevation. (See page four (4) of the staff report for the site arrangement).

Mr. Scholtz seconded the motion.

Mr. Scholtz Called roll:

Mr. Ramicone- YES
Mr. Ten Eyck - YES
Mr. Leugers- YES
Mr. Schwartz- YES
Mr. Scholtz- YES

Item 8. Date of next meeting

Monday, March 18, 2024, at 6:00pm

Item 9.-Communication or Miscellaneous Business

Mr. Uckotter welcomed Mr. Karl Hoalst as the new alternate board member and welcomed Mr. Ramicone to the full board with his move from alternate.

Item 10. – Adjournment

Mr. Leugers sought a motion to adjourn. Mr. Ramicone made a motion to adjourn, seconded by Mr. Ten Eyck.

Mr. Scholtz called roll:

Mr. Ramicone- YES
Mr. Ten Eyck - YES
Mr. Leugers- YES
Mr. Schwartz- YES
Mr. Scholtz- YES

The meeting adjourned at 7:04 p.m.
Meeting minutes prepared by Jon Ragan



Michael Schwartz, Vice-Chairman



Steve Scholtz, Secretary